

SUPREME COURT OF SOUTH AUSTRALIA

(Civil: Application)

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COMMERCIAL & GENERAL LAW (SA) PTY LTD v LAW SOCIETY OF SOUTH AUSTRALIA

[2015] SASC 16

Reasons for Decision of The Honourable Justice Gray

11 February 2015

**PROFESSIONS AND TRADES - LAWYERS - TRUST ACCOUNTS -
INVESTIGATION OF ACCOUNTS**

**PROFESSIONS AND TRADES - LAWYERS - PRACTISING
CERTIFICATES - CANCELLATION AND SUSPENSION**

**PROFESSIONS AND TRADES - LAWYERS - COMPLAINTS AND
DISCIPLINE - PROFESSIONAL MISCONDUCT - TRUST MONEY**

Application for an interim order suspending a practitioner's practising certificate. The Law Society of South Australia appointed a manager of a legal practice, Commercial & General Law (SA) Pty Ltd, and a supervisor of the firm's trust account to address concerns it had with the management of the firm's trust account. The Legal Profession Conduct Commissioner sought an order suspending the practising certificate of Stephen McNamara, the principal of Commercial & General, and undertook to bring disciplinary proceedings against him within 14 days of the hearing. In summary, the Law Society and the Conduct Commissioner allege that trust funds from the estate of Heanes had been used for the benefit of Mr McNamara and his associates. It was further alleged that trust funds from the estate of Matthews were used to meet the obligations of the Heanes estate.

Whether there is a prima facie case that the practitioner has misused trust monies. Whether an interim suspension order is warranted to protect the public and maintain confidence in the profession.

Held (granting the application):

**First Plaintiff: COMMERCIAL & GENERAL LAW (SA) PTY LTD Counsel: MR R SALLIS -
Solicitor: COMMERCIAL & GENERAL LAW (SA) PTY LTD**

**Second Plaintiff: STEPHEN MCNAMARA Counsel: MR R SALLIS - Solicitor: COMMERCIAL &
GENERAL LAW (SA) PTY LTD**

**Defendant: THE LAW SOCIETY OF SOUTH AUSTRALIA Counsel: MS M BARNES - Solicitor:
LAW SOCIETY OF SOUTH AUSTRALIA**

**Intervener: THE LEGAL PROFESSION CONDUCT COMMISSIONER Counsel: MS F NELSON
QC WITH MR M BARNETT - Solicitor: LEGAL PROFESSION CONDUCT COMMISSIONER**

Hearing Date/s: 03/02/2015

File No/s: SCCIV-14-1624, SCCIV-15-50

A

1. Banking records disclose that funds from the Heanes estate were paid to the immediate benefit of Mr McNamara and his associates.
2. Banking records disclose that funds from the Matthews estate were paid to the benefit of the beneficiaries of the Heanes estate.
3. The evidence does not establish that Mr McNamara had proper authority to make the impugned transfers.
4. The evidence does not establish that the funds from the Matthews and Heanes estates were invested on the terms asserted by Mr McNamara. Rather, the evidence suggests that no investment was made.
5. Trust monies in the amount of \$465,000.00 are missing.
6. The evidence establishes a prima facie case of misuse of trust funds against Mr McNamara.
7. The seriousness of the allegations and the gravity of the prima facie case warrant an order for interim suspension of Mr McNamara's practising certificate to protect the public and maintain confidence in the profession. These matters further warrant the appointment of a manager of the legal practice and a supervisor of the firm's trust account.

Legal Practitioners Act 1981 (SA) s 46 and s 88A, referred to.

Legal Practitioners Conduct Board v Fardone [2009] SASC 15, considered.

**COMMERCIAL & GENERAL LAW (SA) PTY LTD v LAW SOCIETY
OF SOUTH AUSTRALIA
[2015] SASC 16**

Civil

GRAY J.

Introduction

1 In December 2014, the Law Society of South Australia took action in respect of a law practice, Commercial & General Law (SA) Pty Ltd, and its principal legal practitioner, Stephen Patrick McNamara. The Law Society was concerned, in particular, with trust account issues. The Law Society sought to appoint, by resolution, a supervisor of the firm's trust account and a manager of the law practice.

2 Commercial & General and Mr McNamara sought orders restraining both appointments. On 24 December 2014, a Master of this Court declined to restrain the Law Society from appointing a supervisor of the trust account, but did make an order restraining the Law Society from acting on its resolution to appoint a manager of the law practice.

3 Section 46 of the *Legal Practitioners Act 1981* (SA) provides as follows:

Appeal against appointment of supervisor or manager

- (1) A legal practitioner or former legal practitioner may, within 28 days after the appointment of a supervisor or manager, appeal to the Supreme Court against the appointment.
- (2) On an appeal under this section the Supreme Court may confirm or annul the appointment.

4 On 23 January 2015, Commercial & General and Mr McNamara appealed against the decisions of the Law Society to appoint a manager to supervise the law practice and to appoint a supervisor of the trust account. The notice of appeal sought orders annulling both decisions. The grounds of appeal claim that there had been a denial of natural justice, that the decisions to appoint a manager of the practice and a supervisor of the trust account were made without proper inquiry to meet the prerequisites for those appointments, and, finally, that the appointment of a manager was an abuse of process having regard to the undertakings given to the Court by the Law Society.

5 Commercial & General and Mr McNamara have sought directions as to the conduct of the appeal and, in particular, directions in regard to the filing and serving of an application to have the Legal Profession Conduct Commissioner,

Gregory Mornington May, removed from any involvement in the proceeding and a delegate appointed. This was said to be necessary as a result of an asserted conflict of interest.

- 6 On 30 January 2015, the Commissioner sought an interim order suspending Mr McNamara's right to practise as a legal practitioner. Reliance was placed on section 88A of the *Legal Practitioners Act*, which provides:

Supreme Court's inherent jurisdiction

- (1) This Part does not derogate from the inherent jurisdiction of the Supreme Court to control and discipline legal practitioners.
- (2) Without limiting the operation of subsection (1), the Court may act under its inherent jurisdiction to control and discipline legal practitioners on the application of the Attorney-General, the Commissioner or the Society.

The Commissioner relied, in particular, on the decision in *Legal Practitioners Conduct Board v Fardone*, where, when discussing the inherent jurisdiction, I observed:¹

When exercising its inherent jurisdiction the function of the court is to examine the relevant material to determine whether the practitioner has failed to maintain his or her conduct to the standards required of a member of the legal profession. In cases involving breaches of professional standards, the guiding principle is the protection of the public and the standing of the profession, rather than punishment of the practitioner.

The evidence before this Court, together with the practitioner's acknowledgments, establishes serious departures from proper professional standards. It is appropriate that an order for suspension be made immediately. This order is necessary to protect the public. In this way public confidence in the profession can be maintained. As the matter has proceeded on an interlocutory basis it is appropriate that the practitioner and the Conduct Board be at liberty to apply to vary the orders if circumstances change. The interlocutory order may need to be re visited upon the resolution of the disciplinary proceedings that have been the subject of the reserved decision.

- 7 All proceedings and applications were listed for hearing before me on 2 February 2015. Following the hearing of counsel representing Commercial & General and Mr McNamara and the Law Society and the Commissioner, I determined that it was appropriate to proceed first with the application for an interim order suspending Mr McNamara's right to practise. If I were to accede to this application, it would follow that a manager would in all probability be appointed to the practice and the trust account would continue to be the subject of supervision. As there was a need to deal with the matter urgently, I put to one side the application that the Commissioner conduct the matter through a delegate. No objection was taken to this course. I indicated that, at a convenient time, I would hear the application that the Commissioner act through a delegate.

¹ *Legal Practitioners Conduct Board v Fardone* [2009] SASC 15, [27]-[28].

The Application for an Interim Suspension Order

8 The parties agreed that this proceeding was in the nature of an interlocutory proceeding and that any findings of fact that I may make for the purposes of the proceeding were made on that basis. In the findings of fact that I later identify, I recognise that these may have been made on incomplete material and may be the subject of complete or partial review at a later substantive hearing. Insofar as I reach conclusions, I do so on the basis that this is an interlocutory proceeding.

9 The Commissioner has identified the proposed disciplinary proceedings to be brought against Mr McNamara. I was informed that these proposed proceedings would be commenced within 14 days of the present hearing. It is convenient to attach the Commissioner's draft of the proposed charges as Appendix A to these reasons.

Background

10 Banking records from the general account and trust account of Commercial & General and the banking records of a discretionary trust known as Legal Costs Trust were obtained from the National Australia Bank by Julia Susan Dunstone, a solicitor in the employ of the Commissioner. Affidavits were filed by Ms Dunstone addressing the background of the matter. Affidavits were also filed by Alison Jane Hodkin, a trust account regulatory officer employed by the Law Society. Mr McNamara filed five affidavits as well as an affidavit from Philip John Pitman. Numerous exhibits were attached to the affidavits. In reaching my interlocutory findings of fact I have drawn on this affidavit material.

11 Mr McNamara is the sole director and member of Commercial & General and conducts his legal practice through Commercial & General. Commercial & General operates a general banking account as well as a trust account. On 1 June 2006, Mr McNamara established a discretionary trust known as Legal Costs Trust. The trustee is LMCS/sa Pty Ltd, an entity incorporated in May 1993. It has apparently operated as a trustee of a number of trusts. Mr McNamara has been a director of that company continuously since its incorporation. Mr McNamara claimed that Legal Costs Trust acted as "a paymaster in contracts where in accordance with the contracts it has received funds and distributed those funds." Mr McNamara also asserted that Legal Costs Trust "received funds on behalf of persons wanting to invest funds and invested those funds by lending them to third parties."

The Heanes Estate

12 It is convenient to extract a portion of the report of Ms Hodkin summarising matters concerning the estate of Neil Devonshire Heanes:

A total sum of \$385,000 was paid into the LCT account for investment on behalf of this estate and this is the first known investment that was made by the law practice via this account. This \$385,000 was made up of several smaller amounts which were paid into the LCT account on different dates between November 2011 and July 2012. Detailed analysis of the LCT account and other accounts held by the law practice have given great cause for concern as to how the funds were used with no evidence of any of the funds being transferred to an interest bearing account for the benefit of the estate.

Appendix A provides a detailed account of how the funds were used each time funds were transferred into the LCT account. Page 2 provides a summary as to how the funds were used, including the following:

- over \$69,000 was transferred to the law practice business accounts for use towards payment of wages, rent and other expenses;
- over \$6,000 was paid towards Mr McNamara's visa card;
- \$81,700 was paid into an account in the name of Schutara Pty Ltd; and
- \$26,500 was paid to Schutara Pty Ltd Home Loan account.

It should be noted that Schutara Pty Ltd is the trustee for the McNamara Schutte Family Trust and therefore considered to be a personal account belonging to Mr McNamara.

All of these payments plus others listed in the summary provide the basis to suspect that the funds were not invested. Other beneficiaries of the funds include Orio Trust, Pacific Blue Tax Services Pty Ltd, Pitman Industries and Spiros Pseudos. Narration added to these transactions such as "Refund" and "Repayment" do not provide any comfort that an investment of any kind has taken place.

In January and June 2013 the estate has paid out giving the impression that the investment had matured. However it transpires that the money received into the LCT account from another deceased estate, being the Estate of Mildred Matthews, was in fact used to pay out the Estate of Neil Heanes...

13 Appendix A to Ms Hodkin's report sets out a detailed summary of how the Heanes estate monies were used. Of the \$385,000.00 withdrawn from the Commercial & General trust account and deposited into a bank account of the Legal Costs Trust, \$384,615.35 were dispersed from the bank account of Legal Costs Trust. It was Mr McNamara's case that the Legal Costs Trust did not operate a trust account. The Commissioner submitted that this represented the practitioner wrongfully using trust monies.

14 Mr Heanes died in May 2011 and it appears that, soon thereafter, Mr McNamara and Commercial & General acted for the estate. Mr McNamara acknowledged that he was only a substitute executor of the will of Mr Heanes. The three adult children of Mr Heanes each had separate legal representation in regard to their dispute concerning the distribution of the estate. In September 2011, Mr McNamara's application for a grant of probate in his own name was refused. Ms Roach, the executor named on the will, who by this time was no longer in the employment of Mr McNamara, subsequently applied for a grant of probate, which was granted in March 2012.

15 In November 2011, prior to the grant to Ms Roach, Mr McNamara transferred at least \$115,000.00 from the Commercial & General trust account standing to the credit of the estate of Heanes to the account of the Legal Costs Trust. Mr McNamara later transferred a further \$270,000.00 from the Commercial & General trust account standing to the credit of the estate of Heanes to the account of the Legal Costs Trust. The banking records confirm the transfers of the separate amounts making out a total of \$385,000.00. The banking records of the Legal Costs Trust reveal that the monies were disbursed immediately following their receipt into the Legal Costs Trust account in the manner set out in Ms Hodkin's report. At the very least, a substantial amount of those funds were paid from the Legal Costs Trust account to the immediate benefit of Mr McNamara and interests associated with him.

16 Mr McNamara has claimed that he had reached an arrangement with an entity known as Andamooka Opal Stone Unit Trust. Mr McNamara prepared what he described as the relevant trust documentation. The trustees were said to be Sotirios Portellos and Dorothea Tomazou. Mr McNamara asserted that the Andamooka Trust had an arrangement with the Avestra Credit Fund, established by Avestra Asset Management Ltd, for the making of investments. Mr McNamara claimed to have accepted an invitation to place monies with the Andamooka Trust, which, in turn, it was said, would place them with the Avestra Credit Fund. Apparently, Mr McNamara was impressed by an assertion that, in some way, the Andamooka Trust was supported by raw opal with a suggested value of US\$221,364,000.00. In his affidavit, Mr McNamara exhibited purported valuation reports concerning the raw opal. An examination of the valuation reports does not identify the Andamooka Trust as having any interest in the raw opal and identifies the apparent owner as Mr Portellos.

17 Mr McNamara suggested that the Heanes monies were invested with the Andamooka Trust. The only documents evidencing this suggested investment are a purported record of investment kept by the Legal Costs Trust, being correspondence with the Andamooka Trust. Counsel for Mr McNamara acknowledged that these documents were incomplete and that there were no proper records from the Andamooka Trust confirming any investment or the terms of any investment. There were no documents recording the placing of monies by the Andamooka Trust to the Avestra Credit Fund. A further difficulty confronting Mr McNamara's suggestion of an investment is that no monies were ever transferred from the Legal Costs Trust to the Andamooka Trust. Mr McNamara sought to justify his use of the Heanes monies after they were transferred to the account of the Legal Costs Trust claiming that he was instructed to make the withdrawals by the Andamooka Trust.

18 The evidence before this Court makes out a strong *prima facie* case of a misuse of trust funds by Mr McNamara in regard to the estate of Heanes. There is also a strong *prima facie* case of a misappropriation of trust funds. The arrangements between Mr McNamara and the Andamooka Trust raise matters of

grave concern. The absence of any transfer of monies to the Andamooka Trust, at the very least, does not accord with the making of investments. The absence of any record of any monies having been placed in respect of any of these transactions by the Andamooka Trust with the Avestra Credit Fund furthers these concerns. It is also troubling, at the very least, that the Andamooka Trust should be authorising Mr McNamara to make use of funds coming from the Heanes trust account for his personal benefit and for the benefit of entities related to him. The above grave concerns are compounded when regard is had to later events.

- 19 Ultimately, the dispute between the adult children of Mr Heanes was resolved and the solicitors acting for those parties required payment from the trust monies held on behalf of the Heanes estate. By this time, those monies had been disbursed to the Legal Costs Trust and further used for the benefit of Mr McNamara, his associates and others. Mr McNamara resolved the difficulty of meeting the claims in the Heanes estate by drawing from the funds held in trust for the Matthews estate.

The Matthews Estate

- 20 Mildred June Matthews died in December 2012. Ms Roach was the named executor in the will and Mr McNamara acted in regard to the estate. Ms Hodkin set out the following account:

A total sum of \$465,000 was invested via the LCT account on behalf of this estate between January and July 2013. As mentioned above, from these funds \$405,675.87 was used to pay out the Estate of Neil Heanes.

The remaining funds were used for similar purposes that provide great cause for concern and are detailed in Appendix B. Page 2 provides a summary as to how the funds were used, including the following:

- \$31,500 was transferred to the law practice business accounts for use towards payment of wages, rent and other expenses;
- \$1,000 to Schutara Pty Ltd, being the trustee for the McNamara Schutte Family Trust;
- \$800 to SP McNamara's visa card.

All of these payments plus others listed in the summary provide the basis to suspect that the funds were not invested. Other beneficiaries of the funds include Orio Trust and Azian Mercantile. Narration added to these transactions such as "Loan Repayment" does not provide any comfort that an investment of any kind has taken place.

The beneficiaries in this estate were advised that the investment was to mature at the end of January 2014. To date no payments have been made to the beneficiaries other than the sum of \$22,194.63 in February 2014 representing interest, however this amount was funded by an investment being made on behalf of another estate, being the Estate of Khizam in the sum of \$60,000.

21 Mr McNamara transferred monies from the trust account of Commercial & General to the credit of the Matthews estate to the account of the Legal Costs Trust and then applied those monies to meet the claims of the beneficiaries of the Heanes estate. It is the Commissioner's case that this process met the adage "robbing Peter to pay Paul".

22 Mr McNamara asserted that an investment had been made on account of the estate of Matthews with the Andamooka Trust. Again, the difficulties as earlier discussed arose. Substantial sums were purportedly invested by Mr McNamara on behalf of the estate prior to making contact with Ms Roach and prior to Ms Roach entering into a retainer agreement with Commercial & General or receiving a grant of probate. There was no transfer of monies to the Andamooka Trust. There is no evidence of any investment. There is no evidence of any transaction from the Andamooka Trust and the Avestra Credit Fund. The Matthews monies were due to be paid to the beneficiaries of that estate in January 2014. The monies were not forthcoming.

23 On 18 February 2014, Mr Portellos advised Mr McNamara:

... As previously advised we are in the process of changing investments from the Avestra Capital Fund to a European based fund.² This is supposed to be straightforward, but because of changes in Banking requirements and a new policy of "Know Your client" the process is taking longer than expected. I will keep you up to date and CC you in on the relevant emails with our bankers.

A Dr Volker Flick was identified as being involved in the unidentified European based fund.

24 In the 11 months or so from this time to the hearing in this Court, no meaningful information has been received from the Andamooka Trust, Mr Portellos, the Avestra Credit Fund or Dr Flick. The amount of \$465,000.00 remains missing.

25 No evidence has been provided that any of the Matthews estate monies were placed by the Andamooka Trust with the Avestra Credit Fund or any European fund. It might be suggested that this is unsurprising, as no monies were ever transferred from the Legal Costs Trust to the Andamooka Trust. The monies were used by Mr McNamara to meet the obligations of the Heanes estate.

26 The evidence before this Court makes out a strong *prima facie* case of a misuse of trust funds by Mr McNamara in regard to the estate of Matthews. There is a strong *prima facie* case of a misappropriation of trust funds. The arrangements between Mr McNamara and the Andamooka Trust raise matters of grave concern. The absence of any transfer of monies to the Andamooka Trust, at the very least, does not confirm the making of any investment. The absence of

² It is unclear whether the reference to the "Avestra Capital Fund", as opposed to the "Avestra Credit Fund" is deliberate or an error.

any record of any monies having been placed in respect of any of these transactions by the Andamooka Trust with the Avestra Credit Fund or any European based fund furthers these concerns.

27 Mr McNamara sought to justify the transactions in regard to the Heanes and Matthews estates by referring to the interest to be earned on the funds and the fact that interest had been paid to the estates. The banking records suggest that there had been some payments of interest. However, it appears that at least a number of payments had been paid, but the monies came from deposits made by Mr McNamara and do not appear to represent any genuine interest payment from an investment entity.

28 Mr McNamara sought to gain some support from an affidavit of Mr Pitman, a trustee of the Andamooka Opal Trust. This affidavit contains a number of bare assertions and includes an exhibit asserting the payment in full of the monies to the Heanes estate and the Matthews estate. Mr Pitman asserts that the Heanes investments have been paid out in full with interest but no regard is had to the evidence that the interest payments were sourced through Mr McNamara. Having regard to the banking records that are now before the Court, little or no weight can be attached to Mr Pitman's affidavit.

Conclusion

29 As earlier discussed, these are my reasons for ordering the interim suspension of Mr McNamara from practise as a legal practitioner. They also explain my confirmation of the appointment of a supervisor of the trust account and the appointment of a manager of the law practice Commercial & General. I repeat that, in my view, there is a strong *prima facie* case of misuse of trust funds and misappropriation of trust funds.

30 Mr McNamara has asserted that he had inadequate time to properly prepare his answer to Ms Hodkin's report. He claimed that, given time, he would be able to procure evidence from a number of sources to support his claims as to the nature of the investments made on behalf of the estates of Heanes and Matthews. I determined to proceed with an interim order because of the public interest in the matter. However, I have granted Commercial & General and Mr McNamara liberty to apply at short notice to discharge or vary the orders I have made.

31 It is relevant to recall my earlier referred to remarks in *Legal Practitioners Conduct Board v Fardone*.³ The evidence before the Court establishes a serious *prima facie* case of departures from proper professional standards. Accordingly, an immediate order for suspension is necessary to protect the public and maintain public confidence in the profession.

³ *Legal Practitioners Conduct Board v Fardone* [2009] SASC 15, [27]-[28].

APPENDIX A

**IN THE SUPREME COURT OF
SOUTH AUSTRALIA**

ACTION NO. SCCIV 1624 of 2014

IN THE MATTER OF:

**THE LEGAL PRACTITIONERS ACT,
1981**

- and -

IN THE MATTER OF:

STEPHEN PATRICK MCNAMARA

TO: THE SUPREME COURT OF SOUTH AUSTRALIA

The Legal Profession Conduct Commissioner of Level 3, 33 Franklin Street Adelaide in the State of South Australia ("the Commissioner") appointed under and by virtue of the *Legal Practitioners Act, 1981* as amended ("the Act") **HEREBY CHARGES **STEPHEN PATRICK MCNAMARA**** of 82 Flinders Street, ADELAIDE SA 5000, Legal Practitioner ("the practitioner") pursuant to section 82(2) of the Act, with unprofessional conduct in that:

1. MISUSE OF TRUST MONEY

On or about 22 January 2013, the practitioner caused the amount of \$170,000.00 to be transferred from the trust account of his firm, Commercial & General Law, to LMCS/SA Pty Ltd as trustee for the Legal Costs Trust, purportedly as a fixed term investment with "OWAA Avestra Credit Fund" maturing in January 2014 ("the first purported investment"), from funds standing to the account of the estate of the late Ms Mildred Matthews, in circumstances amounting to a misuse of trust money.

Particulars

- 1.1. The amount of \$281,988.00 was being held by the practitioner on trust for Ms Helen Roach, the executor of the estate of the late Ms Mildred Matthews, having been received into trust on 14 January 2013 from the refund of an accommodation bond in the name of the deceased. The first purported investment came from those trust monies.
- 1.2. The first purported investment was speculative and hazardous. No security was sought or obtained. The recording and documentation of the first purported investment was inadequate. The practitioner knew or ought to have known that OWAA Avestra Credit Fund was not an Authorised Deposit-taking Institution and that it did not have an Australian Financial Services Licence.

- 1.3. The first purported investment was made without instructions or authority and at a time when the executor was unaware of the deceased's death.

2. MISUSE OF TRUST MONEY

On or about 23 January 2013, the practitioner caused the amount of \$100,000.00 to be transferred from the trust account of his firm, Commercial & General Law, to LMCS/SA Pty Ltd as trustee for the Legal Costs Trust, purportedly as a fixed term investment with "OWAA Avestra Credit Fund" maturing in January 2014 ("the second purported investment"), from funds standing to the account of the estate of the late Ms Mildred Matthews, in circumstances amounting to a misuse of trust money.

Particulars

- 2.1. The amount of \$281,988.00 was being held by the practitioner on trust for Ms Helen Roach, the executor of the estate of the late Ms Mildred Matthews, having been received into trust on 14 January 2013 from the refund of an accommodation bond in the name of the deceased. The second purported investment came from those trust monies.
- 2.2. The second purported investment was speculative and hazardous. No security was sought or obtained. The recording and documentation of the second purported investment was inadequate. The practitioner knew or ought to have known that OWAA Avestra Credit Fund was not an Authorised Deposit-taking Institution and that it did not have an Australian Financial Services Licence.
- 2.3. The second purported investment was made without instructions or authority and at a time when the executor was unaware of the deceased's death.

3. MISAPPROPRIATION OF TRUST MONEY

On or about 23 January 2013, the practitioner caused to be transferred the amount of \$104,978.50 from the Business Cheque Account 79-518-2687 of LMCS/SA Pty Ltd (as trustee for the Legal Costs Trust) ("the LCT account") and to be paid to Carpenter and Associates for their client in the matter of the estate of Heanes, in circumstances amounting to a misappropriation of trust money.

Particulars

- 3.1. As at 23 January 2013, and at the time of the above transfer, the LCT account had a credit balance of \$270,014.35.
- 3.2. That credit balance came from the amounts of \$170,000.00 and \$100,000.00 which had been transferred to the LCT account in the circumstances particularised in counts 1 and 2 above, and the practitioner thereby held those moneys on trust for the executor of the estate of Matthews ("the owner").
- 3.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 3.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 3.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of

the owner's rights and misused the powers vested in him as a trustee.

4. MISAPPROPRIATION OF TRUST MONEY

On or about 23 January 2013, the practitioner caused to be transferred the amount of \$156,808.09 from the LCT account and to be paid to Michael Hegarty and Associates for their client in the matter of the estate of Heanes, in circumstances amounting to a misappropriation of trust money.

Particulars

- 4.1. As at 23 January 2013, and at the time of the above transfer, the LCT account had a credit balance of \$165,035.85.
- 4.2. That credit balance came from the amounts of \$170,000.00 and \$100,000.00 which had been transferred to the LCT account in the circumstances particularised in counts 1 and 2 above, and the practitioner thereby held those moneys on trust for the owner.
- 4.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 4.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 4.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

5. MISAPPROPRIATION OF TRUST MONEY

On or about 30 January 2013, the practitioner caused to be transferred the amount of \$1,000.00 from the LCT account to the S P McNamara Business Cheque Account 47-972-4878 for "Owaa Fees LCT2SM", in circumstances amounting to a misappropriation of trust money.

Particulars

- 5.1. As at 30 January 2013, and at the time of the above transfer, the LCT account had a credit balance of \$8,227.76.
- 5.2. That credit balance came from the amounts of \$170,000.00 and \$100,000.00 which had been transferred to the LCT account in the circumstances particularised in counts 1 and 2 above, and the practitioner thereby held those moneys on trust for the owner.
- 5.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 5.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 5.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

6. MISAPPROPRIATION OF TRUST MONEY

On or about 31 January 2013, the practitioner caused to be transferred the amount of \$5,000.00 from the LCT account to the Commercial & General

Law Business Cheque Account 75-179-1747 for “Owaa Fees LMCS2Cag”, in circumstances amounting to a misappropriation of trust money.

Particulars

- 6.1. As at 31 January 2013, and at the time of the above transfer, the LCT account had a credit balance of \$7,216.26.
- 6.2. That credit balance came from the amounts of \$170,000.00 and \$100,000.00 which had been transferred to the LCT account in the circumstances particularised in counts 1 and 2 above, and the practitioner thereby held those moneys on trust for the owner.
- 6.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 6.4. The above transfer was made by the practitioner without the owner’s consent, which he knew.
- 6.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner’s proprietary rights, in that he treated the money as his own to dispose of regardless of the owner’s rights and misused the powers vested in him as a trustee.

7. MISAPPROPRIATION OF TRUST MONEY

On or about 4 February 2013, the practitioner caused to be transferred the amount of \$900.00 from the LCT account to the SP McNamara Visa Card 4557 0168 4386 3478 for “Owaa Fees OCT2Visa”, in circumstances amounting to a misappropriation of trust money.

- 7.1. As at 4 February 2013, and at the time of the above transfer, the LCT account had a credit balance of \$2,216.26.
- 7.2. That credit balance came from the amounts of \$170,000.00 and \$100,000.00 which had been transferred to the LCT account in the circumstances particularised in counts 1 and 2 above, and the practitioner thereby held those moneys on trust for the owner.
- 7.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 7.4. The above transfer was made by the practitioner without the owner’s consent, which he knew.
- 7.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner’s proprietary rights, in that he treated the money as his own to dispose of regardless of the owner’s rights and misused the powers vested in him as a trustee.

8. MISAPPROPRIATION OF TRUST MONEY

On or about 11 February 2013, the practitioner caused to be transferred the amount of \$600.00 from the LCT account to the S P McNamara Business Cheque Account 47-972-4878 for “Owaa Fees LCT2SM, in circumstances amounting to a misappropriation of trust money.

- 8.1. As at 11 February 2013, and at the time of the above transfer, the LCT account had a credit balance of \$666.26.
- 8.2. That credit balance came from the amounts of \$170,000.00 and \$100,000.00 which had been transferred to the LCT account in the circumstances particularised in counts 1 and 2 above, and the practitioner thereby held those moneys on trust for the owner.

- 8.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 8.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 8.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

9. MISAPPROPRIATION OF TRUST MONEY

On or about 28 March 2013, the practitioner caused to be transferred the amount of \$55.00 from the LCT account to the SP McNamara Visa Card 4557 0168 4386 3478 for "Registration LCT2Visa", in circumstances amounting to a misappropriation of trust money.

- 9.1. As at 28 March 2013, and at the time of the above transfer, the LCT account had a credit balance of \$46.26.
- 9.2. That credit balance came from the amounts of \$170,000.00 and \$100,000.00 which had been transferred to the LCT account in the circumstances particularised in counts 1 and 2 above, and the practitioner thereby held those moneys on trust for the owner.
- 9.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 9.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 9.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

10. MISUSE OF TRUST MONEY

On or about 5 June 2013, the practitioner caused the amount of \$160,000.00 to be transferred from the trust account of his firm, Commercial & General Law, to LMCS/SA Pty Ltd as trustee for the Legal Costs Trust, purportedly as a fixed term investment with "OWAA Avestra Credit Fund" maturing in January 2014 ("the third purported investment"), from funds standing to the account of the estate of the late Ms Mildred Matthews, in circumstances amounting to a misuse of trust money.

Particulars

- 10.1. The amount of \$170,743.82 was being held by the practitioner on trust for Ms Helen Roach, the executor of the estate of the late Ms Mildred Matthews, having been received into trust on 4 June 2013 from moneys in a cash management account in the name of the deceased. The third purported investment came from those trust monies.
- 10.2. The third purported investment was unnecessary. Probate had been granted on 14 May 2013.

- 10.3. The third purported investment was speculative and hazardous. No security was sought or obtained. The recording and documentation of the third purported investment was inadequate. The practitioner knew or ought to have known that OWAA Avestra Credit Fund was not an Authorised Deposit-taking Institution and that it did not have an Australian Financial Services Licence.
- 10.4. The third purported investment was made without instructions or authority.

11. MISAPPROPRIATION OF TRUST MONEY

On or about 5 June 2013, the practitioner caused to be transferred the amount of \$800.00 from the LCT account to the S P Visa card account number 4557 0168 4386 3478 for "Portellos Fees LCT2Visa", in circumstances amounting to a misappropriation of trust money.

Particulars

- 11.1. As at 5 June 2013, and at the time of the above transfer, the LCT account had a credit balance of \$159,991.26.
- 11.2. That credit balance came from the amount of \$160,000.00 which had been transferred to the LCT account in the circumstances particularised in count 10 above, and the practitioner thereby held those moneys on trust for the owner.
- 11.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 11.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 11.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

12. MISAPPROPRIATION OF TRUST MONEY

On or about 5 June 2013, the practitioner caused to be transferred the amount of \$5,000.00 from the LCT account to the S P McNamara Business Cheque Account 47-972-4878 for "Portellos Fees LCT2SM", in circumstances amounting to a misappropriation of trust money.

Particulars

- 12.1. As at 5 June 2013, and at the time of the above transfer, the LCT account had a credit balance of \$159,191.26.
- 12.2. That credit balance came from the amount of \$160,000.00 which had been transferred to the LCT account in the circumstances particularised in count 10 above, and the practitioner thereby held those moneys on trust for the owner.
- 12.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 12.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 12.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in

that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

13. MISAPPROPRIATION OF TRUST MONEY

On or about 5 June 2013, the practitioner caused to be transferred the amount of \$143,889.28 from the LCT account and to be paid to Carpenter & Associates for their client in the matter of the estate of Heanes, in circumstances amounting to a misappropriation of trust money.

Particulars

- 13.1. As at 5 June 2013, and at the time of the above payment, the LCT account had a credit balance of \$154,191.26.
- 13.2. That credit balance came from the amount of \$160,000.00 which had been transferred to the LCT account in the circumstances particularised in count 10 above, and the practitioner thereby held those moneys on trust for the owner.
- 13.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 13.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 13.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

14. MISAPPROPRIATION OF TRUST MONEY

On or about 7 June 2013, the practitioner caused to be transferred the amount of \$1,000.00 from the LCT account to the S P McNamara Business Cheque Account 47-972-4878 for "Portellos Fees LCT2SM", in circumstances amounting to a misappropriation of trust money.

Particulars

- 14.1. As at 7 June 2013, and at the time of the above transfer, the LCT account had a credit balance of \$9981.98.
- 14.2. That credit balance came from the amount of \$160,000.00 which had been transferred to the LCT account in the circumstances particularised in count 10 above, and the practitioner thereby held those moneys on trust for the owner.
- 14.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 14.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 14.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

15. MISAPPROPRIATION OF TRUST MONEY

On or about 7 June 2013, the practitioner caused to be transferred the amount of \$3,000.00 from the LCT account to the Commercial & General

Law Business Cheque Account 75-179-1747 for “Brennan re Osulliv LCT2Cag”, in circumstances amounting to a misappropriation of trust money.

Particulars

- 15.1. As at 7 June 2013, and at the time of the above transfer, the LCT account had a credit balance of \$8981.98.
- 15.2. That credit balance came from the amount of \$160,000.00 which had been transferred to the LCT account in the circumstances particularised in count 10 above, and the practitioner thereby held those moneys on trust for the owner.
- 15.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 15.4. The above transfer was made by the practitioner without the owner’s consent, which he knew.
- 15.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner’s proprietary rights, in that he treated the money as his own to dispose of regardless of the owner’s rights and misused the powers vested in him as a trustee.

16. MISAPPROPRIATION OF TRUST MONEY

On or about 7 June 2013, the practitioner caused to be transferred the amount of \$3,500.00 from the LCT account to the Commercial & General Law Business Cheque Account 75-179-1747 for “Portellos Fees LCT2Cag”, in circumstances amounting to a misappropriation of trust money.

Particulars

- 16.1. As at 7 June 2013, and at the time of the above transfer, the LCT account had a credit balance of \$5,981.98.
- 16.2. That credit balance came from the amount of \$160,000.00 which had been transferred to the LCT account in the circumstances particularised in count 10 above, and the practitioner thereby held those moneys on trust for the owner.
- 16.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 16.4. The above transfer was made by the practitioner without the owner’s consent, which he knew.
- 16.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner’s proprietary rights, in that he treated the money as his own to dispose of regardless of the owner’s rights and misused the powers vested in him as a trustee.

17. MISUSE OF TRUST MONEY

On or about 12 June 2013, the practitioner caused the amount of \$25,000.00 to be transferred from the trust account of his firm, Commercial & General Law, to LMCS/SA Pty Ltd as trustee for the Legal Costs Trust, purportedly as a fixed term investment with “OWAA Avestra Credit Fund” maturing in January 2014 (“the fourth purported investment”), from funds standing to the account of the estate of the late Ms Mildred Matthews, in circumstances amounting to a misuse of trust money.

Particulars

- 17.1. The amount of \$170,743.82 was being held by the practitioner on trust for Ms Helen Roach, the executor of the estate of the late Ms Mildred Matthews, having been received into trust on 4 June 2013 from moneys in a cash management account in the name of the deceased. The fourth purported investment came from those trust monies.
- 17.2. The fourth purported investment was unnecessary. Probate had been granted on 14 May 2013.
- 17.3. The fourth purported investment was speculative and hazardous. No security was sought or obtained. The recording and documentation of the fourth purported investment was inadequate. The practitioner knew or ought to have known that OWAA Avestra Credit Fund was not an Authorised Deposit-taking Institution and that it did not have an Australian Financial Services Licence.
- 17.4. The fourth purported investment was made without instructions or authority.

18. MISAPPROPRIATION OF TRUST MONEY

On or about 14 June 2013, the practitioner caused to be transferred the amount of \$3,000.00 from the LCT account to the S P McNamara Business Cheque Account 47-972-4878 for "Portellos Fees LCT2SM", in circumstances amounting to a misappropriation of trust money.

Particulars

- 18.1. As at 14 June 2013, and at the time of the above transfer, the LCT account had a credit balance of \$23,281.98.
- 18.2. That credit balance came from the amount of \$25,000.00 which had been transferred to the LCT account in the circumstances particularised in count 17 above, and the practitioner thereby held those moneys on trust for the owner.
- 18.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 18.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 18.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

19. MISAPPROPRIATION OF TRUST MONEY

On or about 19 June 2013, the practitioner caused to be transferred the amount of \$500.00 from the LCT account to the SP McNamara Visa Card 4557 0168 4386 3478 for "Fuel LCT2Visa", in circumstances amounting to a misappropriation of trust money.

Particulars

- 19.1. As at 19 June 2013, and at the time of the above transfer, the LCT account had a credit balance of \$8,781.98
- 19.2. That credit balance came from the amount of \$25,000.00 which had been transferred to the LCT account in the circumstances

particularised in count 17 above, and the practitioner thereby held those moneys on trust for the owner.

- 19.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 19.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 19.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

20. MISAPPROPRIATION OF TRUST MONEY

On or about 19 June 2013, the practitioner caused to be transferred the amount of \$8,000.00 from the LCT account to the S P McNamara Business Cheque Account 47-972-4878 for "Owaa Fees LCT2SM", in circumstances amounting to a misappropriation of trust money.

Particulars

- 20.1. As at 19 June 2013, and at the time of the above transfer, the LCT account had a credit balance of \$8,281.98.
- 20.2. That credit balance came from the amount of \$25,000.00 which had been transferred to the LCT account in the circumstances particularised in count 17 above, and the practitioner thereby held those moneys on trust for the owner.
- 20.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 20.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 20.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

21. MISAPPROPRIATION OF TRUST MONEY

On or about 28 June 2013, the practitioner caused to be transferred the amount of \$200.00 from the LCT account to the S P McNamara Business Cheque Account 47-972-4878 for "Portellos Fees LCT2SM", in circumstances amounting to a misappropriation of trust money.

Particulars

- 21.1. As at 28 June 2013, and at the time of the above transfer, the LCT account had a credit balance of \$270.78.
- 21.2. That credit balance came from the amount of \$25,000.00 which had been transferred to the LCT account in the circumstances particularised in count 17 above, and the practitioner thereby held those moneys on trust for the owner.
- 21.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.

- 21.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 21.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

22. MISUSE OF TRUST MONEY

On or about 3 July 2013, the practitioner caused the amount of \$10,000.00 to be transferred from the trust account of his firm, Commercial & General Law, to LMCS/SA Pty Ltd as trustee for the Legal Costs Trust, purportedly as a fixed term investment with "OWAA Avestra Credit Fund" maturing in January 2014 ("the fifth purported investment"), from funds standing to the account of the estate of the late Ms Mildred Matthews, in circumstances amounting to a misuse of trust money.

Particulars

- 22.1. The amount of \$170,743.82 was being held by the practitioner on trust for Ms Helen Roach, the executor of the estate of the late Ms Mildred Matthews, having been received into trust on 4 June 2013 from moneys in a cash management account in the name of the deceased. The fifth purported investment came from those trust monies.
- 22.2. The fifth purported investment was unnecessary. Probate had been granted on 14 May 2013.
- 22.3. The fifth purported investment was speculative and hazardous. No security was sought or obtained. The recording and documentation of the fifth purported investment was inadequate. The practitioner knew or ought to have known that OWAA Avestra Credit Fund was not an Authorised Deposit-taking Institution and that it did not have an Australian Financial Services Licence.
- 22.4. The fifth purported investment was made without instructions or authority.

23. MISAPPROPRIATION OF TRUST MONEY

On or about 3 July 2013, the practitioner caused to be transferred the amount of \$5,000.00 from the LCT account to the S P McNamara Business Cheque Account 47-972-4878 for "Portellos Fees LCT2SM", in circumstances amounting to a misappropriation of trust money.

Particulars

- 23.1. As at 3 July 2013, and at the time of the above transfer, the LCT account had a credit balance of \$10,070.78.
- 23.2. That credit balance came from the amount of \$10,000.00 which had been transferred to the LCT account in the circumstances particularised in count 22 above, and the practitioner thereby held those moneys on trust for the owner.
- 23.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 23.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 23.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in

that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

24. MISAPPROPRIATION OF TRUST MONEY

On or about 5 July 2013, the practitioner caused to be transferred the amount of \$5,000.00 from the LCT account to the S P McNamara Business Cheque Account 47-972-4878 for "Portellos Fees LCT2SM", in circumstances amounting to a misappropriation of trust money.

Particulars

- 24.1. As at 3 July 2013, and at the time of the above transfer, the LCT account had a credit balance of \$5,070.78.
- 24.2. That credit balance came from the amount of \$10,000.00 which had been transferred to the LCT account in the circumstances particularised in count 22 above, and the practitioner thereby held those moneys on trust for the owner.
- 24.3. The above transfer was a dishonest dealing with trust moneys by the practitioner, in that he knew that he was acting contrary to the standards of ordinary people.
- 24.4. The above transfer was made by the practitioner without the owner's consent, which he knew.
- 24.5. The above transfer was made by the practitioner intending to make a serious encroachment on the owner's proprietary rights, in that he treated the money as his own to dispose of regardless of the owner's rights and misused the powers vested in him as a trustee.

25. MISAPPROPRIATING TRUST MONEY

On or about 31 January 2013, the practitioner caused the amount of \$10,045.75 to be transferred from the trust account of his firm, Commercial & General Law, to his office account, purportedly as an authorised payment of his firm's invoice number 5677 dated 31 January 2013 to the estate of the late Ms Mildred Matthews ("the first costs invoice transfer"), from funds standing to the account of the estate of the late Ms Mildred Matthews, in circumstances amounting to a misappropriation of trust moneys.

Particulars

- 25.1. The first costs invoice transfer was made without instructions or authority, and the practitioner knew or ought to have known that he had no such instructions or authority.
- 25.2. No bill had been delivered by the practitioner, contrary to section 41(1) of the Act.
- 25.3. The first costs invoice transfer was made for work purportedly done and charged for at a rate in excess of the Supreme Court scale of fees, and the practitioner did not have any retainer agreement with his client permitting him to so charge, and he knew or ought to have known that he did not.

26. MISAPPROPRIATING TRUST MONEY

On or about 28 February 2013, the practitioner caused the amount of \$3,697.38 to be transferred from the trust account of his firm, Commercial & General Law, to his office account, purportedly as an authorised payment of his firm's invoice number 5710 dated 28 February 2013 to the estate of the late Ms Mildred Matthews ("the second costs invoice transfer"), from funds

standing to the account of the estate of the late Ms Mildred Matthews, in circumstances amounting to a misappropriation of trust moneys.

Particulars

- 26.1. The second costs invoice transfer was made without instructions or authority, and the practitioner knew or ought to have known that he had no such instructions or authority.
- 26.2. No bill had been delivered by the practitioner, contrary to section 41(1) of the Act.
- 26.3. The second costs invoice transfer was made for work purportedly done and charged for at a rate in excess of the Supreme Court scale of fees, and the practitioner did not have any retainer agreement with his client permitting him to so charge, and he knew or ought to have known that he did not.

27. MISAPPROPRIATING TRUST MONEY

On or about 31 March 2014, the practitioner caused the amount of \$938.08 to be transferred from the trust account of his firm, Commercial & General Law, to his office account, purportedly as an authorised (part) payment of his firm's invoice number 6142 dated 31 March 2014 to the estate of the late Ms Mildred Matthews ("the third costs invoice transfer"), from funds standing to the account of the estate of the late Ms Mildred Matthews, in circumstances amounting to a misappropriation of trust moneys.

Particulars

- 27.1. The third costs invoice transfer was made without instructions or authority, and the practitioner knew or ought to have known that he had no such instructions or authority.
- 27.2. No bill had been delivered by the practitioner, contrary to section 41(1) of the Act.
- 27.3. The third costs invoice transfer was made for work purportedly done and charged for at a rate in excess of the Supreme Court scale of fees, and the practitioner did not have any retainer agreement with his client permitting him to so charge, and he knew or ought to have known that he did not.

28. FALSE AND MISLEADING STATEMENTS

On or about 30 October 2013, by letter to Mr Philip and Mrs Elizabeth Roberts, beneficiaries of the estate of the late Ms Mildred Matthews, the practitioner dishonestly made a statement that was false and misleading in a material particular.

Particulars

- 28.1. The practitioner caused to be sent a letter in his name and signed by him on his firm's letterhead that contained a statement in the following terms:

"In respect to money that has come into the estate, this has been invested in term accounts that mature in January 2014 and will be paid out at the end of January or early February 2014."
- 28.2. The statement was false and misleading in a material particular, in that no such investment had been made and the money that had come into the estate had been misused and misappropriated by

the practitioner in the manner particularised in counts 1 to 27 above.

- 28.3. The statement was dishonestly made by the practitioner because he knew it was false and he intended it to mislead.

29. FALSE AND MISLEADING STATEMENTS

On or about 31 January 2014, by letter to his client, Ms Helen Roach, the executor of the estate of the late Ms Mildred Matthews, the practitioner dishonestly made a statement that was false and misleading in a material particular.

Particulars

- 29.1. The practitioner caused to be sent a letter in his name and signed by him on his firm's letterhead that contained a statement in the following terms:
"In respect to money that has come into the estate, as advised, this has been invested in term accounts that mature in January 2014. In total the sum of \$465,000.00 has been invested"
- 29.2. The statement was false and misleading in a material particular, in that no such investment had been made and the money that had come into the estate had been misused and misappropriated by the practitioner in the manner particularised in counts 1 to 27 above.
- 29.3. The statement was dishonestly made by the practitioner because he knew it was false and he intended it to mislead.

30. FALSE AND MISLEADING STATEMENTS

On or about 30 October 2013, by letter to Ms Julia Dunstone, investigating solicitor, then employed by the Legal Practitioners Conduct Board ("the Board"), in response to an enquiry by the Board into allegations of professional misconduct against the practitioner, the practitioner dishonestly made a statement that was false and misleading in a material particular.

Particulars

- 30.1. The practitioner caused to be sent a letter in his name and signed by him on his firm's letterhead that contained a statement in the following terms:
"It is correct that two separate investments were made to the OWAA Avestra Credit Fund. The first investment was made in January 2013, and the second in July 2013."
- 30.2. The statement was false and misleading in a material particular, in that no such investment had been made and the money that had come into the estate had been misused and misappropriated by the practitioner in the manner particularised in counts 1 to 27 above.
- 30.3. The statement was dishonestly made by the practitioner because he knew it was false and he intended it to mislead.

31. FALSE AND MISLEADING STATEMENTS

In an affidavit sworn by the practitioner on 21 December 2014 in this action ('the practitioner's second affidavit'), the practitioner dishonestly made a statement that was false and misleading in a material particular.

Particulars

- 31.1. In paragraphs 22 to 25 of the practitioner's second affidavit, he swore as follows:
- "22. Ms Roach was hard to contact as she had shifted States (from NSW to Vic) and changed law firms, without leaving forwarding/contact details that I was able to obtain at that time. As a consequence I recognised that I had a duty as a legal practitioner to ensure the funds were properly invested and in accord with Ms Roach's standing instructions, I directed the Estate Funds to be invested in the name of Ms Roach as executor of the Estate of Mildred Matthews.*
- 23 The funds were invested in the LCT in the name of Ms Roach as executor of the Estate of Mildred Matthews and then placed with the Investment Trust. I refer to SPM18.*
- 24 At or about the same time the funds were invested for the Matthews Estate some of the money in the Heanes Estate had to be paid out. At the direction of the Investment Trust to LCT after funds had been cleared, funds were paid out of the LCT Bank Account to solicitors trust accounts who were acting for beneficiaries in the Heanes Estate. There were some other costs and disbursements paid out of the cash funds received for the Estate of Matthews at the direction of the Investment Trust but the Investment Trust has acknowledged receipt of an holds on investment the whole of the funds invested for an on behalf of the Matthews Estate. This occurred in January 2013.*
- 25 The payment of the funds to the LCT in the Matthews Estate also occurred when the final payment to the beneficiary was made in the Estate of Heanes in June 2013. This was at a time when there was a further investment made in the Estate of Matthews in to the LCT. Rather than send the funds into the investment account and remove funds simultaneously, it was explained to me by the Secretary for the Investment Trust that it was simpler, faster and cheaper for the Investment Trust to make an adjustment in its books and records as to whose behalf it was holding funds and have the cash payment made directly from the LCT rather than send the funds into the investment account and simultaneously withdraw them again. SPM 18 clearly shows and acknowledges the funds that have been received as investments by the Investment Trust for an on behalf of Ms Roach as Executrix of the Estate of Mildred Matthews" ("the practitioner's explanation for the Matthews trust money investments")."*
- 31.2. The practitioner's explanation for the Matthews trust money investments was false and misleading in the following material particulars:
- 31.2.1. Ms Roach had not provided "standing instructions" or any instructions at all to invest the Estate Funds.
- 31.2.2. The funds were not "invested in" the LCT.
- 31.2.3. The funds were not then "placed with" the Investment Trust, as described in SPM18 or otherwise.
- 31.2.4. The Investment Trust did not "direct" the LCT to pay funds out of the LCT Bank Account to solicitors trust

accounts who were acting for beneficiaries in the Heanes Estate or for some other costs or disbursements.

31.2.5. The Investment Trust does not hold “on investment” the whole of the funds invested for and on behalf of the Matthews Estate.

31.2.6. There was not a further “investment” made in the Estate of Matthews “in to” the LCT in June 2013.

31.2.7. There was no explanation to the practitioner by the Secretary of the Investment Fund that it was simpler, faster and cheaper for the Investment Fund to make an adjustment in its books and records as to whose behalf it was holding funds and have the cash payment made directly from the LCT rather than send the funds into the investment account and simultaneously withdraw them again.

31.3. The practitioner’s explanation for the Matthews trust money investments was knowingly false and intentionally misleading.

UNDUE DELAY

From about February 2014 to 30 June 2014, the practitioner’s conduct has amounted to undue delay in getting in and distributing the estate.

Particulars

31.4. There has been undue delay in the administration of the estate. The estate ought to have been got in and distributed by no later than the end of January 2014. As at the date of this charge, only a small part the estate has been partially distributed.

31.5. \$465,000.00 previously held in trust by the practitioner is missing and the prospects for the restoration of those monies are doubtful.

The name and address of the solicitor for the Commissioner is Ms Julia Dunstone of Level 3, 33 Franklin Street, Adelaide whose telephone number is 8212 7924.

The address at which documents can be left by way of service upon the Commissioner is Level 3, 33 Franklin Street, Adelaide.

DATED the day of January 2015.

SIGNED:

.....

GREG MAY
Legal Profession Conduct