QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Legal Services Commissioner v Pennisi* [2025] QCAT 432
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **VINCENT PENNISI** (respondent)
APPLICATION NO/S:	OCR191-23 OCR277-23
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	10 November 2025
HEARING DATE:	03 July 2025 17 July 2025
HEARD AT:	Brisbane
DECISION OF:	The Honourable Judicial Member McMeekin KC Assisted by: • Ms Petrina Macpherson, Practitioner Panel Member • Dr Julian Lamont, Lay Panel Member
ORDERS:	**1. The respondent's conduct as particularised in the discipline application filed 8 August 2023 is professional misconduct.** **2. The respondent's conduct as particularised in the discipline application filed 13 November 2023 is professional misconduct.** **3. It is recommended that the respondent's name, Vincent Pennisi, be removed from the local roll.** **4. The respondent pay the applicant's costs of and incidental to each discipline application, such costs to be agreed or assessed on the standard basis in the manner in which costs would be assessed if the matter were in the Supreme Court of Queensland.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – TRUST MONEY – where the Legal Services Commissioner filed a discipline application alleging the respondent disbursed money held on trust in contravention of a court order – where the respondent initially sought to have the discipline application

dismissed because he believed he had authority to disburse the trust money – where the respondent now accepts he disbursed money in contravention of a court order and s 249(2) of the *Legal Professional Act 2007* (Qld) – where the Commissioner submits the conduct amounts to professional misconduct – where the respondent submits the conduct amounts to unsatisfactory professional conduct in the circumstances of the disbursements – whether the respondent's conduct amounts to professional misconduct or unsatisfactory professional conduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – IMPROPER DEALINGS – where the respondent sent a letter to the wife of his client – where the client was subject to a domestic violence order preventing him from communicating with the wife – where the letter was long, contained emotionally manipulative and coercive language – where the respondent knew the letter may amount to a breach of the domestic violence order – where the Legal Services Commissioner alleges that by sending the letter the respondent acted unprofessionally and compromised his integrity and independence – where the Commissioner and respondent agree the conduct amounts to professional misconduct – whether the Tribunal is satisfied the conduct amounts to professional misconduct.

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – where the respondent has engaged in unsatisfactory professional conduct and/or professional misconduct – where the Legal Services Commissioner seeks disciplinary orders against the respondent pursuant to s 456(2) of the *Legal Professional Act 2007* (Qld) – where the Commissioner seeks an order recommending the name of the respondent be removed from the local roll – where the respondent seeks orders imposing a pecuniary penalty and conditions on his practising certificate – whether the respondent is a fit and proper person to remain on the local roll – whether the respondent's name should be removed from the local roll

Domestic and Family Violence Protection Act 2012 (Qld) s 56, s 57, s 60, s 106, s 159
Family Law Act 1975 (Cth) s 121
Legal Profession Act 2007 (Qld) s 5, s 6, s 249, s 418, s 419, s 420, s 452, s 453, s 456, s 649

Adamson v Queensland Law Society Incorporated (1990) 1 Qd R 498

A-G & Minister for Justice Qld v Priddle [2002] QCA 297
Attorney-General v Bax [1998] QCA 89; [1999] 2 Qd R 9
Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand [2018] QCA 66
In the Matter of Vincent Pennisi [SCT] 84
Jensen v Legal Services Commissioner [2017] QCA 189
Legal Practice Tribunal v Pennisi [2007] LPT 1
Legal Services Commissioner v Bussa [2011] QCAT 388
Legal Services Commissioner v Conradie [2018] QCAT 170
Legal Services Commissioner v Cooper [2011] QCAT 209
Legal Services Commissioner v Jensen [2017] QCAT 148
Legal Services Commissioner v Kirin [2024] QCAT 489
Legal Services Commissioner v Kurschinsky [2020] QCAT 182
Legal Services Commissioner v Loel [2020] QCAT 326
Legal Services Commissioner v Madden [2009] 1 Qd R 149
Legal Services Commissioner v Munt [2023] QCAT 479
Legal Services Commissioner v Orchard [2012] QCAT 583
Legal Service Commissioner v Pennisi [2024] QCAT 97
Legal Services Commissioner v PRF [2023] QCAT 291
Legal Services Commissioner v Reeve [2016] QCAT 209
Legal Services Commissioner v SYG [2023] QCAT 401
Legal Services Commissioner v Tang [2025] QCA 206
Legal Services Commissioner v Watts [2016] QCAT 4
Legal Services Commissioner v Winning [2008] LPT 13
Legal Services Commissioner v Wrightway Legal [2015] QCAT 174
New South Wales Bar Association v Cummins [2001] NSWCA 284

APPEARANCES & REPRESENTATION:

Applicant:	A Angeli instructed by Legal Services Commissioner
Respondent:	A Psaltis instructed by Mullins Lawyers

REASONS FOR DECISION

[1] There are two discipline applications brought by the Legal Services Commissioner (‘Commissioner’) against the respondent, Vincent Pennisi, under s 452 of the *Legal Profession Act 2007* (Qld) (‘the Act’). The Commissioner alleges that the respondent engaged in professional misconduct, and seeks that disciplinary orders be made against Mr Pennisi pursuant to s 456 of the Act.

The charges

[2] Under file OCR277-23, the Commissioner charges Mr Pennisi that between 4 December 2018 and 19 March 2019 he paid monies from the V Pennisi & Associates Trust Account contrary to an order of the Federal Circuit Court of Australia dated 29

May 2018, and in breach of s 249 of the Act, and will be referred to in these reasons as the trust account issue.

[3] Under file OCR191-23, the Commissioner charges Mr Pennisi that on or about 31 May 2021 he engaged in conduct in the course of practice which was likely, to a material degree, to bring the profession into disrepute, and will be referred to in these reasons as the Letter issue.

Jurisdiction

[4] The Tribunal's jurisdiction is not in doubt. Mr Pennisi was at all material times an Australian lawyer as defined in s 5(1) of the Act and an Australian legal practitioner within the meaning of s 6(1) of the Act. He was admitted to the roll of legal practitioners in Queensland on 5 March 1974 and at all material times he held a local practising certificate. He held an unrestricted principal practising certificate from 1 July 1991 to 30 June 2021, and from 16 July 2021 to date. He was the sole practitioner and principal of the law practice trading as V Pennisi & Associates from 28 March 2008 to 1 June 2021. He was a partner and principal of the law practice trading as Pennisi Zia Lawyers from 28 July 2021 to 30 June 2022, and from 8 September 2022 to date.

OCR277-23: The trust account issue

A brief overlook of the issues

[5] Mr Pennisi withdrew three amounts from his firm's trust account thereby exhausting the trust monies being held, two of the withdrawals being to pay his own fees. He did so not only without authority but contrary to orders of the Federal Circuit Court of Australia. He thereby deprived the entitlement of an intended beneficiary, as determined under the order of the Court, of some of the monies held on trust.

[6] Mr Pennisi submits that his conduct amounts to unsatisfactory professional conduct, as defined within s 418 of the Act, but not professional misconduct, as defined in s 419 of the Act. In *Legal Services Commissioner v Conradie*, his Honour Judicial Member P Lyons KC observed

> In principle, it is a serious matter for a solicitor to withdraw money from the solicitor's trust account, without authority. While there may be some exceptional cases, as a general rule such conduct falls short, to a substantial degree, of the standard of professional conduct observed and approved by members of the profession of good repute and competency.[1]

[7] Given we accept the general rule as observed by the Judicial Member, the question is whether this is one of those exceptional cases. Once we have determined the characterisation of the conduct, the issue then is to determine the appropriate sanction.

The orders and the background context

[8] From time to time, Mr Pennisi acted for a person we will identify as 'the wife' in a family court proceeding before the Federal Circuit Court (later renamed as the Federal Circuit and Family Court). We will identify the party contradicting as 'the husband'. There were numerous applications, but for present purposes the proceedings concerned, inter alia, a property dispute involving the sale of their former matrimonial

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1 [2018] QCAT 170, [54] ('*Conradie*').

home located at Fir Street, Victoria Point ('Fir St Property'). On 15 June 2017, Judge Baumann (as his Honour then was) made various orders concerning, among other matters, the division of property including, but not limited to, the Fir St Property. His Honour held that the wife was to receive 45 per cent of the net assets and the husband to receive 55 per cent.

[9] In allotting which property the parties were to receive to reflect the 55/45 split, Judge Baumann assumed a sale of the Fir St Property for $570,000 and a net amount realised of $500,000. Judge Baumann's order provided that the gross proceeds of sale were 'to be appropriated in the following order and manner':

> a. Payment of liabilities secured over the former matrimonial home by the ANZ;
>
> b. Payment of all liabilities associated with the sale of the subject property including statutory charges, vendor duty, legal costs, agents commission, advertising fees and auction fees;
>
> c. In payment to each of the party's share of the nett proceeds set out in Order 4 and 5 of these Orders [as to which see below];
>
> d. that the wife shall be entitled to a 45% share of the following nett assets and the husband to the remaining 55% [and thereafter set out his understanding of the assets and liabilities of the parties].[2]

[10] Judge Baumann then added:

> Provided that should the [Fir St Property] nett proceeds from the sale of the [Fir St Property] home be less or more than the nett amount of $500,000.00 the amount of each of the husband and wife is to receive from such sale proceeds shall be adjusted to reflect the percentage division of the net asset as to 45% to the wife and 55% to the husband.[3]

[11] Judge Baumann ordered that the wife was to receive $348,752 and the husband $426,254 from the pool of net assets, but did not leave the amount to be paid from the sale of the Fir St Property to be left to any discretion. He identified which amounts should come from the sale albeit adjusted as provided above. His Honour drew a distinction between the disposition of the proceeds of sale and leaving payments otherwise to other sources, which is evident from his orders 4 and 5 (inter alia) of the order:

> 4. That the wife shall be entitled to the following:
>
> | | |
> |---|---|
> | Partial property settlement | $25,000 |
> | Share of sale proceeds of the [Fir St Property] | $323,752 |
>
> …
>
> 5. That the husband shall be entitled to the following:
>
> [various identified assets totalling $681,351 but relevantly including]

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[2] Hearing Book filed 10 December 2025 in the matter of OCR277-23, vol 1, 72 [3] ('HB – OCR277-23').

[3] HB – OCR277-23, vol 1, 72 [3].

Partial property settlement	$25,000
[Less two identified liabilities totalling $431,345 leaving a net of $250,006]	
Share of sale proceeds of [Fir St Property] (subject to adjustment as here and before set out)[4]	$176,248

[12] On 9 February 2018, Judge Egan, also a Judge of the Federal Circuit Court of Australia, ordered that the wife pay her husband's costs 'of and incidental to the property proceedings incurred by [the husband] from 4 February 2016 until the date of trial being 30 August 2016, such costs to be assessed…'.[5] Further, Judge Egan ordered that 'the amount of such assessed costs are to be paid to the husband from the wife's forty-five percent (45%) share of the net proceeds of sale of the Fir Street Property'.[6] The parties agreed that the assessed costs, thereby ordered by Judge Egan that the wife was to pay, was $14,338.00.

[13] On 29 May 2018, Judge Egan ordered:

> 1. That paragraph 2 of the Order made by me on 9 February 2018 be varied such that the amount of any assessed costs as ordered by me to be paid by the wife pursuant to my Order **shall be first paid in the net proceeds of sale from the [Fir St Property].**
>
> …
>
> 7. That upon the sale of the [Fir St Property], the net proceeds of sale be held in the Applicant's solicitor's trust account pending further Order of the Court.
>
> …
>
> 9. That each party have liberty to apply on the giving of three (3) days' notice, each to the other.[7]

[14] The significance of giving parties liberty to apply is well known to lawyers. In such an order, the relevant court retains the ability to make further orders or directions related to a matter, even after an initial order or judgment has been made. It allows parties to return to court for clarification, adjustments, or further directions concerning the implementation of the original order, without needing to start entirely new proceedings.

[15] Interposing here, there can be no doubt about the meaning and intent of Judge Egan's orders. Effectively, the husband had a charge on the net proceeds of the sale of the Fir St Property to pay the costs mentioned. The costs were to be met from the wife's share of the proceeds of the sale. Further, the net amount once received into the trust account, intending to be the trust account of V Pennisi & Associates, was to be held pending further order of the Court. As will be seen, there was no such further order.

[16] Returning to the narrative. On 18 July 2018, Judge Egan made further orders in response to an application and its amended version filed by the husband. Mr Pennisi appeared for the wife. Judge Egan dismissed the applications and, so far as relevant,

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4 HB – OCR277-23, vol 1, 73 [4]-[5].
5 HB – OCR277-23, vol 1, 42 [1].
6 HB – OCR277-23, vol 1, 42 [2].
7 HB – OCR277-23, vol 1, 44-45 [1], [7], [9] (emphasis added).

ordered the husband to pay the wife's costs of and incidental to those applications. In contradistinction to his Honour's earlier costs order in favour of the husband, Judge Egan did not order the costs to be paid out of the proceeds of the Fir St Property. The applications said nothing of the orders made of 9 February 2018 or 29 May 2018. The applications are described in the 'List of orders for file' from the Court's portal as 'Dismissed' at a 'Directions Hearing'.[8] Those costs were assessed at $4,589.[9]

[17] On 6 September 2018, his Honour Judge Middleton of the Federal Circuit and Family Court dismissed an application filed by the wife on 3 May 2018. The order has no apparent relevance at this juncture, but, as discussed in [61], it is necessary to return to it.

[18] On 4 December 2018, the Fir St Property sale was settled on a contract price of $500,000, some $70,000 less than assumed in Judge Baumann's orders. As well, there were very significant reductions from the proceeds. It transpired the net proceeds of the sale totalled $250,458.38 and that was paid into the trust account of V Pennisi & Associates ('the trust account'). Thus, the net proceeds were nearly one half of the assumption underlying his Honour's analysis. There are three disbursements worthy of comment:

(a) $60,000 was paid to Rosen Lawyers' trust account. It is common ground that the amount refers to a debt claimed by the husband's daughter against the husband. Judge Baumann mentioned a 'purported Deed of Compromise' that the husband had entered into with the daughter asserting a debt of $100,000. The husband's counsel 'did not press for the debt to be included in the marital pool of assets and liabilities'. There is no mention in the judgment that the daughter had a caveatable interest in the Fir St Property or that any such amount needed to be brought into account in determining the cash available for distribution to the parties. It is not known to the Tribunal how a claimed monetary debt to the husband resulted in a caveatable interest in jointly owned real estate.

(b) $14,938 was paid to V Pennisi and Associates. This is not to criticise the amount of the fee charged but to note that Mr Pennisi must have been aware that a fee of that size was never anticipated by Judge Baumann. That amount is well above the typical legal fees of a straightforward conveyance of a residence when acting for the vendor, perhaps ten times a typical fee. The wife swore an affidavit in proceedings before the Federal and Family Court that 'great difficulty and costs was experienced in the sale of the home' and that her solicitor, presumably Mr Pennisi, 'negotiated a release of the caveat [lodged by the husband's] daughter at a reduced amount' of the existing debt.[10] Judge Baumann was not aware of that caveat.

(c) $158,372 was paid to the ANZ Bank reflecting presumably the home mortgage and ANZ Business Credit facility expressly dealt with by Judge Baumann. Judge Baumann knew of the existence of the existing mortgage (which he assumed at $70,000) and the existence of the Business Credit facility. His orders were framed to have the mortgage brought into account in determining the net amount available to share between the parties and left it to the husband to meet

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8 HB – OCR277-23, vol 1, 114.
9 HB – OCR277-23, vol 1, 105 [13].
10 HB – OCR277-23, vol 1, 128 [9], [11].

> the Business Credit facility. The total debts were a total of $149,453 at the time of judgment. Whether that increase in indebtedness was due to the husband increasing the mortgage, as Mr Pennisi asserts in his response to the discipline application,[11] or the effluxion of time and increase of interest owed, or for some other reason, is not dealt with by evidence and not known by this Tribunal.

[19] Several observations should be made. Firstly, the asset pool in fact available was substantially less than the $775,006 that Judge Baumann adopted. The parties had approximately $250,000 less, more than a 30 per cent reduction. Secondly, the depletions were in some cases anticipated but in some plainly not, most obviously the debt of $60,000. Thirdly, there is a real question over whether the legal fees that were owed to Mr Pennisi for work involved in negotiating with a third party's lawyer about a claimed charge on the Fir St Property, which was unknown to Judge Baumann, fell within his Honour's intent when he ordered that the gross proceeds be 'appropriated' by 'legal costs' associated with the sale of the Fir St Property (see [9] above).

[20] Mr Pennisi is not charged in respect of any of his decisions which resulted in the substantial reduction in the net proceeds received into the trust account. However, these unexpected diminutions seem to have impacted on Mr Pennisi's decisions as a trustee, for which he is charged. The husband has not provided any sworn evidence and so the Tribunal does not know what, if any, instructions he provided that led to the substantial alteration to the amount received into the trust account. It seems a reasonable inference that the husband did not agree to what transpired. As will be seen, he has complained bitterly about the end result and about his perception of the way Mr Pennisi dealt with him. What is certain, is that Mr Pennisi at no time took instructions from the husband. Mr Pennisi was of course aware of the acrimony between the husband and wife and the long history of litigation that preceded.

[21] The relevance to the issue here is that any competent solicitor, acting as trustee, should have been seriously concerned about their position. Each of these considerations ought to have caused a competent practitioner to consider seeking clarification from the Court as to how the judgment and orders in place be affected. And a competent practitioner aware of the orders made would appreciate that such clarification could easily be sought under the liberty to apply provision.

The wife is in financial difficulties

[22] In an e-mail of 13 September 2018 from the wife to Mr Pennisi, the wife refers to a District Court proceeding against her brought by the ANZ Bank. A contract of sale for the Fir St Property had failed. She explained to Mr Pennisi the difficulties she had in relation to the litigation with the ANZ Bank, and her belief that 'all those issues with the bank will be solved when the house is sold.' Relevantly, she then wrote, relevant to this discipline application:

> **According to judge Egan's order dated on 29/5/2018 pr7 says that upon the sale of the property, according to the net proceeds of sale be held in the applicant's solicitors trust account pending further orders of the court, however Judge Middleton dismissed the outstanding application and closed our case..how can we go from there?**
>
> I know that first we need to sell the house.

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[11] HB – OCR277-23, vol 1, 26 [1.14(b)].

> We use relevant court orders below.
> 15/6/2017 by judge Bauman [sic]
>
> 9/2/2018 and 29/5/2018 by judge Egan . [sic]
>
> 45% wife 55% husband assets pool (not 45/55 for house sale)
> Cost order 9/2/2018 awarded to [the husband].
> Appeal cost awarded to [the wife] $1000 agreed to return "prado" as it is .
> Cost order 18/7/2018 to [the wife].
>
> Please find attached copy of the court order 6/9/2018 and assessed cost and a screen shot of our agreement for appeal cost for conveyancing.[12]

[23] At no stage does Mr Pennisi explain what advice he gave in response to the wife's question. It is known that the wife did not take advantage of the liberty to apply provision set out in the same orders referenced in the e-mail of 13 September 2018, which, to a competent lawyer, would be the obvious answer to the question posed.

The distribution

[24] After receipt of the net proceeds from the sale of the Fir St Property into the trust account, Mr Pennisi then made, on the wife's instructions, three distributions. Mr Pennisi:

(a) on or about 7 December 2018, paid the wife the sum of $235,000.00;

(b) on 7 January 2019, transferred $6,894.59 to the wife's family law file (to pay outstanding legal fees owed to Mr Pennisi); and

(c) on 19 March 2019, transferred $8,563.79 to her family law file (also used to pay the outstanding legal fees owed to Mr Pennisi).

[25] The entire funds received into the trust account from the sale of the Fir St Property were so disbursed. The husband received none of the sale proceeds.

A failed contempt proceeding

[26] Not surprisingly the husband was upset. Some years later, he eventually determined to bring an application for contempt against the wife. He was self-represented and, as is often the case when self-advised, not well advised. On 18 January 2022, his Honour Judge Lapthorn dismissed the application. Judge Lapthorn's reasons, however, offer no support for Mr Pennisi's stance:

> [The husband] did not receive any of these [Fir Street Property] proceeds. **Both [the wife] and Mr Pennisi hold the view that he was not entitled to do so in accordance with the judgment and orders of Judge Baumann, notwithstanding the order of Judge Egan that the proceeds of sale were to be deposited into a trust account until further order of the court. There is no doubt this was not complied with.** This failure to comply forms the basis of the applicant's complaint.
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> ...
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> **I have much sympathy for [the husband's] complaint. There appears to be a complete disregard for the orders of Judge Egan including the requirement to pay [the husband's] costs before the distribution of the**

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[12] HB – OCR277-23 vol 1, 120-21 (emphasis in original).

> **proceeds of sale.** However the orders of Judge Egan were styled "until further order" and Judge Middleton made an order dismissing all outstanding applications. **Whilst I do not consider that that order in any way took away [the wife's] obligation to comply with Judge Egan's orders** I am satisfied that the wife could have been confused about her obligations and relied on her solicitor. I am not satisfied [the husband] has sufficiently established his case to the requisite standard, that is the higher standard of beyond reasonable doubt. **Although there has been a breach of the orders** I cannot be satisfied the breach was a flagrant challenge to the court. For that reason I will dismiss each of the applications.
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> ....
>
> **I well understand [the husband's] frustration in his complaint that the orders of Judge Egan were not complied with**.[13]

[27] Later, the husband brought an action for damages for conspiracy against Mr Pennisi and the wife for depriving him of the monies in trust. As best we can tell, that action was similarly misguided. What we are told is that he retained solicitors at some point, and the solicitors mention in correspondence that the husband was by then impecunious. These proceedings were eventually dismissed by consent on 7 October 2022 by Judge Lapthorn.

Unsworn assertions

[28] There are several assertions made that are not supported by affirmed or sworn evidence. We have not acted on those claims but are aware that, if true, such matters may have influenced what decisions were made. For example, in his response to the disciplinary application, Mr Pennisi said:

> Other Orders (including costs orders against [the husband] – Order of Egan J 18 July 2018), Warrant of Execution – [the husband] encumbered property, subsequent to Baumann J Order (15 June 2017) by increasing the ANZ mortgage by drawing down for his failed business enterprise & financial dealings with his daughter … who secured a judgment against him, and warrant registered over the property for approximately $111,000.00. [The husband] further failed in meeting his obligations to ANZ which filed Supreme Court proceedings for foreclosure.[14]

[29] Similarly, the husband has made assertions in his submissions, which are not sworn to, including that:

(a) Mr Pennisi took advantage of his nervous breakdown – implicitly from the context when Mr Pennisi was dealing with the trust monies;

(b) he had attempted to communicate to Mr Pennisi many times towards the end of 2018 to ask Mr Pennisi to contact his solicitors regarding court orders and the holding of trust monies, but Mr Pennisi ignored his phone calls and emails, and e-mails from his conveyancing solicitors;

(c) he had another nervous breakdown in January 2019, which was caused by Mr Pennisi continuing to ignore his and his solicitor's attempts at contact;

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13 [redacted] [2022] FedCFamC2F 10, [19], [27], [29] (emphasis added).

14 HB – OCR277-23, vol 1, 26 [1.14(b)].

(d) Mr Pennisi knew at all times that he had diagnosed post-traumatic stress disorder and was in an emotionally fragile state from 2017;

(e) he was in 'protective custody' for his nervous breakdown and not able to receive communications, which Mr Pennisi knew (at a time we cannot determine from the husband's submissions); and

(f) he was permanently disabled when crushed by a 30-tonne boat on 31 July 2019.[15]

[30] We do not know what Mr Pennisi knew of the husband's personal situation, and we are not concerned with any dealings prior to the receipt of monies into trust, save to understand Mr Pennisi's explanation for his conduct the subject of the charge. We know little of the validity of the various claims made against the settlement monies from the sale. Whether any of these claimed matters would have resulted in the Court reaching some different result is not known to this Tribunal. However, what is evident is that a prudent solicitor would have appreciated that the financial circumstances were very different to the situation that Judge Baumann had considered. The puzzling aspect is that Mr Pennisi proceeded, without direction from the Court, to determine what property should go to his client.

The law on trust money

[31] There is no doubt about the law. Section 249 of the Act governs how a law practice must deal with trust monies held in the trust account:

> **249 Holding, disbursing and accounting for trust money**
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> (1) A law practice must—
>
> (a) hold trust money deposited in a general trust account of the practice exclusively for the person on whose behalf it is received; and
>
> (b) disburse the trust money only under a direction given by the person.
>
> Maximum penalty—50 penalty units.
>
> (2) Subsection (1) applies subject to an order of a court of competent jurisdiction, division 2A or as otherwise authorised by law.
>
> (3) Subject to division 2A, the law practice must account for the trust money in the way prescribed under a regulation.
>
> Maximum penalty—50 penalty units.

[32] Thus, Mr Pennisi was required to disburse the trust monies held in the trust account 'only under a direction given by the person on whose behalf it is received' but subject to subsection (2): 'subject to an order of a court of competent jurisdiction'. It is undisputed that the orders of Judge Egan were orders of a court of competent jurisdiction. Put simply, Mr Pennisi did not comply with the orders of Judge Egan in contravention of s 249 of the Act.

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[15] HB – OCR277-23, vol 1, 135-36 [1]-[8].

A concession of unsatisfactory professional conduct

[33] Until the eve of the hearing on 3 July 2025, Mr Pennisi's position was, in summary, that he had done nothing wrong as he was entitled to disburse monies from the trust account as and when he had determined. He took legal advice at some point. As a result of that advice (which he chooses not to disclose) he accepts that his conduct consists of unsatisfactory professional conduct and that his previously held position was wrong. That change of position was communicated to the Commissioner on 26 June 2025, one week prior to the Tribunal hearing.

[34] The issues for the Tribunal to determine then are whether Mr Pennisi's conduct should be characterised as unsatisfactory professional conduct as he submits or professional misconduct as the Commissioner submits, as well as the appropriate sanction. In reaching a determination of both issues it is necessary to understand the extent of the departure from good practice that occurred and why.

[35] In the discussion that follows it should be emphasised that the Commissioner does not assert any dishonesty in Mr Pennisi's conduct. We proceed on that basis.

The extent of departure from proper practice

[36] The position adopted by Mr Pennisi in the week before the initial hearing on 3 July 2025 is very different to the position he adopted at the time of the disbursements in late 2018 and early 2019 and held until that time. To provide insight into his thinking and understanding, it is helpful to examine his responses to the complaint and charge brought by the Commissioner.

[37] The Commissioner filed the discipline application on 13 November 2023. Mr Pennisi filed a formal response on 2 January 2024. He provided an affidavit on 29 August 2024, in which he referred to a 'full analysis' in an affidavit sworn by the wife on 19 March 2019 in the contempt proceedings. That affidavit was provided as an annexure to his own affidavit. The Commissioner's submissions were filed on 19 November 2024. Mr Pennisi filed his submissions in response on 2 December 2024. There the matter rested until supplementary submissions were filed by Mr Pennisi on the eve of the hearing, being 2 July 2025. The analysis below is intended as a summary of Mr Pennisi's position until those supplementary submissions were received:

(a) the wife had sole authority to deal with the net proceeds of the sale of the Fir St Property, and she provided instructions to Mr Pennisi upon which he relied;[16]

(b) section 249 of the Act placed a responsibility on Mr Pennisi to pay trust money he received from the sale of the Fir St Property to the person/s entitled to receive same;[17]

(c) in carrying out such responsibility it was necessary for Mr Pennisi to take into account who was entitled to receive the monies as required by s 249 of the Act, which he submits he did;[18]

(d) the person/s entitled to receive proceeds were subject to many orders of the Federal Circuit Court and Federal Circuit and Family Court of Australia, citing

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[16] HB – OCR277-23, vol 1, 8-9 [4], [9].

[17] HB – OCR277-23, vol 1, 8 [5].

[18] HB – OCR277-23, vol 1, 8 [6].

the orders of Judge Baumann of 15 June 2017, and the orders of Judge Egan of 9 February 2018, 29 May 2018, and 18 July 2018;[19]

(e) Mr Pennisi concluded that the only person entitled to receive the monies in the trust account was the wife, and on his accounting, the husband owed monies to the wife;[20]

(f) in the subsequent proceedings brought by the husband against the wife and Mr Pennisi, principally regarding whether any monies were owed to her husband were dismissed by Judge Lapthorn on 7 October 2022, which corroborates and supports Mr Pennisi's own conclusions that the husband was not entitled to any monies received into the trust account; and

(g) the discipline application brought by the Commissioner should, therefore, be dismissed.[21]

[38] Mr Pennisi's submissions are not merely misconceived but display a level of profound misunderstanding, ignorance of proper practises, and disregard for the judgments and orders of the Court.

[39] The first three propositions in [37] above, (a)-(c), are wrong either in fact or in law. The fourth proposition, (d), is accurate save that the orders made on 18 July 2018 have no impact on the conduct raised in the discipline application. The fifth proposition, (e), regarding Mr Pennisi's views as to who had entitlements is irrelevant, at least to the submitted justification for his conduct, but must be examined more closely. The sixth proposition, (f), does not have the effect claimed, that is, that the dismissal of proceedings supports Mr Pennisi's claims in the fifth proposition, and so is irrelevant.

[40] The first proposition is simply wrong. The wife had no authority, let alone sole authority, to deal with the net proceeds. No argument was advanced by Mr Pennisi to support the bald assertion. The plain effect of the order of Judge Egan of 29 May 2018 is that the monies received into the trust account could not be distributed without an order of the Court. The very order which authorised the monies to be paid into the trust account were made subject to that qualification.[22] Hence, absent an order of the Court authorising disbursement, neither party had authority to deal with the monies in the trust account. As can be seen from the wife's email of 13 September 2018, Mr Pennisi was made aware of the difficulty that Judge Egan's order presented in relation to the wife accessing the proceeds of any sale.

[41] Further, even assuming Judge Egan's order was overlooked, it was self-evident that the monies held in the trust account were for the benefit of both the husband and the wife. When a jointly owned asset is sold and the proceeds placed into trust, the monies so held are held on behalf of both, absent an order or agreement altering that position. That is axiomatic. Here the orders made preserved the husband's entitlement. As mentioned above, Judge Baumann's orders divided the monies from the sale between the two parties. He plainly drew a distinction between the allotting of the proceeds of sale and the division of other property, a distinction identified in the wife's email of 13 September 2018 to Mr Pennisi. Judge Baumann's orders required that $176,248 of the sale proceeds from the Fir St Property be paid to the husband, that is approximately

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19 HB – OCR277-23, vol 1, 8-9 [7].

20 HB – OCR277-23, vol 1, 9 [8], [10].

21 HB – OCR277-23, vol 1, 9 [11]-[13].

22 HB – OCR277-23, vol 1, 45 [7].

35.25% of the expected net proceeds. To any lawyer the monies were plainly jointly held even absent the orders of the Court. Incidentally, the effect of Judge Baumann's order was to put the husband in funds from the sale of the Fir St Property and so be available to deal with the debts assigned to his responsibility, an effect ignored by Mr Pennisi.

[42] As to the second proposition, s 249 of the Act does not place a responsibility on Mr Pennisi to pay trust money received from the sale of the Fir St Property to the persons entitled to receive same. The proposition ignores s 249(2). Section 249(2) expressly requires that any disbursement is subject to an order of a court of competent jurisdiction. Judge Egan's orders certainly meet that description and required two restraints: firstly, the costs awarded to the husband, $14,388, be paid from the wife's share of the net proceeds of the sale of the Fir St Property; and secondly, before any disbursement there be a further order of the Court dealing with the disbursement of any proceeds. No lawyer, let alone one of 45 years' experience (as Mr Pennisi then stood), could not but have understood the meaning of these orders. Again, there was no argument advanced to support Mr Pennisi's bald assertion.

[43] No authority is cited to support the third proposition. A solicitor is not entitled to go behind a court order and determine what the rights of parties ought to be and so determine their entitlements. However, this is precisely what Mr Pennisi did by disbursing the trust monies contrary to multiple Court orders. Again, Mr Pennisi ought to have known perfectly well that he was not entitled to do so. This is the fundamental error here.

[44] The three orders mentioned in the fourth proposition subsequent to Judge Baumann's decision have been already detailed. None of the orders have anything to say of any disbursement being permitted from the trust account. Counsel's submissions that the multiplicity of orders is said to be a cause of Mr Pennisi's unsatisfactory professional conduct, as counsel now submits we should characterise Mr Pennisi's conduct, as the orders did not speak to one another, and may have been more clearly spoken. It is of considerable concern that nothing in the terms of the orders or the context should have caused a rational competent practitioner some confusion. At the time of the order of 18 July, when Judge Egan last dealt with the matter, and Mr Pennisi appeared, there were no monies in trust and, at that stage of course, it was not known what amount would eventually be available to be disbursed. Why then the order should have caused any misunderstanding is inexplicable. Judge Egan there dismissed two applications filed on 4 June and 13 July 2018, but nothing is said of authorising disbursements from trust or setting aside his own order that the husband be entitled to his costs from the wife's share.

[45] The fifth proposition again assumes, without citation of authority or argument, that a solicitor is entitled to work out for himself the amount his client might be entitled to – in the very different financial situation dealt with by Judge Baumann - and thereby not consider the Court orders and the express provisions of the Act. To say the proposition is to reject it. Yet Mr Pennisi held that view. Again, his analysis lies at the heart of his conduct and again we will examine it.

[46] The sixth proposition calls on Judge Lapthorn's order made years later on 7 October 2022, to somehow justify Mr Pennisi's conduct. Counsel for Mr Pennisi did not advance the proposition and, of course, he could not. Judge Lapthorn was not asked to examine the appropriateness of Mr Pennisi's disbursements. To the contrary, when

his Honour dealt with the issue directly in the contempt proceedings he held, as indeed was obvious, that the Court orders had been ignored.

[47] The order of 7 October 2022 was made by consent and by its terms dismissed 'all outstanding applications'. As mentioned, the husband had brought a claim for damages for conspiracy against Mr Pennisi and the wife. Counsel submits that by then the arithmetic shows, depending on which items are included or excluded, a $6,000 payment one way or a $4,000 payment roughly the other way, and so too small to justify further litigation. These arguments are to revisit the notion that Mr Pennisi was entitled to decide what entitlements the wife should receive.

[48] It is not known whether the notion of the amount in dispute be *de minimis*, as counsel submits, reflects the husband's thinking and decision to consent to the dismissals, or indeed reflects what the Court would have arrived at. The husband's submissions filed in this application and dated October 2024 makes it plain that he remains outraged by Mr Pennisi's conduct. For present purposes what can be said about the dismissal of the conspiracy proceedings on 7 October 2022, is that no reference was made in the orders that the disbursements that were made in December 2018, January 2019 and March 2019 and contrary to the existing Court orders were thereby authorised. There was also no curial examination of the proposition. Even if Mr Pennisi's claim be accurate, that is, the Court seized with the issues would have taken the same course or authorised those same disbursements as he decided unilaterally to undertake—that would be no excuse for his conduct. But that much is not shown.

Analysis of Judge Baumann's judgment

[49] To assay an understanding of Mr Pennisi's approach, and effectively his claim that even if unauthorised, as he now concedes, he arrived at a fair result, it is necessary to set out his reasoning. As mentioned above it was Mr Pennisi's decision to put his own interpretation on Judge Baumann's judgment that lies at the heart of his conduct. In his affidavit sworn on 29 August 2024, Mr Pennisi sets out his reasoning:

> 11. The application of Judge Bauman's [sic] said order to disbursement entitlement of proceeds of sale provided that [the wife] receive 69.75% of such proceeds, namely $275,797.00.
>
> 12. The application of Judge Egan's orders of 8 February 2018 and 29 May 2018 provided that [the wife] pay [the husband] $14,338.00.
>
> 13. The application of Judge Egan's order of 18 July 2018 provided that [the husband] pay [the wife] $4,589.00.
>
> 14. Accordingly, [the husband] was not entitled to receive any monies from Trust monies received from the proceeds of sale of the property. In fact, there was insufficient monies to pay [the wife's] entitlements by a shortfall of $31,048.00.[23]

[50] There are several criticisms that can be made of this analysis. One is the apparent unfairness to the husband. It is worth observing at the outset that it was the husband, not the wife, who achieved the better result at the trial. He was to receive the major share of the net assets, fixed at 55 per cent. Further, he had the advantage of an order from Judge Egan that he was to receive costs of the trial agreed to be $14,338 from the wife's share of the net proceeds of the sale of Fir St Property, not from the pool of

23 HB – OCR277-23, vol 1, 105 [11]-[14].

assets. The Fir St Property was easily the most significant asset held jointly. As mentioned, in his analysis of the husband's entitlements, Judge Baumann found that the husband was to receive $176,248 from the proceeds of the sale of Fir St Property (about 35 per cent of the then assumed expected net proceeds). The effect, as we said, was to place him in funds. To arrive at a conclusion that it is the wife who should receive the entire net proceeds of the sale –contrary to Judge Baumann's plain intent – should have caused any practitioner pause in that his thinking might have gone astray, but apparently that did not occur to Mr Pennisi.

[51] The essential criticism, however, is the adoption of assumptions that are not set out in Judge Baumann's orders. To show that Mr Pennisi did so it is necessary to follow the thinking that is behind the allegations in paragraph 11 of his affidavit quoted above.

[52] Judge Baumann did not order that the wife was to receive 69.75 per cent of 'such proceeds of sale'. His Honour made no mention of 69.75 per cent of the proceeds of anything. Nor were the proceeds of sale reflected by the sum of $275,797. To understand where that sum is derived, it is necessary to go to the affidavit of the wife in the contempt proceedings. She swore, presumably with the advice of Mr Pennisi, that the net amount available at settlement was $395,409. That amount was arrived at by adding to the amount received into the trust account of $250,458.38, the $60,000 paid out to the husband's daughter, and $84,950 paid out to the ANZ Bank regarding a business loan. Mr Pennisi then added the $25,000 that was ordered to be paid to the wife, and described by the judge as 'partial property settlement', to the $323,752 Judge Baumann assumed would be paid to the wife from the sale of the Fir St Property. That total was $348,752. He then divided that total by the net proceeds of sale that Judge Baumann assumed of $500,000 and converted it into a percentage ($348,752/$500,000 = 69.75%). That percentage was then applied to $395,409 resulting in $275,797 as being the wife's entitlement. But neither the percentage, nor the net amount available, nor the amounts to be deducted against the husband, reflect anything that Judge Baumann had determined.

[53] To demonstrate the unfairness of Mr Pennisi's approach, is to apply his approach but from the husband's perspective: one takes the 'partial property settlement' the husband was to receive ($25,000), add his share of the assumed sale proceeds ($176,248), and add the costs that Judge Egan had ordered from the wife's share of the sale proceeds ($14,388). The husband was therefore to receive $215,636 divided by the net proceeds of sale that Judge Baumann assumed ($215,636/$500,000) which equals 43.1 per cent. That percentage applied to $395,409 in fact available results in a payment from the trust account to the husband of $170,528.

[54] In interpreting Judge Baumann's order, Mr Pennisi determined – without any direction from the Court – what amounts should be brought into account in reducing the husband's entitlement from the proceeds of sale. We note that the wife did not have an order entitling her to have her costs deducted from the husband's share of the proceeds of sale and that Judge Baumann had:

(a) not ordered that the $25,000 to each party was to be taken from the proceeds of sale and inferentially he did not intend such a distribution;

(b) not ordered that $60,000 should diminish the proceeds by payment to the husband's daughter;

(c) not ordered that the ANZ Business Credit facility should come from the proceeds of sale; and

(d) plainly been unaware that the ‘legal costs’ associated with a simple conveyance would result in close to ten times that amount as would be normally expected.

[55] Mr Pennisi does not claim to have had any instructions from the husband at any time, let alone to disburse monies from the trust account. Mr Pennisi does not claim that he was unaware of the existence of Judge Egan’s orders of 9 February 2018 and 29 May 2018 (significantly the later order being the subject of this discipline application). The wife’s email of 13 September 2018, quoted above at [22], makes it plain that Mr Pennisi was made aware of the orders and his client identified the problem that the order presented. The closest claim of ignorance of any relevant matter was made is in Mr Pennisi’s assertion that the wife:

> was not in financial position to engage my services on a full-time basis and only did so itinerantly so I was not always directly conversant with all of the issues and reliant upon her instructions, documents she provided to me and my perusal of the Commonwealth Courts Portal.[24]

If this is a plea that he remained ignorant of some relevant fact it is not evident to the Tribunal what fact that is.

[56] Mr Pennisi swore and submits that ‘I came to the conclusion that the only person entitled to receive the monies in Trust was [the wife]’.[25] To reach that view he needed to overlook Judge Egan’s order, his statutory duties, and the husband’s interests which Judge Baumann had endeavoured to protect. Significantly, Mr Pennisi, without any authority, determined the source from which monies were to be paid to the wife and himself.

[57] As the Commissioner submits, Mr Pennisi’s conduct can be compared to that of a prudent, competent practitioner:

> A prudent solicitor in Mr Pennisi’s position—a solicitor with 50-years post admission experience, who was only engaged for certain aspects of a proceeding, upon learning of potentially incongruent orders, would have taken steps to satisfy themselves that it was proper to act on a client’s direction to make a disbursement from a trust account. It was incumbent upon Mr Pennisi to ensure he was complying with the Court orders and with the obligations of the Act.
>
> Mr Pennisi ought to have approached the Court and sought clarification about the operation of the 29 May Order, or advised the client to approach the Court for clarification or an order that the money could be disbursed. Order 9 of the 29 May Order made provision for this [by giving parties the liberty to apply]. Mr Pennisi did not do this—or anything—to satisfy himself that he was acting in accordance with his trust account obligations and his overriding duty to the Court.[26]

[58] We agree with that submission. We think it should be self-evident to any practitioner, let alone one with the experience of Mr Pennisi.

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24 HB – OCR277-23, vol 1, 104, [9].

25 HB – OCR277-23, vol 1, 105 9 [8].

26 HB – OCR277-23, vol 1, 5, [23]-[24] (citations omitted).

Mr Pennisi's changed position

[59] In his second affidavit filed 2 July 2025, Mr Pennisi:

(a) concedes that he breached s 249 of the Act in disbursing the net proceeds as he did;

(b) says that in disbursing monies from the trust account he 'overlooked two important matters arising from the order of Judge Egan dated 29 May 2018', that is, that no payment was to be made at all without a further order of the Court and there was an order that the husband was to be paid his costs out of the proceeds of sale;

(c) says that instead of considering these two matters he 'focused on the mathematical exercise which [he] had undertaken and which [he] considered supported the approach that [the wife] was entitled to the proceeds of sale of the [Fir St Property] and was therefore the person authorised to direct [him] as to where to disburse those proceeds held in [the] trust account';

(d) accepts as accurate the Commissioner's submission, set out above in [57], as to what he should have done and that he therefore should have advised [the wife] to approach the Court, or do so himself, to seek a further order permitting disbursements or variations to existing orders;

(e) paid out proceeds from the trust account 'in accordance with the enquiries which [he] had made with [the wife] to understand the net effect of the orders of Judge Baumann and Judge Egan made in the Court and the financial exercise [he] undertook…';

(f) allowed his own financial analysis and his understanding of the acrimonious and protracted nature of the disputes between the wife and the husband 'to cloud [his] proper and careful reading of the 29 May 2018 order'; and

(g) says that he is 'extremely disappointed in [himself] for not having carefully checked the orders of 29 May 2018' while accepting that he had the orders.[27]

[60] The claim in [59](e) seems to assert that Mr Pennisi did not work out for himself the net effect of Judge Baumann's order and the orders of Judge Egan. He seems to assert that the wife has told him, the solicitor, the effect of the judgment and orders. He makes no claim in either of his affidavits that he did not have a copy of Judge Baumann's order. He accepts he had the orders of Judge Egan. To not apply his own knowledge and acumen to the judgment and orders would be a serious departure from good practice, if it were so. Further, contrary to the assertion Mr Pennisi's counsel founded his submissions on, being that Mr Pennisi 'genuinely believed on the basis of his own analysis of the orders' that he had authority to act as he did.[28]

[61] We have mentioned that the order of Judge Middleton of 6 September 2018 was of no apparent relevance to these disciplinary proceedings, see [17] above. So far as the evidence shows, the order of Judge Middleton, as per the Commonwealth Courts

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[27] Vincent Pennisi, 'Affidavit of Vincent Pennisi sworn 2 July 2025', Statement in *Legal Services Commissioner v Pennisi,* OCR277-23, 2 July 2025, [7]-[16].

[28] Vincent Pennisi, 'Respondent's Supplementary Outline of Submissions: Characterisation of the Conduct', Submission in *Legal Services Commissioner v Pennisi,* OCR277-23, 2 July 2025, [18](a) ('Respondent's Supplementary Submissions').

Portal, was issued at a direction hearing and dismissed an application filed by the wife on 3 May 2018 in the proceedings.[29] In counsel's oral submissions the order is said to have possibly taken greater significance:

> [Mr Pennisi] thought that Judge Egan's order needed to be effectively varied to take into account where the parties lay in terms of their asset position. He took into account and knew about Judge Middleton's order dismissing all of the proceedings and closing the case, which I don't take any higher than that a possible reading of that order, particularly when Judge Egan's order said it applied until further order, is that it could mean that that order was sufficient to discharge Judge Egan's order.[30]

[62] There are two answers to that submission. Firstly, no competent lawyer could think that an order dismissing an application varied Judge Egan's orders. However, the reference in the Commonwealth Courts Portal does not go so far as counsel's description. The closest to the assertion that Judge Middleton's order was 'dismissing all of the proceedings and closing the case' can be found in the wife's email of 13 September 2018 where she states that Judge Middleton 'dismissed the outstanding application and closed our case'. That appears to be a construction that the wife adopted.

[63] Secondly, and more fundamentally, nowhere does there appear in any of Mr Pennisi's affidavits a reference to Judge Middleton's order or a claim that he was confused by this order. Mr Pennisi does not make the claim that counsel submits.

Characterisation of Mr Pennisi's conduct

The relevant tests

[64] The Tribunal's power to make a disciplinary order is dependent on a finding that the respondent has engaged in unsatisfactory professional conduct or professional misconduct.[31] The statutory definitions are set out in ss 418 and 419 of the Act. They are inclusive in their terms and hence recourse to common law tests is permissible if helpful.

[65] Section 418 provides:

> ***Unsatisfactory professional conduct*** includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

[66] Section 419 provides:

> (1) ***Professional misconduct*** includes—
>
> (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or keep a reasonable standard of competence and diligence; and

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[29] HB – OCR277-23, vol 1, 114.

[30] Transcript of Proceedings, *Legal Services Commissioner v Pennisi* (Queensland Civil Administrative Tribunal, OCR191-23 and OCR277-23, Judicial Member McMeekin KC, 17 July 2025), 1-49/29 (A Psaltis).

[31] *Legal Profession Act 2007* (Qld), s 456(1) ('the Act').

(b) conduct of an Australian legal practitioner, whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

[67] The Commissioner submits that Thomas J's dictum in *Adamson v Queensland Law Society Incorporated* is of assistance here:

> The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.[32]

[68] Section 420(1)(a) of the Act is also relevant. It provides that 'conduct consisting of a contravention of a relevant law' is conduct 'capable of constituting unsatisfactory professional conduct or professional misconduct' and this includes a 'contravention of a regulation or legal profession rules'.

Discussion

[69] To act contrary to the orders of the Court and in relation to the dealings in trust monies strikes in a fundamental way at the bedrock of our system of law. It is fundamental that a solicitor understands the terms on which monies are received into his or her trust account and abides by those terms. If authority be cited for so fundamental a proposition, the Commissioner cites the decision of DG Thomas J in *Legal Services Commissioner v Reeve*:

> [75] In a conveyancing transaction, where monies are paid, but must be held pending adjustments due other events occurring, members of the general public must be able to have confidence that monies paid into a trust account will be dealt with in accordance with the basis on which the moneys are paid. This must be so regardless of the party for whom the legal practitioner who holds the monies in trust is acting.
>
> [76] Because the legal practitioner takes on duties as trustee, the legal practitioner, acting prudently and to the standard of competence and diligence a member of the public is entitled to expect, must ensure that the terms on which the monies are held and able to be disbursed, are fully understood by all parties (including the practitioner).[33]

[70] The point of the reasons quoted is to emphasise that a solicitor must act proactively in identifying the mandate on which he or she receives monies into trust.

[71] Mr Pennisi submits that his conduct was not of the degree of seriousness required to warrant the characterisation of professional misconduct. There were extensive oral submissions, but the point attempted to be made appears in the written submissions:

> (a) Mr Pennisi engaged in that conduct which involved paying the money to his client, [the wife], whom he genuinely believed on the basis of his own analysis of the orders of the Federal Circuit Court was the true beneficiary of the money and with her authority; and
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> (b) the conduct was not a flagrant disregard for the trust accounting obligations. To the contrary, Mr Pennisi believed that he was paying the

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32 (1990) 1 Qd R 498, 507, ('*Adamson*').

33 [2016] QCAT 209, [75] – [76] ('*Reeve'*).

> true beneficiary of the funds. It is also not part of a pattern of repeated and brazen conduct concerning the misappropriation or misapplication of trust monies.[34]

[72] With great respect the issue of whether the disregard is 'flagrant' and 'brazen' depend on the colouring of those epithets that one adopts. The error in the submission is to assume that Mr Pennisi's subjective beliefs, that he was entitled to take the monies from the trust account, is to be substituted for the objective standard that the legislation and authority set. To 'overlook' the terms of the order authorising his receipt of the monies into trust, and to not read the relevant orders 'carefully', and to have matters extraneous to the issue 'cloud his proper and careful reading of the orders', as Mr Pennisi now swears, is to offer little by way of either excuse or explanation. Objectively, his conduct is a fundamental failure of a legal practitioner's duties. These submissions downplay Mr Pennisi's many failings.

[73] Counsel for Mr Pennisi further submits, citing Tribunal cases, that:

> Mr Pennisi's conduct was not the type of trust accounting conduct which is readily found by this Tribunal to amount to professional misconduct. That conduct usually entails dishonest breaches of the trust accounting rules where practitioners act to deceive or to their own financial gain or act repeatedly.[35]

[74] The authorities cited were *Conradie*; *Legal Services Commissioner v Kurschinsky*;[36] *Legal Services Commissioner v Loel*;[37] *Legal Services Commissioner v Watts*;[38] and *Reeve*. With respect, to say that dishonest conduct invariably falls into the category of professional misconduct provides no authority for the submission made.

[75] Firstly, it is trite to observe that these decisions depend very much on their own facts and characterisation of conduct can turn on questions of degree.[39] Hence it is not necessary to examine each of these authorities.

[76] Secondly, while there are some similarities with some of these decisions, they tend to point very much to a characterisation that the conduct subject of this discipline application constitutes professional misconduct. Particularly, the Commissioner relied on the decision of *Kurschinsky*, and with good reason.

[77] In *Kurschinsky,* the solicitor faced numerous charges, but charge 5 is directly relevant to the situation here. Justice Daubney described the relevant circumstances:

> [37] Charge 5 relates to the transfer of monies totalling $197,266.77 from the law practice trust account to the tax practice trust account without the consent, authority or direction of the persons on whose behalf the funds were held.
>
> [38] The funds in question were monies that had been received into the respondent's law practice trust account as a consequence of the sale of a property which was the subject of dispute in family law proceedings

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34 Vincent Pennisi, 'Respondent's Supplementary Outline of Submissions', Submission in *Legal Services Commissioner v Pennisi*, OCR277-23, 2 July 2025, [18] ('Respondent's Supplementary Outline of Submissions').

35 Respondent's Supplementary Outline of Submissions, [19].

36 [2020] QCAT 182 ('*Kurschinsky*').

37 [2020] QCAT 326.

38 [2016] QCAT 4.

39 *Legal Services Commissioner v Bussa* [2011] QCAT 388, [10].

> between a Ms Worthington and a Mr Henry. **The proceeds of sale were deposited into the law practice trust account by Ms Worthington, and were obviously held on trust for both Ms Worthington and Mr Henry pending resolution of the family law proceeding and a decision as to the disposition of the money.** Despite the funds being impressed with that trust, the respondent, solely on the instructions of Mr Henry, transferred or caused those monies to be transferred out of the law practice trust account and into the trust account of the tax practice.
>
> [39] At no time did Ms Worthington give her consent to the withdrawal of that trust account money.[40]

[78] Those facts are identical to the situation facing Mr Pennisi, absent the order of the Court compelling him not to distribute at all and absent the order to first pay costs to the husband. As Daubney J observed, the monies were 'obviously held on trust for both'. Justice Daubney did not hesitate to conclude that the conduct that he had described:

> … constituted conduct which violated or fell short of, "to a substantial degree, the standard of professional conduct observed or approved by members of the profession in good repute and competency".[41]

[79] Counsel for Mr Pennisi submits that Daubney J dealt collectively with the conduct and so provides no guidance on this particular issue. We disagree. His Honour did deal specifically with the characterisation of this charge and indeed his duty commanded that his Honour do so. Further, the point of distinction the counsel submits is for the worse, not the better. That is, the family law proceedings in *Kurschinsky* had not reached resolution whereas the proceedings here had resolved. Hence, in *Kurschinsky* there was '*no basis whatsoever* to transfer the money'.[42] To assert that there was no resolution in *Kurschinsky*, but here there was a decision by Judge Baumann which Mr Pennisi did not follow, somehow justifies his misconduct being looked on in a more benign light, is baffling.

[80] As the Commissioner submits the conduct the subject of charge 5 in *Kurschinsky* related to a breach of s 249 of the Act, exactly the charge Mr Pennisi faces. The charges involving dishonesty were the subject of separate charges and separately dealt with by Daubney J. Here there is the aggravating circumstance, and an extremely aggravating one, that Mr Pennisi contravened two Court orders.

[81] *Conradie* involved six unauthorised disbursements from the solicitor's trust account totalling $10,000. The disbursements were made over a period of more than a year. Most involved small if not trifling amounts. The total amount was refunded by the solicitor. The solicitor claimed, to a psychiatrist, that the monies expended by him were expended 'legitimately', although the Tribunal could not conclude whether that was so or not.[43] The focus of the hearing was on the solicitor's mental state, which

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40 *Kurschinsky*, [37]-[39] (emphasis added).

41 *Kurschinsky*, [67] (citation omitted).

42 Vincent Pennisi, 'Respondent's Outline of Submissions in Response to the Commissioner's Supplementary Submissions', Submission in *Legal Services Commissioner v Pennisi,* OCR277-23, 15 July 2025, [22](a) ('Respondent's Supplementary Submissions in Response') (emphasis in original).

43 *Conradie*, [52].

provided some explanation for his conduct. Nonetheless, there was a finding of professional misconduct.[44]

[82] It is not irrelevant that the monies disbursed by Mr Pennisi were much more substantial than in *Conradie*. Mr Pennisi made three transfers totalling $250,438 over approximately three months. Counsel for Mr Pennisi submits that in *Conradie* there was a pattern of behaviour which was not so here. The Hon. Judicial Member P Lyons KC did not mention that aspect as significant in his judgment in *Conradie*. Counsel submits that there was a single and explained incident here. That is not so. There were three payments at three different times and each involving a failure to obey different orders, including that Mr Pennisi:

(a) did not comply with the order not to distribute without the leave of the Court;

(b) did not comply with the order to pay the husband's costs from the wife's proceeds; and

(c) overlooked that there was no order that he pay his fees from the trust account.

[83] The facts here are, in our judgment, far more serious than in *Conradie*.

[84] Counsel for Mr Pennisi submits that the facts in *Reeve* came close to the facts here, where the Tribunal, DG Thomas J presiding, held that the solicitor had been guilty of unsatisfactory professional conduct. The relevant charge was the same, namely – disbursing trust monies contrary to s 249 of the Act. The amount involved in *Reeve* was $2,337.50 and concerned payment of building work. The purchaser required a contribution from the vendor for building work needed as a condition of settlement. The contribution was paid into trust. The solicitor paid out the monies in trust after settlement but before such work was attended to. The vendor complained. The solicitor's understanding of the basis on which the monies were held on trust came from reports to him of arrangements reached through conversations between agents and not the vendor's solicitor. He thought that after settlement the purchaser was entitled to the monies and paid out the monies held in trust. He contested the charge brought against him. The solicitor pointed out that upon settlement of the transaction the vendor had no interest at all in whether the work was to be performed. Further, plainly the purchaser could, if she wished, sell the property on without attending to the building work and, absent an express agreement which did not exist, retain the monies. The solicitor was of the view that the vendor sought to impose a condition on the purchase monies paid after the power to impose such a condition had passed. Significantly, there was no written agreement for him to check to determine the terms on which the monies were held on trust, or indeed any other means. Many practitioners would consider that absent a clear express agreement the purchaser's position was unassailable. The point however is that a purchaser's rights to the monies is not the same issue as the authority of a trustee to deal with monies in trust.

[85] Justice DG Thomas found that the terms of the trust did not permit payment out at that time. His Honour's reasoning, so far as relevant, is set out at [69]. His Honour considered that the solicitor's conduct fell short of the standard required but not in a substantial or consistent way.[45] In summary, the solicitor failed to understand the terms on which monies were held due to the confused conversations relayed to him

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[44] *Conradie*, [54].
[45] *Reeve*, [78].

by third parties. There was a single event, the conduct explicable, and involved a very modest amount of monies. The facts in *Reeve* are far from the facts here. What the decision in *Reeve* demonstrates is the strictness of a solicitor's duty when holding monies on trust.

Conclusion on characterisation

[86] The duty imposed on a solicitor receiving funds into a trust account was explained, accurately, in the Commissioner's submission:

> The public is entitled to expect that:
>
> (a) **first**, a solicitor accepting money into their (or their law practice's) trust account by a court order, does take proactive steps to understand the terms of the court order and his or her obligations;
>
> (b) **second**, if the solicitor remains unsure of his or her obligations under the court order, that the solicitor raises the issue with the court or obtains independent advice;
>
> (c) **third**, the solicitor ensures compliance with the court order; and
>
> (d) **fourth**, if instructed to distribute funds in breach of a court order, informs his or her client of the terms of the court order and the consequences for breaching the court order and take no steps to assist the client to breach the court order, including by causing funds to be disbursed from the trust account, otherwise than in accordance with the order or the Act.[46]

[87] Mr Pennisi failed to meet the expectations the public are entitled to expect. The orders were not in any way complex. Mr Pennisi's client drew his attention to the relevant paragraph of Judge Egan's order. The meaning of the orders made are self-evident. It is inexplicable how a competent practitioner would not have understood the order and followed it. Mr Pennisi failed completely in his duty as a trustee.

[88] We return to the observation of the Hon. Judicial Member Lyons KC in *Conradie*, referred to at [6], that there may be some exceptional cases, involving the withdrawal of trust money without authority, that do not depart from the standard of conduct expected of a solicitor. While not substituting the Judicial Member's observation for the test in the legislation, the circumstances here are exceptional but not to the good. Mr Pennisi's conduct fell far short of the standard of professional conduct observed and approved by members of the profession of good repute and competency and constitutes professional misconduct as defined by Thomas J in *Adamson* and s 419(1)(a) of the Act.

ORC 191-23: The Letter issue

A preliminary matter

[89] For the purpose of the analysis and discussion that follows, we will refer to the person for whom Mr Pennisi acted as 'the client' and the client's former wife, who was also the person that submitted a complaint to the Legal Services Commission in respect of the conduct, as 'the aggrieved'.

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46 HB – OCR277-23, vol 1, 6 [25] (emphasis in original; citation omitted).

The charge

[90] The Commissioner alleges that on or about 31 May 2021, Mr Pennisi engaged in conduct in the course of practice which was likely, to a material degree, to bring the profession into disrepute.

[91] The conduct alleged, and accepted, is that on that date Mr Pennisi sent a 13-page letter on behalf of the client to the aggrieved ('the Letter') containing statements or assertions which the Commissioner asserts 'were likely to amount to a breach' of a protection order made under the *Domestic and Family Violence Protection Act 2012* (Qld) ('DFVP Act'). The particulars of which are:

(a) the use of emotionally manipulative or coercive language; and

(b) speaking of the relationship between the client and the aggrieved.[47]

[92] There are other particulars regarding the Letter which are also not in dispute and do not rely on the existence of the protection order, they are:

(a) the Letter was unprofessional as it was oppressively lengthy, contained grammatical and spelling errors, poor punctuation, incorrect tenses and repetitive statements;

(b) the statements contained in the Letter were unprofessional in tone and context; and

(c) by drafting and/or arranging for the Letter to be sent to the aggrieved, Mr Pennisi's integrity and professional independence was compromised.[48]

[93] By that conduct, Mr Pennisi was likely to bring the profession into disrepute to a material degree.

[94] The protection order referred to in the charge was made by a Magistrate enjoining the client and contained various conditions including the following:

> The [client] is prohibited from, directly or indirectly, contacting or attempting to contact or asking someone else to contact the aggrieved by any means of communication including but not limited to telephone, internet, letter, or social networking sites.
>
> - Except by messages sent through an agreed communication platform namely 'Talking Parents' and all such communications must be succinct and not include any form of emotionally manipulative, coercive or abusive language, talk of past/relationship matters or any other matter not directly related to the child spending time with the [client] or the child's welfare or development…[49]

[95] It is accepted, and in any case evident from the Letter itself, that Mr Pennisi was well aware of the protection order when involved in the drafting and sending of the Letter to the aggrieved. Further, he does not claim that he was unaware of the significance of the existence of such a condition in such a protection order.

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47 Hearing Book filed 10 December 2025 in the matter of OCR191-23, vol 1, 25 [10] ('HB – OCR191-23').

48 HB – OCR191-23, vol 1, 25 [1.5], [1.7]-[1.8].

49 HB – OCR191-23, vol 1, 25 [1.2].

[96] The condition in question was not a 'standard' condition. Sections 56 and 106 of the DFVP Act provides for standard conditions to be included in every domestic violence order, and they do not include a non-contact condition. Section 57 provides that '[a] court making or varying a domestic violence order must consider whether imposing any other condition is necessary or desirable to protect … the aggrieved from domestic violence'. Obviously, on the evidence available to the Magistrate, the condition in question here was necessary or desirable to protect the aggrieved. In considering imposing a condition such as the one here, the DFVP Act instructs that '[t]he principle of paramount importance to the court must be the principle that the safety, protection and wellbeing of people who fear or experience domestic violence, including children, are paramount'.[50]

The retainer

[97] Mr Pennisi says that he was retained by the client two days before the Letter was sent. He does not speak of any earlier contact. He was engaged on an urgent basis. What circumstance necessitated the urgency is not explained. Nor is there anything in the letter to suggest any urgency. The arrangement between them, he says, was entered into contrary to his usual practice. His usual practice is to require clients to deposit monies in trust prior to starting work. Here, Mr Pennisi agreed that he proceed without payment until the work was done – 'the letter was complete' – and without any money in trust. No explanation is offered as to why. He says that the client supplied a draft and wanted Mr Pennisi to settle it and send it. The draft is now not available. Mr Pennisi's affidavit reads:

> 79. [The client] and I met throughout the Saturday and Sunday and discussed the draft letter.
>
> 80. We disagreed as to the proposed contents of the letter. Within those two days, there were times where I threatened to cease acting for [the client]. However, [the client] always managed to convince me not to do so.
>
> 81. The letter was changed to some extent from the original draft. However, there were some aspects that remained in the letter which I now acknowledge are inappropriate and would have been offensive to [the aggrieved].
>
> 82. I understood that [the client] knew [the aggrieved] well. I was informed that she would be receptive to the letter and would not find it offensive. I was too trusting in this regard.
>
> 83. The letter includes the statement "*it is my own decision as a lawyer to write and send this letter to you*". Amongst others, I regret the inclusion of this.[51]

[98] What matters that were the subject of any disagreement, what aspects of the Letter caused him to threaten to cease to act, what changes to the initial draft were made, and what work was done, are not disclosed. As well, what aspects he now finds offensive to the aggrieved, but formerly he did not, are not identified. Nor did Mr Pennisi explain which statements he regretted, other than the one mentioned in paragraph 83 of his affidavit; nor did he explain why he singled out this statement that he regretted including in the Letter. What seems evident is that the inclusion of the statement he

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[50] *Domestic and Family Violence Protection Act 2012* (Qld), s 57(3) ('DFVP Act').

[51] HB – OCR191-23, vol 1, 207-8 [79]-[83] (emphasis in original).

regrets was of great importance to the client, and his refusal to do so may have been sufficient to deny his fee.

[99] What is known is that Mr Pennisi charged the client $6,490.00 (including GST) for settling the Letter, which included 13 hours of work and 20 phone calls. It is also known that on the day the Letter was sent to the aggrieved, Mr Pennisi handed to the client a letter in these terms:

> I confirm advices that the [sic] your letter to [the aggrieved] may amount to a breach of the Domestic Violence Order against you but you nonetheless request me to forward same to her and you indemnify me and take full responsibility for same.[52]

[100] This letter to the client makes plain that Mr Pennisi was well aware that the correspondence he had forwarded put himself in the position of being potentially in breach of the protection order.

The Letter

[101] Even absent the protection order, the Letter is quite extraordinary. The Letter has no identifiable legal purpose. The covering e-mail from Mr Pennisi to the aggrieved expressly made that clear: '

> This letter does not seek any variation to any Orders.
>
> It is just a gentle letter which I hope you will be pleased after reading it.[53]

The Letter opens with a similar statement: 'This is a friendly and genuine letter that does not seek any variation to any orders.' Mr Pennisi, so far as he has disclosed, did not know the aggrieved, but knew that the parties were separated, and must have realised that the aggrieved had sought protection from harassment from the client by seeking from the Court a protection order which included the non-contact condition mentioned above.

[102] According to the agreed facts, or self-evident from the Letter itself, the Letter includes:

(a) approximately 14 references to the fact the client participated in a 'men's behaviour change program';

(b) approximately 29 references to couples counselling or to counselling;

(c) approximately 40 references to the client's love for the aggrieved or their child; and

(d) six separate references (including hyperlinks, quotations and a graph) over two pages that purport to demonstrate the dangers of child abuse to children in step-relationships, Mr Pennisi writing that he has put together the research 'so you are informed of the content thereof'.[54]

[103] The Letter includes numerous examples of statements that were unprofessional and lacking any professional independence, including:

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[52] HB – OCR191-23, vol 1, 151.
[53] HB – OCR191-23, vol 1, 112.
[54] HB – OCR191-23, vol 1, 29, 214.

> [The client] will be delighted and will cherish the new opportunity to show love towards you the way you want to receive love.
>
> …
>
> You [i.e. the aggrieved], [the client], and [the child] could have lovely family times together.
>
> …
>
> Just through spending time with [the client] you will see for yourself he has changed into the most easy going, most kind, and respectful person you always desire.
>
> …
>
> Since [the child] was born, [the client] has always shown so much love towards [the child] in emotional, caring and practical ways.[55]

[104] The Commissioner chose the following excerpt as illustrative of the general tone of the Letter. We agree. The Commissioner could have chosen many other passages for the same purpose. The excerpt reads:

> [The client] understands you cannot please everyone. However more than 4 years ago you have chosen to please your parents. Isn't it time to put you and [the child's] own future first?
>
> Sometimes separation and divorce reveals that what couples has is indeed true love. It has been 4 years since you and [the client] has separated.
>
> This separation has revealed many things such as [the client's] unending love towards you is not based on circumstances honeymoons periods, nor age.
>
> It has shown that his love for you is patient, it is kind, and it is unconditional love.
>
> You and [the client] entered into your relationship a decade ago when you were 24 and he was 25, there were several times where you raised your concerns to [the client] that he will no longer love you as years go by
>
> [The client] is more in love with you today than when you were a 24 year old.[56]

[105] The first paragraph of the extract immediately above appears to the Tribunal as particularly scandalous. It appears on the fifth page of the Letter and is repeated in similar terms on the following page: 'During discussions with [the client], this is a situation where you cannot please everyone, you have pleased your parents at the expense of [the child] and your own future for the last 4 years.' For a lawyer, without any apparent basis and without any legitimate legal purpose, to assert to a mother that her decision to quit the relationship with the client was done so in order to please her parents, and then to claim that she was thereby not willing to put her child's future first, is simply appalling.

[106] No submission is made by Mr Pennisi that any part of the Letter had any legitimate connection to the domestic violence proceedings before the Court nor indeed any reference to what may have been a proper concern for lawyers.

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55 HB – OCR191-23, vol 1, 35-36.

56 HB – OCR191-23, vol 1, 31.

The evidence of the aggrieved

[107] The aggrieved separated from the client in April 2017 and they were divorced in July 2019. They have a child, aged six at the time of the swearing of the aggrieved's affidavit on 31 October 2023. Since separation she has received 'lengthy, repetitive, and obsessive communications from [the client]'. She received such communications on an almost daily basis until the protection order was made at her request. This was the third domestic violence order she had obtained and the one then current was made on 23 January 2020 to last for five years. She 'experienced the persistent communications … to be emotionally manipulative and coercively controlling'. She swore that the communications were 'seriously affecting [her] physical and mental health and disrupting [her] work and personal life.'[57]

[108] The aggrieved suspected that the Letter had been written by the client. The Letter contained coercive and emotional language that the client had used in the past, it contained basic spelling and grammatical errors, including the incorrect tenses, and contained nonsensical statements.

[109] The aggrieved received three such letters from three different solicitors acting for the client. The letters were received on 31 May 2021 from Mr Pennisi, as it turns out the second in the sequence, an eight-page letter on 2 March 2021, and a 23-page letter on 23 July 2021. The other letters were similar in style and content, and each caused her a great deal of stress and concern. She believed that the client was trying to 'get around' the protection order.

[110] In her complaint to the Commissioner of 25 June 2021 the aggrieved, in referring to the protection order, observed: 'This letter clearly breaches these conditions. I simply could not believe a professional lawyer wrote it' and repeated the observation in her affidavit in these proceedings: 'I do not believe that a solicitor with decades of experience could have written such a letter.'[58]

Mr Pennisi's response

[111] By email of 13 August 2021, Mr Pennisi, in response to advice from the Commissioner that a complaint from the aggrieved concerning the Letter had been received, replied:

> Under the provisions of the Domestic and Family Violence Protection Act, as [the client's] lawyer, it is lawful for me to have written to the above named.[59]

[112] In further correspondence with the Commissioner of 1 November 2021, Mr Pennisi confirmed that he was the author of the content of the Letter and that the Letter was sent in reliance upon s 60 of the DFVP Act.

[113] Mr Pennisi's response of 13 October 2023 to the discipline application was that his conduct amounted to unsatisfactory professional conduct. He admitted the particulars save for the allegation that statements or assertions in the Letter 'were likely to amount to a breach of [the protection order]', on which he reserved his position.

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[57] HB – OCR191-23, vol 1, 49.
[58] HB – OCR191-23, vol 1, 50.
[59] HB – OCR191-23, vol 1, 90.

[114] Mr Pennisi's counsel advised the Tribunal, during the hearing on 17 July 2025, that Mr Pennisi now accepts that his conduct amounts to professional misconduct. Mr Pennisi changed his position after receiving legal advice.

The disputed facts

[115] Mr Pennisi does not accept that certain statements contained in the Letter were likely to breach the terms of the protection order. A non-exhaustive list of 14 such statements were provided by the parties in a co-executed statement of agreed and disputed facts:

a. at page 2:

> “,...[the client] is transparent about his desire to reconcile with you.”

b. at page 2:

> “I also ask you to take a step back, and ask yourself the honest question, what is [the client] trying to achieve with spending all his time, efforts, if it's not to reconcile with you as well as giving [the child] the best possible outcome in having a family together.”

c. at page 5:

> “[The client] sees and considers that a future with [the child] and you is worth every second, sweat of his heart and soul, as it's a dream future that'll be a lifelong shame to give up on...

d. at page 5:

> “[The client] is more in love with you today than when you were a 24 year old.

e. at page 6:

> “ ...[the client] has realised and experience just how excruciatingly painful and paralysing it is to break or separate true love.”

f. at page 6:

> “[the client] more than anyone else is ready to grow old together with you.

g. at page 6:

> “When you came back to Australia in early 2018, you, [the client] and [the child] spent time together as a new family, you went to Rocks riverside parks together, went swimming at the beach together at Caloundra, Bribe island, Gold Coast.
>
> You and [the client] also did easy simple things like cleaning the Oxley house and moving items to the recycling centre as well as going shopping together like Garden city, Ikea and Rocklea markets.

h. at page 7:

> “...what remains constant is [the client's] ending love for you has not changed. Instead of going to look for another partner, [the client's] faithful love for you has not weakened...

i. at page 7:

> “[The client] is honest about his desires to reconcile with you.

j. at page 8:

> "[The client] has the heart to listen and be the best husband he can be to you...

k. at page 9:

> "… as [the client] loves you, [the client] cares about your opinion more than anyone else, and dream of you coming back to him, so why would he want to use anything you say against you, that would go against what [the client] desires which is for you to freely desire to come back to him."

l. at page 9:

> "Please remember [the client] desires to reconcile, so the last thing he wants is to upset you so why would he do anything that might upset you."

m. at page 10:

> "[The client's] mother also wishes you and [the client] to reconcile for [the child's] sake, so she is happy to join in the time with you, [the child] and [the client] just like in 2018 where the 4 of you went to places like a Bribie Island to have a swim, Jindalee DFO, Southbank and Kangaroo point together and had a great time. The location can be anywhere of your choice, like Teralba park where you and [the client] enjoyed picnics there together in 2018 and had lovely walks around near the soccer fields."

n. at page 12:

> "[The client's] mum, sister, and dad all still continues to think positively of you and also hope that one day you and [the client] can get back together again."[60]

[116] Mr Pennisi's counsel urges that no findings be made about these disputed facts. Counsel submits that Mr Pennisi's acceptance of the charge means that no further enquiry is required. Mr Pennisi disputes that these many statements have the effect contended for, that is, that the Letter is replete with statements that were likely to breach the terms of the protection order. To contend that we are to ignore the effect of these statements is to not examine the facts and not determine how serious the departure from the standards expected has occurred. If there was one such statement in a few words of a phrase in a 13-page letter the case would be very different. The disputed facts, if shown, demonstrate that the conduct in question is of a far more serious nature.

[117] Counsel made no submission why these statements could have any other but that effect contended for. How could he? Every example is precisely within the condition proscribed by the protection order. Every example falls within a 'form of emotionally manipulative, coercive, or abusive language, talk of past/relationship'.

[118] The Commissioner submits that the Letter 'must be considered in its entirety as it is impossible to quantify its impact or the severity of the Respondent's conduct by extracting discrete passages'. That is so. The entire Letter has no other discernible purpose other than to manipulate or coerce the aggrieved, and at times discuss the past of the aggrieved and the client and talk of their relationship for that evident purpose.

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[60] HB – OCR191-23, vol 1, 214-7.

[119] Counsel submits that the Tribunal would err in treating the facts here as if the charge was that the Letter that Mr Pennisi had sent *in fact* breached the terms of the protection order. He is not charged with that. He is charged with a communication that was *likely* to breach the terms of the protection order. To go so far is to impermissibly go outside the charge and the limitations of the Tribunal's jurisdiction, which is to hear and determine the allegations in the discipline application, and no more than that. So the submission goes, supported by citing *Legal Services Commissioner v Madden*.[61]

[120] In our view the decision in *Madden* has no relevance to this issue. *Madden* concerns the jurisdiction of the Tribunal to determine an allegation not made against the practitioner in relation to the complaint against the legal practitioner, in that case an allegation of dishonesty. Here the allegations in question are directly made by the Commissioner.

[121] Section 453 of the Act provides that:

> The disciplinary body must hear and determine each allegation stated in the discipline application.

The legislative provision is mandatory. However, the word 'allegation' is undefined. To determine its intended meaning it is necessary to consider the legislative context. That will be controlled by the purpose of the hearing of a discipline application. After completing the hearing, s 456(1) of the Act requires a determination of whether the Tribunal is satisfied that 'the practitioner is guilty of unsatisfactory professional conduct or professional misconduct'. Section 456(2) specifies the orders which the Tribunal may make 'in a way it considers appropriate'.

[122] Neither categorising the conduct or the making of orders is determined by the attitude of the practitioner to the allegations. The Tribunal must independently be satisfied whether the conduct complained of is one category or the other, or not at all. Then, the Tribunal must determine the appropriate order/s. Those orders range from a recommendation that the name of the practitioner be removed from the local roll to a private reprimand. To determine each issue – the category and the appropriate order – the Tribunal is required to 'hear and determine each allegation', as s 453 demands.

[123] In this context 'allegation' means those assertions of fact made by the Commissioner that the Commissioner sets out to prove to enable the Tribunal to be satisfied both as to the categorisation of the conduct and the appropriate order/s. Mr Pennisi does not avoid the effect of s 453 by pleading that he accepts that the charge is made out but avoids the examination of the 'allegations' made in the discipline application and so determining how serious the charge lies in the scale of misconduct.

[124] The issue in dispute is whether these statements contained in the Letter, had the effect contended for by the Commissioner. Each in their context plainly had that effect as discussed at [117] above. The allegation that the Letter was likely to breach the terms of the protection order is made out.

The section 60 point

[125] Mr Pennisi asserted initially, and for some time thereafter, that he was entitled to write the Letter. He claimed his entitlement from s 60 of the DFVP Act. We note, as Mr Pennisi well knew or should have realised, that the Letter was directed to an aggrieved

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61 [2009] 1 Qd R 149, [72]-[74] ('*Madden*').

complainant whom the Court, seized with the relevant facts, intended to protect from communications from the client.

[126] We have received no submissions or evidence relevant to that claim and so will say little of it, save the following. Section 60 of the DFVP Act does provide a statutory exception to a lawyer from the effect of a prohibition order but is limited to a lawyer acting in the proceedings relevant to the imposition of the protection order. A competent lawyer could hardly think otherwise. Justice Williams has analysed this case and its application to s 60 in *Legal Service Commissioner v Pennisi,*[62] and we, with respect, gratefully adopt.

Characterisation of the conduct

[127] It is now common ground between the parties that the proper characterisation of Mr Pennisi's conduct is in the more serious category of professional misconduct. It is necessary for the Tribunal to determine the issue independently. The Tribunal agrees with that agreed position. Indeed, we consider this conduct to be a very serious example of professional misconduct.

[128] As set out above, the Magistrate set out in the protection order a condition that was to prevent communications that were described as 'not include any form of emotionally manipulative, coercive, or abusive language, talk of past/relationship or any other matter not directly related to the child spending time with the respondent or the child's welfare or development.' The entire letter was within that description – it was repetitively emotionally manipulative, it was coercive, it mentioned their past and their relationship, and dealt with other matters not directly related to the child spending time with the client or the child's welfare and development. The client was plainly intending to do precisely what he was prohibited from doing, which was:

> …prohibited from, directly or indirectly, contacting or attempting to contact or asking someone else to contact the aggrieved by any means of communication…[63]

[129] There are three particularly troubling features of the evidence. Firstly, Mr Pennisi could not but have known when forwarding the Letter that he was aiding his client in breaching the prohibition order imposed by the Magistrate. Secondly, Mr Pennisi's act in writing to his client to claim the indemnity strongly tends to the conclusion that he had little faith in his claim to the lawfulness of his conduct provided by s 60 of the DFVP Act. Thirdly, Mr Pennisi had not the slightest concern for the impact of his conduct on the aggrieved person, the person entitled to the protection from the harassment of his client.

[130] His indifference to the effect on the aggrieved and indeed his complete lack of insight into the gravity of his misconduct was exemplified in his letter of response to the notice from the Commission that a complaint had been received from the aggrieved:

> To the extent that the letter may have amounted to improper conduct (which I don't accept) I say it is an isolated incident that firstly has not caused of itself any serious or significant harm to the complainant herself & from a "public interest" viewpoint so low scale as to warrant any further consideration.[64]

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[62] [2024] QCAT 97, [97]-[104].
[63] HB – OCR191-23, vol 1, 80.
[64] HB – OCR191-23, vol 1, 197.

[131] Mr Pennisi's repeated apologies to the aggrieved in his affidavit sworn on 24 November 2023 and his acceptance of his responsibility of his patent misconduct is in complete contrast with his response to the Commissioner.

[132] Whether explained by indifference or a startling lack of insight or some other factor, Mr Pennisi's conduct viewed objectively involved the following:

(a) an act in complete disregard of the protection order in place;

(b) a disregard of the obvious reasons why such an order would be in place;

(c) a significant risk of imperilling the mental health of the aggrieved, which should have been evident to any competent practitioner and indeed any lay person; and

(d) facilitating a man who was evidently endeavouring to use Mr Pennisi's legal position to get around the protection put in place by the Courts.

[133] Such conduct falls far, far below the conduct that an honourable member of the profession would expect. The Commissioner's complaint that Mr Pennisi engaged in conduct in the course of practice which was likely, to a material degree, to bring the profession into disrepute is sustained.

Sanction

[134] In exercising the discretion conferred by s 456 of the Act in determining the order best made on a finding, as here, of professional misconduct the submissions reflected a view that there were two questions to consider: firstly, the fitness of the practitioner at the time of hearing; and secondly, whether he should be found as probably permanently unfit to remain on the roll. The recent decision of the Court of Appeal in *Legal Services Commissioner v Tang*, [65] handed down after the hearing, emphasises that that latter question needs to be addressed within a broader context. That decision cautions against the Tribunal considering the question of 'probably permanently unfit' as if it were a stand-alone test divorced of the broader protective concerns of the Act.

[135] The principles governing the decision on sanction have been expounded in several cases and the Commissioner identified the following: *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand*;[66] *Legal Services Commissioner v Munt*;[67] *New South Wales Bar Association v Cummins*;[68] *Attorney-General v Bax*;[69] *Madden;* and *Legal Services Commissioner v Wrightway Legal*.[70]

[136] In summary those cases show the following:

(a) The characterisation of the conduct and the determination of sanction involves a two-stage process. The matters relevant to the issue of characterisation of the conduct exclude those events that occur subsequent to the alleged conduct. In

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65 [2025] QCA 206 ('*Tang*').
66 [2018] QCA 66 ('*Shand*').
67 [2023] QCAT 479 ('*Munt*).
68 [2001] NSWCA 284.
69 [1998] QCA 89 [1999] 2 Qd R 9 ('*Bax*').
70 [2015] QCAT 174 ('*Wrightway Legal*').

second stage, the determination of sanction, those subsequent matters can be relevant.[71]

(b) Disputed facts need to be decided on the balance of probabilities.[72] The degree of satisfaction required varies according to the consequences for the relevant Australian legal practitioner.[73] We are conscious of the gravity of the consequences for the practitioner here.

(c) The remedies of strike off or suspension are not applied by way of punishment but rather for the protection of the public and of the profession's standing.[74]

(d) There is a deterrent element both personal and general.[75]

(e) In *Wrightway Legal* the Court observed on the significance of trust:

> Many aspects of the administration of justice depend on the trust by the judiciary and/or the public in the performance of professional obligations by professional people.[76]

(f) The approach can of course be informed by the legislation governing the regulation of the profession.[77] The main purposes set out in chapter 4 of the Act include 'to promote and enforce the professional standards, competence and honesty of the legal profession', 'to provide a redress for complaints about lawyers', and 'to otherwise protect members of the public from unlawful operators'.

(g) Significantly in *Shand,* McMurdo JA (with the agreement of Morrison JA and Brown J) wrote:

> The reference by Pincus JA in *Bax* to the protection of the profession's standing is important. The community needs to have confidence that only fit and proper persons are able to practise as lawyers and if that standing, and thereby that confidence, is diminished, the effectiveness of the legal profession, in the service of clients, the courts, and the public is prejudiced. The Court's Roll of practitioners is an endorsement of the fitness of those who are enrolled.[78]

[137] Before turning to the relevant considerations pertinent here it is necessary to refer to the guidance in *Tang* on the question of the 'probably permanently unfit' issue. After referring to the judgment of McMurdo J in *Shand*, part of which we have quoted above, Bleby AJA (with whom Boddice and Brown JJA agreed) wrote:

> [29] It is in this context that McMurdo JA explained the role of an assessment that a practitioner is 'probably permanently unfit' to practise:
>
> > Consequently, the respondent's disavowal of any intention to engage in legal practice was not the end of the matter. If he was not a fit and proper person to engage in legal practice, all of the

71 *Shand*; *Munt*.
72 *Legal Profession Act 2007* (Qld), s 649(1).
73 *Legal Profession Act 2007* (Qld), s 649(2).
74 *Bax*; *Madden*; *Shand,* [52].
75 *Wrightway Legal*; *Shand,* [54].
76 *Wrightway Legal,* [28].
77 *Madden*.
78 *Shand*, [55].

> purposes which I have described required that his name be removed from the Roll, absent something which indicated that he was likely to become a person who was fit to be a legal practitioner.
>
> In this way, the test of probable permanent unfitness is, as the Attorney-General submits, **a way of identifying that the character of the practitioner is so indelibly marked by the misconduct that he cannot be regarded as a fit and proper person to be upon the Roll**. (emphasis added)
>
> [30] Understood in this way, the 'probably permanently unfit' test is not a separate test to be imposed when considering whether a practitioner's name should be removed from the roll. It is a matter that informs the exercise of the discretion conferred by s 456(2) to make various orders directed towards protection of the public and maintenance of confidence in the profession.
>
> [31] To treat the 'probably permanently unfit' test as a separate test risks encouraging a standalone assessment of various factors personal to the practitioner separately from the protective concerns of the Act.

And Bleby AJA concluded at [44]:

> [44] … I would regard the question of probable permanent unfitness as a significant matter that informs the appropriate sanction to be imposed in the exercise of the discretion. It is to be determined with close regard to the protective purposes of the legislation. In many cases, having regard to those purposes, **the nature of the professional misconduct will itself be sufficient to warrant a conclusion, absent some countervailing indicator, in respect of which an evidential onus necessarily falls on the practitioner,** that the practitioner is probably permanently unfit to practise. This will often be so in cases of dishonesty that strike at the heart of the protective purposes of the Act and demonstrate a character fundamentally at odds with that required of a legal practitioner. (emphasis added)

Disciplinary history

[138] Mr Pennisi's disciplinary history is not edifying. In 2002, he faced six charges of professional misconduct, five of which concerned trust account matters and the sixth a failure to maintain reasonable standards of competence and diligence. On each charge he was found to have been guilty of professional misconduct. He was fined $10,000, directed to complete the next trust accounts module, and required to periodically report to the Queensland Law Society for the following three years. He was suspended from practice for a period of 12 months, but that suspension was not to become operative unless he defaulted in the performance of terms of the orders. He did not default.

[139] In 2007, Mr Pennisi faced three charges arising from the operation of his trust account. The breaches were seen as minor and primarily the fault of others. A finding of unsatisfactory professional conduct was made. He was publicly reprimanded and ordered to pay a $1,500 fine.

[140] In 2017, Mr Pennisi faced three charges: acting contrary to instructions, failing to act with competence and diligence, and failing to provide documents on request. The Tribunal found that his conduct amounted to unsatisfactory professional conduct, he was publicly reprimanded and ordered to pay a fine of $1,000.

[141] In 2023, Mr Pennisi faced two charges, one of which was dismissed. The other involved undue delay in advising executors of certain matters and so delaying the finalisation of an estate by six years. He was publicly reprimanded and ordered to pay a fine of $5,000.

[142] In his affidavit in the proceedings involving the Letter, Mr Pennisi swears that he had been the respondent in three disciplinary matters and received fines in each. He overlooked one proceeding. He did recognise that he had made errors, and went on to say that the conduct was 'quite different to this current matter'.[79] That is true so far as the Letter issue is concerned, but nonetheless relevant in a more general sense. However, some of these previous proceedings are potentially very much relevant to the trust account issue and we will look at those more closely.

[143] The six charges in 2002 were determined by the Solicitors Complaints Tribunal.[80] In their reasons the Tribunal referred to Mr Pennisi having been warned of similar conduct in 1995:

> The offences, serious in themselves, must have been uncovered to the practitioner's knowledge by subsequent Law Society audits. Having said this, the fact remains that the practitioner has resumed a course of conduct – that is transferring funds where accounts have not been delivered to the client and in some cases not raised – of which he was warned against in 1995.[81]

A penalty imposed of $10,000 in 2002 was a very substantial penalty.

[144] Five years later Mr Pennisi was again before the Tribunal, by then at the age of 56, and found guilty of three further charges 'arising from the operation of his trust account'.[82] In that decision, de Jersey CJ (as he then was) stated that:

> ...it is the context of the previous finding of professional misconduct which in this case would tip the scales in favour of a more serious characterisation. It is right to say, as submitted for the applicant, that having been found guilty of professional misconduct in respect of trust account breaches in 2002 the respondent should have been more vigilant in guarding against the sort of occurrences involved here and that there has in a sense been a consistent failure by the respondent to reach a reasonable standard of competence and diligence.[83]

[145] There are two factors to bear in mind. These serious trust account charges of 2002 occurred almost 25 years ago and medical evidence was proffered then that explained his conduct. Both factors tend to lessen the weight of that very poor conduct in determining our decision in this proceeding.

[146] The Commissioner submits that these four prior disciplinary sanctions, and the conduct the subject of this proceeding, demonstrate that none of the disciplinary orders which have been imposed have effectively protected the public from further misconduct by Mr Pennisi. The Commissioner references the adverse findings against him, the heavy penalty, the repeated fines, the reprimands, the need for retraining on trust accounts, and reporting periodically to the Queensland Law Society for a period has not prevented continuing offending over the decades.

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79 HB – OCR191-23, vol 1, 206.

80 *In the Matter of Vincent Pennisi* [SCT] 84.

81 *In the Matter of Vincent Pennisi* [SCT] 84, 4.

82 *Legal Practice Tribunal v Pennisi* [2007] LPT 1.

83 *Legal Practice Tribunal v Pennisi* [2007] LPT 1, 5-6.

[147] We do not consider the trust account charges are of significance as evidencing of ongoing misbehaviour involving trust account matters. Nonetheless, the observations by the Chief Justice quoted above are very much applicable here. As well, over approximately a 20-year period, Mr Pennisi faced the Tribunal on four occasions involving 13 charges before the two under consideration here. There is some force to the Commissioner's submission in a more general sense. Such a history cannot but impact on our assessment of the character of the practitioner, his attention to his responsibilities as a legal practitioner, and the potential impact of our decision here on his future behaviour. We are conscious that the conduct currently in question, as Mr Pennisi argues, is essentially different in character to the earlier cases, and the claimed causes behind the conduct are very different. However, these two applications involve considerably more serious conduct and is a factor against the practitioner.

Personal antecedents

[148] In his affidavit sworn 24 November 2023, Mr Pennisi sets out his antecedents and personal particulars. He details difficulties he had with financial matters with a partner apparently in the 1970s, the nature of his practice since 1984, his heavy involvement in community affairs, his six-year period as President of the North Brisbane Law Association, and his work as an honorary solicitor. He describes his marital problems and his relationship with his three daughters. Mental health issues involving his second wife, apparently around 2019, resulted in the incurring of significant debts, a disputed family law property settlement that resulted in litigation not resolved until November 2023. He swore that until that resolution he had 'for decades … been under financial stress, owing to these matrimonial difficulties…'. He was diagnosed with an incurable blood cancer in June 2018, has undergone a successful bone marrow transplant, but his life expectancy is limited. He considers retiring in the coming years.[84]

[149] Mr Pennisi is presently 75 years old, graduating in law in 1973, 52 years ago. He articled for five years and was admitted as a practitioner 51 years ago.

The trust account issue

[150] We turn then to the issue of sanction in respect of the trust account issue. The Commissioner submits that the proper sanction is to make an order recommending that Mr Pennisi's name be removed from the local roll.

[151] Mr Pennisi submits that he be subjected to a public reprimand and that a pecuniary penalty of $10,000 be imposed. His counsel submits that Mr Pennisi is no longer a partner of a law firm or has any authority to operate a trust account. Mr Pennisi is willing to undertake to cease to practise by 30 June 2027 and accept the imposition of appropriate supervision conditions for the intervening period.

[152] We do not accept those latter submissions. We proceed on the common submission that Mr Pennisi believed that he was entitled to disburse the monies as he did, such a belief can only be explained by an ongoing level of incompetence and ignorance that is unacceptable. The misconduct in question shows a very serious level of incompetence. See the analysis at [38] – [45] above.

[153] We are entitled, and indeed required, to bring into account post conduct behaviour. Practitioners usually point out rehabilitative conduct after the misconduct charged to

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[84] HB – OCR191-23, vol 1, 200-6.

give the Tribunal some confidence that some alternative to the recommendation of removal of the practitioner's name from the roll will be effective to protect the public and the standing of the profession. What has transpired has been to the opposite effect. Here, what has occurred provides not the slightest confidence that Mr Pennisi has learnt, or can learn, from his errors.

[154] The chronology set out above at [37] is to show that Mr Pennisi's thinking and understanding were not only in 2018 and early 2019 when he determined to disburse monies from trust but that he persisted in this thinking and understanding after time for reflection and the opportunity for close study of the various judgments and orders. Such reflection and consideration was, of course, required from the outset and before disbursing monies from the trust account, but Mr Pennisi's thinking continued despite the judgment of Judge Lapthorn in the contempt proceedings in 2022 and his Honour's trenchant criticism of the disbursements contrary to the orders of the Court, after receipt of discipline application from the Commissioner in November 2023 detailing his misconduct, after receipt of her submissions in November 2024, and when making his response in December 2024. He apparently held these views until two months or so ago.

[155] To persist in the face of these matters on legal propositions that were completely untenable provides strong ground for a finding of Mr Pennisi's unsuitability.[85] Justice DG Thomas in *Legal Services Commissioner v Jensen* stated:

> The sanction of recommendation that the lawyer be removed from the solicitor's roll may be appropriate for cases of intransigent defiance of the Commissioner, repeated professional discourtesy, or repeated and reckless assertions of indefensible legal propositions.[86]

The force of DG Thomas J's decision is somewhat lessened given the determination on appeal was that suspension for nine months along with other sanctions were appropriate.[87] However, the circumstances in *Jensen* are not so compelling as here and the practitioner's professional background was very different than Mr Pennisi's and justified a very different view of the permanency of his fitness to remain in practice.

[156] It seems Mr Pennisi could not see why he was criticised until he received advice from others more familiar with their duties as a trustee and more knowledgeable as to the effect of such orders imposed by the Court. Counsel offered no submissions on how this continued understanding up and until the eve of the hearing could be consistent with Mr Pennisi's fitness to remain on the roll.

[157] As well we must bring into account his conduct regarding the Letter issue. Mr Pennisi has admittedly been guilty of professional misconduct again. And there are some common features. In both cases the effect of his conduct was to bring about a result quite contrary to the intended effect of orders made involving or against his client. In each case he maintained initially that he had acted properly. He demonstrated no significant insight into the gravity of his misconduct in either case. And he seemed unconcerned with the effect of his actions on the person affected by his misdeeds in each case, or at least until advised by solicitors retained to protect his position.

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[85] Cf *Legal Services Commissioner v Jensen* [2017] QCAT 148.

[86] [2017] QCAT 148, [57] ('*Jensen*').

[87] *Jensen v Legal Services Commissioner* [2017] QCA 189.

[158] We have detailed his personal antecedents. There is nothing in his personal life that could justify or explain his misconduct. We are aware that Mr Pennisi was undergoing chemotherapy in November 2018, and the first of the payments was on 7 December 2018. Mr Pennisi does not assert that his understanding of his decisions was affected. To the contrary Mr Pennisi made two further payments from the trust account months later and maintained that his conduct was appropriate years later. As well, his disciplinary history does not inspire confidence.

[159] While not advanced by either party we have considered and rejected the sanction of a suspension for a period. In *A-G & Minister for Justice Qld v Priddle,*[88] in dismissing an Attorney-General appeal seeking that the practitioner be struck off the roll rather than be suspended as the Tribunal had determined, McMurdo P (Williams JA and Mackenzie J agreeing), held the Tribunal was entitled to conclude in all the circumstances that suspension was the appropriate penalty. Her Honour noted that:

> Suspension from practice rather than striking from the Roll of Solicitors is an appropriate order in cases of unprofessional conduct where a legal practitioner's behaviour has fallen below the high standards expected of such a practitioner but not in such a way as to indicate that the practitioner is lacking the necessary attributes of someone entrusted with the important responsibilities of a legal practitioner.[89]

[160] In our view, Mr Pennisi lacks the necessary attributes.

[161] Mr Pennisi submits that the Tribunal should impose a regime of supervision by his partner, Mr Ibtassam Zia, or some other practitioner of more experience. Mr Zia was admitted in 2018. One works out of the city office, the other out of a Chermside office. Given that he and Mr Pennisi were in partnership since November 2019, it is self-evident that Mr Zia has had little influence, presumably, on Mr Pennisi's understanding of his patent misconduct in respect of either issue until in receipt of external advice. In any case, it would be difficult to think of a less suitable person than Mr Zia to supervise given that he is very much the junior partner, working in a separate office, and with only several years of experience. But our rejection is not based on that plain unsuitability or the suitability of any practitioner taking on that role.

[162] Mr Pennisi has demonstrated an inability to understand his ethical duties or the effect of the Court orders. At age 75 and after 50 years of practise he cannot learn now. It would seriously mislead the public to leave his name on the roll and hence to endorse his fitness to practise.

[163] We consider that the only course is to recommend his removal from the roll.

The Letter issue

Mr Pennisi's affidavit

[164] So far as he endeavours to explain his conduct Mr Pennisi asserts in his affidavit of 24 November 2023:

(a) he sincerely apologised for the stress and any other negative emotions the aggrieved experienced as a result of the Letter;[90]

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88 [2002] QCA 297.

89 [2002] QCA 297 [9].

90 HB – OCR191-23, vol 1, 207 [70], 208 [86].

(b) he found the client to be genuine and convincing,[91] 'intense, but charming and charismatic';[92]

(c) his failure to require payment of funds in trust in advance of the work was an error as it 'impacted [his] professional output in relation to the contents of the letter';[93]

(d) he understood the client knew the aggrieved well and the client informed him that 'she would be receptive to the [L]etter and would not find it offensive' and in doing so he was 'too trusting';[94]

(e) that the comment that he expressly identified that he regretted including was inserted as he believed that, absent the inclusion, he would not be paid for his work over two days;[95] and

(f) the story invoked sympathy, he 'took the impression he was genuinely concerned for his relationship (with [the aggrieved] and his child)' and the client's concern about not being able to see his daughter resonated because there was a time in his life when he was not permitted to see one of his daughters.[96]

[165] In his affidavit Mr Pennisi acknowledged the Letter was 'long, repetitive and emotional', was entirely inappropriate to send, and that an aggravating feature was that the aggrieved was 'the aggrieved in domestic violence proceedings'.[97]

[166] Counsel submits that the explanation for Mr Pennisi's conduct is that he was overwhelmed by the financial stress that he was under at the time he sent the Letter. His affidavit of 24 November 2023 reads:

> I can see that at the time of my dealings with [the client], I was very overwhelmed and under significant financial pressure. I was in the midst of stressful personal litigation, and I had significant financial liabilities.
>
> …
>
> I now recognise that my financial stressors had an impact on how I conducted myself as a legal practitioner in this matter. I believe that, if at the relevant time I was in my current financial position, my decision to send the [L]etter in the form it was received by [the aggrieved] may well have been quite different.[98]

[167] There is no information provided there of any details, but in his later affidavit of 2 July 2025 Mr Pennisi says that: in August 2019 he and his first wife had accumulated significant liabilities including in excess of $200,000 of unsecured debt;[99] and in his dealings with his second wife he took on a greater share of the debt with a greater share of the assets, but a breakdown in their relationships took place and resulted in

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91 HB – OCR191-23, vol 1, 207 [77].
92 HB – OCR191-23, vol 1, 208 [87].
93 HB – OCR191-23, vol 1, 207 [78].
94 HB – OCR191-23, vol 1, 207 [82].
95 HB – OCR191-23, vol 1, 208 [84].
96 HB – OCR191-23, vol 1, 208 [88].
97 HB – OCR191-23, vol 1, 208 [86].
98 HB – OCR191-23, vol 1, 208-9.
99 Vincent Pennisi, Affidavit, Affidavit in *Legal Services Commissioner v Pennisi,* OCR277-23, 2 July 2025, [67] ('Affidavit of Mr Pennisi sworn 2 July 2025').

litigation.[100] Resolution of the litigation in November 2023 with a successful outcome resulted in a great sense of relief for the first time in his adult life.[101]

Mr Pennisi's submissions

[168] Counsel submits:

(a) Mr Pennisi acknowledges the seriousness of the conduct;

(b) Mr Pennisi expressed his remorse and regret;

(c) it is an isolated incident;

(d) it occurred in circumstances where Mr Pennisi trusted the client and found him charismatic, charming, and persuasive;

(e) the gravity of the conditions proffered demonstrates Mr Pennisi's insight and remorse and his desire to demonstrate putting in place mechanisms so as not to reoffend;

(f) Mr Pennisi has already put in place the protective measure of retiring from the partnership; and

(g) the proposed sanction will provide sufficient protection to the public.

[169] Counsel submits that the appropriate sanction is that Mr Pennisi:

(a) be publicly reprimanded;

(b) pay a pecuniary penalty of $10,000;

(c) undertake the training course Family Violence Foundations or the like and upon completion provide evidence of completion to the Commissioner;

(d) practise with appropriate supervision until retirement;

(e) cease practising by 30 June 2027 and not apply for any further practising certificate which would take effect from that time; and

(f) pay the Commissioner's costs.

The Commissioner's submissions

[170] The Commissioner submits that the proper sanction is to make an order recommending that Mr Pennisi's name be removed from the local roll.

[171] There are no cases involving similar factual circumstances in reported QCAT decisions which may serve as a comparative.

[172] Mr Pennisi demonstrated limited insight into the impact on the aggrieved nor how the community more broadly would consider his behaviour. His response to the complaint which we have referred above – and presumably before he received independent advice – attempted to minimise the severity of the conduct. His affidavit demonstrates no real appreciation of the damage that domestic violence can cause.[102]

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[100] Affidavit of Mr Pennisi sworn 2 July 2025, [68], [71].
[101] Affidavit of Mr Pennisi sworn 2 July 2025, [76]-[77].
[102] HB – OCR191-23, vol 1, 15-6.

[173] Mr Pennisi had limited input into the Letter. Various aspects point strongly to the true author to be the client – for example the 'research' relating to child abuse in step-relationships and the matters the aggrieved assert reflect the client's typical style of writing. Nonetheless, the Commissioner submits that there are indications through the Letter of careful deliberation by Mr Pennisi. The Commissioner relies on such statements as:

> … It is my own decision as a lawyer to write and send this letter to you.
>
> …
>
> [I have] read and seen the Protection Order … Even with the no contact condition. I have mentioned to [the client] that there is an exemption for a lawyer…
>
> I have told [the client] under the Act that I am lawfully permitted to also correspond with you …
>
> With my lengthy and professional experience, I believe that [the client] loves you and [the child]. His unconditional and endless love for you and your daughter is admirable and rare in today's society.[103]

[174] The claim in the Letter that his contact was lawfully permitted, as he was a lawyer and so exempted from the no contact condition, was an 'especially aggravating feature to the conduct, as it discloses an absence of good faith in his dealings with [the aggrieved] when one considers his letter to [the client] on the same day. The Respondent knew that the contact likely fell outside of what was acceptable contact by a legal practitioner in the circumstances. He was complicit in acting contrary to the protective nature of the order and cynically held out to [the aggrieved] that his contact was lawful.'[104]

[175] Finally, the Commissioner submits that Mr Pennisi's culpability was not in any way mitigated by the matters raised in his affidavit of 24 November 2023.

Discussion

[176] As the Commissioner contends Mr Pennisi's conduct here is not really comparable to the conduct that is the subject of any decisions that have gone before. There have been many decisions concerning correspondence directed at others that amounted to professional misconduct or unsatisfactory professional conduct. Cases include *Legal Services Commissioner v Winning*,[105] *Legal Services Commissioner v Cooper*,[106] and *Legal Services Commissioner v Orchard*.[107] *Legal Services Commissioner v SYG*[108] is a more serious case but still does not approach the circumstances here. There the practitioner sent seven letters to various persons, including senior government officials. Those letters included emotional language, unsubstantiated personal opinion, went beyond legitimate advocacy, and were primarily designed to embarrass or frustrate other persons. The letters, as is here, included lack of judgment in the

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103 HB – OCR191-23, vol 1, 17, [47].
104 HB – OCR191-23, vol 1, 18, [49].
105 [2008] LPT 13.
106 [2011] QCAT 209.
107 [2012] QCAT 583.
108 [2023] QCAT 401.

allegations made and the unprofessional language and tone used. The practitioner's conduct was found to constitute professional misconduct.

[177] *Legal Services Commissioner v Kirin*[109] involved similar correspondence but in the domestic violence proceedings and directed to the solicitor acting for the client, not to the client herself. *Legal Services Commissioner v PRF*[110] too involved correspondence in the domestic violence proceedings. The respondent is alleged to have failed to maintain reasonable standards of competence and diligence by disclosing material to 20 recipients, contrary to s 159 of the DFVP Act and s 121(1) of the *Family Law Act 1975* (Cth). There were significant mitigating circumstances not present here. Both cases resulted in a finding of unsatisfactory professional conduct.

[178] The distinguishing feature here is that the Letter was sent despite the plain terms of a Court order prohibiting communication of this type to this person.

[179] As to Mr Pennisi's explanation for his behaviour we have difficulty accepting any truth to it. Mr Pennisi's claim to have found the client 'charismatic, charming, and persuasive' sits very uncomfortably with his actions. So does his claim that his good judgment was overcome by financial stress, very little of which was in fact disclosed. While so impressed by the charm of the client, and so overcome by financial stress, Mr Pennisi handed to the client a letter demanding an indemnity on the same day as the sending of the Letter, and we repeat, in these terms:

> I confirm that the (sic) your letter to [the ex-wife] may amount to a breach of the Domestic Violence Order against you but you nonetheless request me to forward same to her and you indemnify me and take full responsibility for same.

[180] Nor does that claim for an indemnity sits well with Mr Pennisi's claim that he believed that [the aggrieved] 'would be receptive to the letter and would not find it offensive'. How any practitioner could think such a thing is hard to imagine, but if so, why be worried about any ramifications and require an indemnity?

[181] We received no evidence from Mr Pennisi, nor any submission, endeavouring to explain away the evident inference that the sending of the Letter was a cynical exercise in an abuse of a solicitor's position. He discloses no instruction he received that explained his understanding of why the protection order was in place and why he should feel free to go against it so flagrantly. What arguments that are said to have been persuasive are not disclosed. The circumstances summarised at [97] above are all consistent with that view that this was just such an exercise.

[182] Whether Mr Pennisi authored the Letter as he claimed to the Commissioner initially, or merely added his letterhead and signature to the Letter from the draft supplied by the client (as the aggrieved seem to have suspected), or somewhere between, we cannot determine. Mr Pennisi has chosen to reveal very little of what transpired. The probabilities seem to indicate that Mr Pennisi contributed little to the contents. In addition to the suspicions of the aggrieved, she being all too familiar with the client's literacy, or more accurately lack of it, we observe that the following are consistent with that view:

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[109] [2024] QCAT 489.

[110] [2023] QCAT 291.

(a) in his letter demanding indemnity, Mr Pennisi referred to the Letter as 'your letter' indicating it was the client's letter not his;

(b) in the same sentence as 'your letter', Mr Pennisi writes 'you … request me to forward **same** to her' (emphasis added), that is, his task was to forward that same letter provided by the client; and

(c) Mr Pennisi's remark in his affidavit of 24 November 2023 of 'my decision to send the **letter in the form it was received** by [the aggrieved] may well have been quite different' (emphasis added) had he been in a different financial position, suggesting a form determined by the client.

[183] None of our observations are conclusive. Whether author or merely forwarder, Mr Pennisi is responsible for both the contents of the Letter and for sending it to the aggrieved. At any point along that spectrum, Mr Pennisi's conduct was dishonourable and disgraceful. He has brought shame on the profession.

[184] Incidentally, Mr Pennisi's remark mentioned immediately above in [181(c)], and previously at [97], demonstrates that he yet fails to understand his position. He had no right to send a letter on behalf of the client to the aggrieved unless he acted in the course of the proceedings involving the protection order, typically to advise of an intention to seek a variation of the order, or if he communicated through 'an agreed communication platform namely "Talking Parents"' on any permitted subject as limited in the prohibition order. Mr Pennisi disclaimed holding any instruction to seek to vary the prohibition order and he did not so communicate through the agreed platform, nor did he avoid any prohibited topic.[111]

[185] We agree with the Commissioner's submission that Mr Pennisi's culpability was not in any way mitigated by the matters raised in his affidavit. His letter demanding indemnity to the client and his initial response to the complaint to the Commissioner causes us to treat with some scepticism the impact of the matters referred to in his affidavits. It is trite to observe that most in our community, and in our profession, cope with marital problems, financial pressures and ill health, yet behave ethically and competently, behaviour that should be second nature to a member of an honourable profession.

[186] We have mentioned above at [157] the common features of this case and that involving the trust account issue.

[187] Counsel submits that the various measures Mr Pennisi has put in place to restrict his ability to practise independently, set out in his affidavit of 15 July 2025, provide ample protection for the public particularly as Mr Pennisi proposes to retire on or before 30 June 2027. As the decision in *Shand* demonstrates, where the practitioner had no intention of again practising, a willingness to restrict one's practice as Mr Pennisi has undertaken does not address the wider and important factors of protection and general deterrence.

[188] His conduct in respect of this charge marks Mr Pennisi as one failing to have the personal integrity necessary to discharge the duties of a legal practitioner. To permit his name to remain on the roll would be to endorse him as a fit person to be on the roll. That would mislead the public.

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[111] See Legal Service Commissioner v Pennisi [2024] QCAT 97)

[189] General as well as personal deterrence is also relevant. We share the aggrieved's astonishment that an experienced practitioner would write such a letter. But we know that at least two other practitioners have sent such letters. Whether they were charmed by a charismatic client, as Mr Pennisi's counsel submits, into grossly unethical conduct, or by more prosaic influences we cannot say. In either case, the public are entitled to protection more generally from practitioners so minded.

[190] We recommend that his name be removed from the local roll.

Costs

[191] Mr Pennisi does not resist an order for costs and there is no basis not to make an order against him.

Conclusion

[192] In summary, we find that Mr Pennisi's engaged in professional misconduct on each charge. We consider him not to be a fit and proper person at the time of the hearing, and that the probability is that he is permanently unfit to practice.

[193] The orders are that:

(a) we recommend that the Mr Pennisi's name be removed from the local roll; and

(b) Mr Pennisi pay the applicant's costs of and incidental to each discipline application, such costs to be agreed or assessed on the standard basis in the manner in which costs would be assessed if the matter were in the Supreme Court of Queensland.