

**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**ACT** : LEGAL PROFESSION ACT 2008 (WA)

**CITATION** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE and DUTTON [2014] WASAT 124

**MEMBER** : JUSTICE J C CURTHOYS (PRESIDENT)  
MR M SPILLANE (SENIOR MEMBER)  
MS R MOORE (MEMBER)

**HEARD** : DETERMINED ON THE DOCUMENTS

**DELIVERED** : 23 SEPTEMBER 2014

**FILE NO/S** : VR 29 of 2014

**BETWEEN** : LEGAL PROFESSION COMPLAINTS  
COMMITTEE  
Applicant

AND

GEOFFREY PAUL DUTTON  
Respondent

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*Catchwords:*

Unprofessional conduct - Using trust monies for own benefit

*Legislation:*

*Legal Practice Act 2003*(WA), s 137(1)(b)

*Legal Profession Act 2008* (WA), s 215(2), s 226, s 260, s 262, s 404, s 428(1)

*State Administrative Tribunal Act 2004* (WA), s 56

*Result:*

Practitioner guilty of unprofessional conduct  
Report to Full Court of the Supreme Court recommending striking off

*Summary of Tribunal's decision:*

The practitioner engaged in and admitted to persistent breaches of his obligations in that he:

- a) used trust monies for his own benefit contrary to s 137(1)(b) of the *Legal Practice Act 2003* (WA) and s 226 of the *Legal Profession Act 2008* (WA) (LP Act), totalling \$64,001.55;
- b) failed to deposit trust moneys in a general trust account as required by s 215(2) of the LP Act;
- c) failed to properly maintain trust accounts;
- d) failed to provide proper bills and trust statements;
- e) failed to give proper advice to his clients and to advise them of their obligations;
- f) failed to comply with his obligations to advise clients of costs under s 260 and s 262 of the LP Act and the *Family Law Rules 2004* (WA); and
- g) failed to return telephone calls and respond to emails and letters.

The practitioner consented to his name being struck off the roll of practitioners and the Tribunal so recommended.

*Category:* B

**Representation:**

*Counsel:*

Applicant : Ms PE Le Miere  
Respondent : In person

*Solicitors:*

Applicant : Law Complaints Officer  
Respondent : N/A

**Case(s) referred to in decision(s):**

A Solicitor v Council of the Law Society of New South Wales (2004) 216  
CLR 253

In re a Practitioner (1982) 30 SASR 27

Law Society of South Australia v Rodda (2002) 83 SASR 541

Legal Practitioners Complaints Committee v De Alwis [2006] WASCA 198

Legal Practitioners Complaints Committee v McKerlie [2007] WASC 119

Ziems v Prothonotary of the Supreme Court of NSW (1957) 97 CLR 279

**REASONS FOR DECISION OF THE TRIBUNAL:**

***Introduction***

1           The Legal Profession Complaints Committee (Committee) made a referral under s 428(1) of the *Legal Profession Act 2008* (WA) (LP Act) to the Tribunal in relation to a legal practitioner, Mr Geoffrey Paul Dutton.

2           The Committee alleged that between about 2007 and 2012, Mr Dutton engaged in professional misconduct in the course of acting for a number of different clients; and that he also engaged in unsatisfactory professional conduct and professional misconduct in the course of acting for another client.

3           At the directions hearing held on 11 March 2014, the Tribunal ordered that the matter be referred to mediation.

4           As a result of the mediation, the parties agreed in writing to settle the proceeding pursuant to s 56 of the *State Administrative Tribunal Act 2004* (WA).

5           The terms of the consent orders of 4 June 2014 are as follows:

**The Tribunal notes:**

The Legal Profession Complaints Committee ('the Committee') alleged that there is proper cause for disciplinary action against the practitioner pursuant to s 438 (1) of the *Legal Profession Act 2008* (WA).

By a written agreement between the parties dated 4 June 2014 the parties agreed the terms upon which the proceedings could be settled.

The practitioner admits the statement of facts and the statement of contentions as set out in Paragraphs 1 to 14 as set out below.

**The Tribunal orders:**

Being satisfied by reason of the practitioner's admission that proper cause exists for disciplinary action against the practitioner, and in order to give effect to the agreed terms of settlement of the proceedings, it is on 23 June 2014 ordered pursuant to s 56(1) of the *State Administrative Tribunal Act 2004* (WA) that:

1.       The practitioner engaged in professional misconduct by:
  - a.       Between about 7 March 2011 and about November 2011 in the course of acting for D B (**Malcolm**) by contravening

s 260 of the *Legal Profession Act 2008* (WA) (Act) in that he:

- i. incorrectly advised Malcolm that in the absence of a costs agreement the '*Supreme Court Contentious Business Determination 2008*' would regulate the fees that the practitioner could charge when the applicable Costs Determination was the Legal Practitioners (Family Court of Western Australia) Determination 2010;
  - ii. incorrectly advised Malcolm that '... the amount of money and type of case is within the civil jurisdiction of the Magistrate's Court of Western Australia';
  - iii. did not provide an adequate estimate or explanation of the total legal costs or range of estimates of the total legal costs as required by s 260(1)(c) of the Act; and
  - iv. incorrectly advised Malcolm of the range of costs that may be recovered if Malcolm was successful in the litigation or that Malcolm may be ordered to pay if Malcolm was unsuccessful, in circumstances where the litigation was proceeding in the Family Court, and as such it was only in unusual circumstances that Malcolm would be able to recover any costs or would be likely to have to pay the other party's costs.
- b. On or about 15 March 2011 in the course of acting for Malcolm by not depositing trust money received on 15 March 2011 on behalf of Malcolm, in the amount of \$20,000 (**\$20,000 Payment**), to a general trust account of the practitioner's practice in contravention of s 215(2) of the Act.
  - c. From about 17 March 2011 to about 4 April 2011 by dishonest conduct in the course of acting for Malcolm in that the practitioner without authority knowingly used for his own benefit all, or in the alternative some, of the \$20,000 Payment which was trust money to which he was not entitled.
  - d. Since about 15 March 2011 in the course of acting for Malcolm by failing to account to Malcolm for the \$20,000 Payment in that he did not:

- i. give Malcolm a bill for the fair and reasonable value of the legal services provided by the practitioner;
  - ii. provide Malcolm with a trust statement at any time; and
  - iii. repay to the person beneficially entitled to the \$20,000 Payment in circumstances where the practitioner did not carry out or complete Malcolm's retainer.
2. The practitioner engaged in professional misconduct by:
  - a. On or about 17 December 2010 in the course of acting for Mr D T (**David**) by not depositing trust money received on about 17 December 2010 on behalf of David, in the amount of \$50,000 (**\$50,000 Payment**), to a general trust account of the practitioner's practice in contravention of s 215(2) of the Act and contrary to David's instructions.
  - b. Between about 5 November 2010 and about 25 February 2011 in the course of acting for David by not complying with a order of the Family Court of Western Australia (**Family Court**) made on 21 October 2010 requiring the practitioner within 14 days to comply with the Costs Notification Rules of the *Family Law Rules 2004* and provide a copy to the Court.
  - c. Between about 5 February 2010 and about 10 May 2012, in the course of acting for David by contravening s 260 and s 262(1) of the Act in that he:
    - i. did not until about 24 October 2010, being some 9 months after being retained by David, provide any costs disclosure in writing, contrary to s 262(1) of the Act;
    - ii. incorrectly advised David that in the absence of a costs agreement the '*Supreme Court Contentious Business Determination 2008*' would regulate the fees that the practitioner could charge when the applicable Costs Determination was until 30 June 2010 the *Legal Practitioners (Family Court of Western Australia) Determination 2008* and from 1 July 2010 the *Legal Practitioners (Family Court of Western Australia) Determination 2010*;

- iii. incorrectly advised David that '... the amount of money and type of case is within the civil jurisdiction of the Magistrate's Court of Western Australia';
  - iv. did not provide an adequate estimate or explanation of the total legal costs or range of estimates of the total legal costs as required by s 260(1)(c) of the Act; and
  - v. incorrectly advised David of the range of costs that may be recovered if David was successful in the litigation or that David may be ordered to pay if David was unsuccessful, in circumstances where the litigation was proceedings in the Family Court, and as such it was only in unusual circumstances that David would be able to recover any costs or would be likely to have to pay the other party's costs.
- d. From about 23 December 2010 to 11 March 2011 in the course of acting for David being dishonest conduct in the course of acting for David in that the practitioner without authority knowingly used for his own benefit \$20,289.51 being part of the \$50,000 Payment not paid to David which was trust money to which the practitioner was not entitled.
- e. Between about February 2011 and about May 2012 in the course of acting for David by engaging in conduct that fell below the standard of diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, and which involved a substantial and consistent failure to reach or maintain a reasonable standard of diligence in that the practitioner did not take adequate steps to carry out David's instructions to effect property transfers pursuant to Consent Orders of the Family Court.
- f. Since about 5 February 2010 in the course of acting for David by failing to account to David for \$3,000 being trust money received from David on or about 5 February 2010 (**\$3,000 Payment**) and part of the \$50,000 Payment in that he did not:
- i. give David a bill for the fair and reasonable value of the legal services provided by the practitioner;
  - ii. provide David with a trust statement at any time; or

- iii. repay to David the \$3,000 Payment and part of the \$50,000 Payment, being \$19,000 after allowing for the practitioner's reasonable and proper fees and disbursements in circumstances where the practitioner did not carry out or complete David's retainer.
3. The practitioner engaged in professional misconduct by:
- a. On or about 13 September 2011 in the course of acting for his client, E G A Pty Ltd (**Express Group**), in respect of a claim for \$49,714.07 against C G Pty Ltd (**C**) filed in the Magistrates Court of Western Australia (Civil Jurisdiction) (**Proceedings**) by not depositing trust money in the amount of \$2,500 received on 13 September 2011 from Express Group (**\$2,500 Payment**) to a general trust account of the practitioner's practice in contravention of s 215(2) of the Act.
  - b. Between about 13 September 2011 and about March 2012 in the course of acting for Express Group in the Proceedings by not providing any of the disclosure as to costs required by s 260 and s 262 of the Act, in contravention of that provision.
  - c. On 1 February 2012 in the course of acting for Express Group in respect of the Proceedings by intentionally, alternatively recklessly, attempting to mislead Mr Peter T (**Mr T**), a director of Express Group, by representing to Mr T that the practitioner had filed in the Proceedings an application for a means enquiry when he had not.
  - d. Between about 21 November 2011 and about March 2012 by engaging in conduct that fell below the standard of diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, and which involved a substantial and consistent failure to reach or maintain a reasonable standard of diligence in that the practitioner did not:
    - i. take any, or any adequate, steps to progress Express Group's application for default judgment;
    - ii. carry out the work that he was instructed to do, namely apply in the Proceedings for a means enquiry; and
    - iii. return or respond to telephone calls from his client in a timely manner, or at all, on 31 October

2011, 1 November 2011, 10 January 2012, 30 January 2012, 31 January 2012 and emails from his client of 21 October 2011 and 6 March 2012.

- e. Since about 13 September 2011 in the course of acting for Express Group in the Proceedings, by not accounting to Express Group for the \$2,500 Payment in that he did not:
  - i. give Express Group a bill for the fair and reasonable value of the legal services provided by the practitioner;
  - ii. give Express Group a detailed account for assessment as requested by Express Group on or about 28 March 2012;
  - iii. provide a trust account statement;
  - iv. repay the \$2,500 Payment to Express Group in circumstances where the practitioner did not carry out or complete Express Group's retainer.
  
- 4. The practitioner engaged in professional misconduct by:
  - a. In the course of acting for his client C L N (**Claire**), in respect of children's and property proceedings against her former de facto partner SE in the Family Court of Western Australia (**client matter**) by not depositing trust money in the amount of \$1,650 received from Claire by five payments of \$330 made on or about 9 January 2012, 16 January 2012, 23 January 2012, 30 January 2012 and 6 February 2012 respectively (**Trust Payments**) to a general trust account of the practitioner's practice in contravention of s 215(2) of the Act.
  - b. Between about 3 December 2011 and 12 March 2012 in the course of acting for Claire, in the client matter by not providing any of the disclosure as to costs required by s 260 of the Act, in contravention of that provision.
  - c. Between about 3 December 2011 and 12 March 2012 in the course of acting for Claire in the client matter by engaging in conduct that fell below the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australia legal practitioner where the conduct involved a substantial failure to reach or maintain a reasonable standard of competence and diligence in that the practitioner:

- i. advised Claire that the Family Court of Western Australia (**Family Court**) Order dated 4 November 2011 permitted her to relocate with her children to Perth, when it did not;
  - ii. by email at about 8.35 am on 2 March 2012, without instructions, informed SE's solicitor that Claire consented to an injunction that prevented Claire from taking her children, or permitting them to be taken, out of Australia and placed their names on the Airport Watch List for that purpose (**injunction**);
  - iii. during a telephone call with Claire at about 9.15 am on 2 March 2012, when the practitioner informed Claire of the injunction being sought by SE to be heard on 2 March 2012, he did not inform Claire that SE had also applied for an order that would require Claire's children to be returned from Perth to Geraldton within 24 hours of service of the order (**return order**);
  - iv. did not at any time obtain Claire's instructions or provide any advice to Claire in respect of the return order;
  - v. upon receiving specific instructions from Claire during the telephone call referred to in c) above, that she did not consent to the injunction, did not inform SE's solicitor's, Clavey Legal and/or the Family Court that his client did not consent to the injunction;
  - vi. did not respond to emails from Claire seeking advice about the order of the Family Court made on 2 March 2012 requiring the return of her children to Geraldton; and
  - vii. did not carry out the work that he was instructed to do, namely write to SE's solicitor to seek disclosure of SE's financial position prior to applying for a property settlement in the Family Court against SE.
- d. Since about December 2011 in the course of acting for Claire in the client matter by not accounting to Claire for the Trust Payments in that he did not:
- i. give Claire a bill for the fair and reasonable value of the legal services provided by the practitioner

(other than a bill dated 29 December 2011 and paid on or about that date);

- ii. provide a trust account statement to Claire at any time; and/or
- iii. repay to Claire the Trust Payments (\$1,650) in circumstances where the practitioner did not carry out or complete Claire's retainer and acted contrary to her instructions.

5. The practitioner engaged in professional misconduct by:

- a. On or about 23 March 2012 in the course of acting for his client, KJC (**Karen**) in respect of proposed property proceedings against her estranged husband PC in the Family Court of Western Australia (**Property Proceedings**) by not depositing trust monies in the amount of \$3,000 received from Karen on or about 23 March 2012 (**\$3,000 Payment**) to a general trust account of the practitioner's practice in contravention of s 215(2) of the Act.
- b. About 22 February 2012 and about April 2012 in the course of acting for Karen in the Property Proceedings by not providing any of the disclosure as to costs required by s 260 of the Act, in contravention of that provision.
- c. About 13 March 2012 and 12 April 2012 in the course of acting for Karen in the Property Proceedings and in respect of an application for parenting and recovery orders pursuant to a grant of legal aid by engaging in conduct that fell below the standard of diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, and which involved a substantial and consistent failure to reach or maintain a reasonable standard of diligence in that the practitioner did not:
  - i. on 26 March 2012, without reasonable excuse, attend an appointment arranged with Karen;
  - ii. take any steps to carry out the client's instructions to commence children's proceedings, including a recovery order (of her children that she had had limited contact with since 1 December 2011), in the Family Court of Western Australia (**Family Court**) pursuant to a grant of Legal Aid; and

- iii. between 23 March 2012 and 12 April 2012 take any, or any adequate, steps to carry out Karen's instructions to commence property proceedings in the Family Court against PC in circumstances where practitioner had advised Karen to commence the Property Proceedings and, to the practitioner's knowledge, Karen had taken out a loan to make the \$3,000 Payment to him he required before he would commence the Property Proceedings.
- d. Since about 23 March 2012 in the course of acting for Karen in the Property Proceedings by not accounting to Karen for the \$3,000 Payment in that he did not:
  - i. give Karen a bill for the fair and reasonable value of the legal services provided by the practitioner;
  - ii. provide Karen with a trust statement at any time; or
  - iii. repay to Karen the \$3,000 Payment in circumstances where the practitioner did not carry out or complete Karen's retainer.
- 6. The practitioner engaged in professional misconduct by:
  - a. Between about 5 April 2008 and 12 April 2012 in the course of acting for his client, D W (**Mr W**), in respect of a claim against his former de facto wife C N (**Ms N**) to recover the financial contributions he had made to the maintenance and improvement of her property in Middle Swan and for the non return of personal items (**Claim**) by engaging in conduct that fell below the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, and which involved a substantial and consistent failure to reach or maintain a reasonable standard of competence and diligence, in that the practitioner did not provide any or any adequate advice to Mr W:
    - i. as to the appropriate jurisdiction in which to commence proceedings to prosecute his claim;
    - ii. any time limits that might apply to commencing proceedings in the Family Court of Western Australia (**Family Court**); and

- iii. with respect to enforcement of the default judgment obtained on behalf of Mr W in the District Court of Western Australia on 30 July 2008 (**Default Judgment**).
- b. Between about 30 July 2008 and 12 April 2012 in the course of acting for Mr W with respect to his Claim by engaging in conduct that fell below the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, and which involved a substantial and consistent failure to reach or maintain a reasonable standard of competence and diligence, in that the practitioner sought to commence proceedings in the Family Court to enforce the Default Judgment in circumstances where:
- i. The Family Court had no jurisdiction to grant enforcement because a default judgment awarded by the District Court of Western Australia (**District Court**) could only be enforced by an application to the District Court pursuant to s 9(1) of the *Civil Judgments Enforcement Act 2004* (WA);
  - ii. The practitioner did not apply for leave to make an application to the Family Court, as he was required to do pursuant to s 205ZB(2) of the *Family Court Act 1997* (WA) (**FCA**) because Mr W's and Ms N's relationship ended more than 2 years before the application to the Family Court was made;
  - iii. The practitioner, in the affidavits he prepared on behalf of Mr W, did not or did not adequately, identify any contributions made by Mr W or any serious injustice that Mr W would suffer as he was required to do to invoke the jurisdiction of the Family Court pursuant to s 205Z(1)(c) of the FCA given that Mr W and Ms N had not been in a de-facto relationship for at least 2 years;
  - iv. The practitioner prepared and attempted to file an application in the Family Court in or about August 2010 that did not comply with the requirements of the FCA, including purporting to apply for an exemption to obtain a certificate from a Family Dispute Resolution Practitioner prior to commencing proceedings when one was not required under the FCA;

- v. The practitioner prepared and attempted to file an application in the Family Court in or about September 2011 that was not accompanied by a supporting affidavit or a financial statement as required under the FCA;
  - vi. The practitioner did not respond to a requisition of the Family Court dated 19 September 2011 and took no steps to progress Mr W's matter after 19 September 2011.
- c. About 6 May 2008 to 12 April 2012 in the course of acting for Mr W in respect of the Claim by not accounting to Mr W for the monies or balance of the monies paid by Mr W to the practitioner on account of costs and disbursements on or about 11 April 2008, 15 April 2008, 6 May 2008, 20 May 2008, 21 May 2008 and 21 October 2008 being \$6,039.90 (**Payments**), in that the practitioner did not:
- i. after 3 May 2008 give the client a bill for the fair and reasonable value of the legal services provided by the practitioner;
  - ii. provide the client with a trust statement at any time; and
  - iii. repay to Mr W \$6,039.90 in circumstances where the practitioner did not carry out or complete Mr W's retainer.
7. The practitioner engaged in professional misconduct by:
- a. On or about 6 January 2011, 9 June 2011, 14 July 2011 and 11 November 2011 in the course of acting for, G M C and K C (**Mr and Mrs C**) in respect of a dispute with M Z (**BDT matter**) and a claim against Mr and Mrs C for \$98,879.79 by Donatella C (**plaintiff**) filed in the District Court of Western Australia (**District Court Proceedings**) by not depositing trust money in the amounts of \$2,000, \$500, \$2,000 and \$3,500 received from Mr and Mrs C on or about 6 January 2011, 9 June 2011, 14 July 2011 and 11 November 2011 respectively, (**Trust Monies**) to a general trust account of the practitioner's practice in contravention of s 215(2) of the Act.
  - b. On or about 30 June 2011 in the course of acting for Mr and Mrs C in the District Court Proceedings by not providing any of the disclosure as to costs required by s 260 of the Act, in contravention of that provision.

c. Between about 30 June 2011 and 12 April 2012 in the course of acting for Mr and Mrs C in the District Court Proceedings by engaging in conduct that fell below the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, and which involved a substantial and consistent failure to reach or maintain a reasonable standard of competence and diligence, in that the practitioner did not take any or any adequate steps to advise or inform Mr and Mrs C of

- i. the application dated 14 December 2011 by the plaintiff to strike out 8 paragraphs of their defence;
- ii. their obligation to provide discovery;
- iii. the application dated 23 February 2012 by the plaintiff for a springing order;
- iv. the orders made in the District Court Proceedings on 31 January 2012 and 27 February 2012; and
- v. the serious consequences to Mr and Mrs C of non-compliance with the 27 February 2012 order in the District Court Proceedings;

in circumstances where the failure to comply with the 27 February 2012 order resulted in judgment being entered against Mr and Mrs C on 16 April 2012.

d. Since about 6 January 2011 in the course of acting for Mr and Mrs C in the BDT matter and the District Court proceedings by not accounting to them for the Trust Monies in that he did not:

- i. give Mr and Mrs C a bill for the fair and reasonable value of the legal services provided by the practitioner;
- ii. provide a trust statement; and
- iii. repay the Trust Monies (\$8,000), in circumstance where the practitioner did not carry out or complete the retainer for the District Court proceedings.

8. The practitioner engaged in professional misconduct by:

a. Between about December 2009 and 12 April 2012 in the course of acting for his client, CTB Management Pty Ltd

(CTBM), in respect of a claim for \$32,783.46 alleged to be owing for labour and materials supplied by CTBM to P Corporation Pty Ltd filed in the Magistrates Court of Western Australia (Civil Jurisdiction) (**Proceedings**) by not providing any of the disclosure as to costs required by s 260 of the Act, in contravention of that provision.

- b. On or about 9 May 2010 and 12 January 2011 in the course of acting for CTBM in the Proceedings by not depositing trust money in the amount of \$3,300 received from CTBM (**\$3,300 Payment**) on 9 May 2010 and \$2,200 on 12 January 2011 (**\$2,200 Payment**) to a general trust account of the practitioner's practice in contravention of s 215(2) of the Act.
- c. Between about 8 June 2010 and about April 2012 in the course of acting for CTBM in the Proceedings by engaging in conduct that fell below the standard of diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, and which involved a substantial and consistent failure to reach or maintain a reasonable standard of diligence in that he did not take any or any adequate steps to substantively progress the Proceedings in a timely manner.
- d. Between 13 January 2011 and 17 April 2012 in the course of acting for CTBM in the Proceedings by not communicating candidly and in a timely manner with his client CTBM in that he did not:
  - i. inform CTBM of the orders made in the Proceedings on 13 January 2011;
  - ii. respond to emails from representatives of CTBM of 7 October 2011, 26 October 2011, 16 November 2011 sent at 1.21pm and 1.25pm, 28 February 2012, 22 March 2012, 28 March 2012 and 17 April 2012; and
  - iii. inform CTBM that his practising certificate had been suspended and he was no longer able to continue to act for CTBM;in contravention of Rule 8 of the *Legal Profession Conduct Rules 2010* (**Rules**).
- e. Since about 9 May 2010 in the course of acting for CTBM in the Proceedings by not accounting to CTBM for the \$3,300 Payment or the \$2,200 Payment in that he did not:

- i. give CTBM a bill for the fair and reasonable value of the legal services provided by the practitioner;
- ii. provide a trust statement at any time; and/or
- iii. repay to CTBM the \$3,300 Payment and/or the \$2,200 Payment (\$5,500);

in circumstances where the practitioner did not complete CTBM's retainer.

9. The practitioner engaged in unsatisfactory professional conduct and professional misconduct by:

- a. On or about 26 October 2010 in the course of acting for W Pty Ltd (**W**) in respect of a claim for \$20,910.54 against J Pty Ltd (**J**) filed in the Magistrates Court of Western Australia (Civil Jurisdiction) (**Proceedings**) by not providing adequate disclosure as to costs required by s 260 of the Act, in contravention of that provision in that he informed W that if W did not enter into an agreement with the practitioner the Supreme Court Contentious Business Determination 2008 would apply and regulate what the practitioner could charge the client when absent a costs agreement the Legal Practitioners (*Magistrates Court*) (*Civil Determination 2010*) applied.
- b. On or about 30 May 2011 in the course of acting for W in the Proceedings by not depositing trust money in the amount of \$3,000 received from W on 30 May 2011 (**\$3,000 Payment**) to a general trust account of the practitioner's practice in contravention of s 215(2) of the Act.
- c. Between about 24 May 2011 and about March 2012 in the course of acting for W in respect of the Proceedings by engaging in conduct that fell below the standard of diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, and which involved a substantial and consistent failure to reach or maintain a reasonable standard of diligence, in that he did not take any or any adequate, steps to progress the Proceedings after 23 May 2011 and in particular did not file a Statement of Claim by 6 June 2011 in accordance with orders made at a pre-trial conference in the Magistrates Court on 23 May 2011 (**pre-trial conference**) in circumstances where:

- i. on 27 May 2011 the practitioner advised W that if the \$3,000 Payment was not paid by 30 May 2011, he would file a Notice of Ceasing to Act on 31 May 2011; and
    - ii. on 30 May 2011 W paid in advance the \$3,000 Payment on account of the practitioner's professional fees, in particular for the preparation of the Statement of Claim.
  - d. From about 29 October 2010 to 12 April 2012 in the course of acting for W in respect of the Proceedings by not accounting to W for the amount of \$2,000 received from W on 29 October 2010 (\$2,000 Payment) or the \$3,000 Payment in that he did not:
    - i. give W a bill for the fair and reasonable value of the legal services provided by the practitioner;
    - ii. give W an itemised invoice as requested by W on 8 March 2012;
    - iii. repay to W the \$2,000 Payment and/or the \$3,000 Payment (\$5,000) in circumstances where the practitioner did not complete W's retainer.
10. The practitioner engaged in professional misconduct by:
  - a. On or about 12 July 2011 in the course of acting for his client, JT, in respect of children's proceedings against her estranged husband PC in the Family Court of Western Australia (**Proceedings**) by not depositing trust money in the amount of \$3,000 received on behalf of JT (**\$3,000 Payment**) to a general trust account of the practitioner's practice in contravention of s 215(2) of the Act.
  - b. Between about 22 June 2011 and about November 2011 in the course of acting for JT in respect of the Proceedings by not providing any of the disclosure as to costs required by s 260 of the Act, in contravention of that provision.
  - c. That the practitioner from about 12 July 2011 to 12 April 2012 engaged in professional misconduct within the meaning of s 403 and 438 of the Act in the course of acting for JT in respect of the Proceedings by not accounting to JT for the \$3,000 Payment in that he did not:
    - i. give JT a bill for the fair and reasonable value of the legal services provided by the practitioner;

- ii. give JT an invoice with a breakdown and a receipt in respect of the \$3,000 Payment as requested by JT on or about 23 August 2011;
  - iii. provide JT with a trust account statement at any time; and
  - iv. repay the \$3,000 Payment, in circumstances where the practitioner did not carry out or complete JT's retainer.
11. The practitioner engaged in professional misconduct by:
- a. On or about 2 April 2012 in the course of acting for his client, WD Pty Ltd (**WD**), in respect of a dispute with a former employee, Ms Melissa, by not depositing trust monies in the amount of \$1,700 received from WD on about 2 April 2012 (\$1,700 Payment) to a general trust account of his practice contrary to s 215(2) of the Act.
  - b. Between about 2 April 2012 and 12 April 2012 in the course of acting for WD by engaging in conduct that fell below the standard of diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner in that the practitioner did not take any or any adequate steps to carry out WD's instructions to prepare and send a letter of demand to Ms Melissa in circumstances where the matter was urgent and the practitioner had been paid the \$1,700 Payment in advance to do so.
  - c. From about 8 June 2012 in the course of acting for the client by failing to account to the client for \$550 being the balance of trust money received and not refunded to W in that he did not:
    - i. give the client a bill for the fair and reasonable value of the legal services provided by the practitioner;
    - ii. provide the client with a trust statement at any time; or
    - iii. repay to the client the \$550 in circumstances where the practitioner did not carry out or complete the client's retainer and had agreed to refund the entire \$1,700 Payment.
12. The practitioner engaged in professional misconduct by:

- a. On or about 29 August 2011 in the course of acting for his client, Ms Elsa M T C (**Ms T C**), in respect of the estate of her late husband Mr Ryan James R (**deceased's estate**) by not depositing trust money in the amount of \$550.00 received from Ms T C (**\$550 Payment**) to a general trust account of the practitioner's practice in contravention of s 215 (2) of the Act.
  - b. Between about 29 August 2011 and about 15 February 2012 by engaging in conduct that fell below the standard of diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner, and which involved a substantial and consistent failure to reach or maintain a reasonable standard of diligence, in that the practitioner did not:
    - i. take any or any adequate steps to do what he was retained to do, namely obtain a grant of Letters of Administration of the deceased's estate;
    - ii. return or respond to two telephone calls from Ms T C on 16 January 2012, a letter from Ms T C of 16 January 2012, three telephone calls from Ms T C on 15 February 2012 and an email from Ms T C of 15 February 2012.
  - c. Since about 29 August 2011 in the course of acting for Ms T C by not accounting to her for the \$550 Payment in that he did not:
    - i. give Ms T C a bill for the fair and reasonable value of the legal services provided by the practitioner;
    - ii. provide a trust account statement to Ms T C or Mr Ian R;
    - iii. repay the \$550 Payment to Ms T C alternatively the balance of the \$550 in circumstances where the practitioner did not carry out any work further to obtaining a grant of Letters of Administration that was of benefit to Ms T C or Mr Ian R or that he had been retained to do.
13. The practitioner engaged in professional misconduct by:
- a. Between about 16 November 2011 and about April 2012 in the course of acting for his client, Ms Jan M (now Mrs Jan ML) (**Mrs M**), in respect of a claim for \$9,450 against R Camps Australia Pty Ltd (**Claim**) by not

providing any of the disclosure as to costs required by section 260 of the Act, in contravention of that provision.

- b. On or about 18 November 2011 in the course of acting for Mrs M in respect of the Proceedings by not depositing trust money in the amount of \$2,500.00 received on 18 November 2011 from Mrs M to a general trust account of the practitioner's practice in contravention of s 215 of the Act.
- c. Since about 18 November 2011 in the course of acting for Mrs M in respect of the Proceedings by failing to account to Mrs M for \$2,500 being trust money received from Mrs M on or about 18 November 2011 (**\$2,500 Payment**) in that he did not:
  - i. give Mrs M a bill for the fair and reasonable value of the legal services provided by the practitioner;
  - ii. provide Mrs M with a trust statement at any time; or
  - iii. repay to Mrs M the \$2,500 Payment in circumstances where the practitioner did not carry out or complete Mrs M's retainer.

14. The practitioner engaged in professional misconduct:

- a. between about July 2007 and 28 February 2009 by dishonest conduct and a contravention of s 137(1)(b) of the *Legal Practice Act 2003 (WA)* (**2003 Act**); and
- b. between about 1 March 2009 and 15 March 2010 by dishonest conduct and a contravention of s 226(1)(a) of the Act;

by withdrawing, without authority and using for his own benefit, funds from the general trust account of his law practice, Dutton Legal in respect of the clients set out in column 1 in the amounts shown in column 3 and shaded yellow of the attached Schedule and thereby causing a deficiency in the trust accounts or trust ledger accounts of those clients set out in the attached Schedule.

- c. Between about March 2007 and 28 February 2009 he contravened section 140 of the 2003 Act by failing to maintain books of account in the manner required by the *Legal Practice Board Rules 2004* (**2004 Rules**); in that he:

- i. did not record the particulars for trust account transactions, as required by regulations 52(2)(a)(iii) and (iv), 52(2)(b)(ii), (iii) and (iv), 52(2)(c)(ii) and 52(3) of the 2004 Rules;
  - ii. did not record the particulars for the trust accounts maintained by the practitioner as required by rule 52(3)(c), (d), (e), (f)(i), (f)(ii) and (f)(iii) of the 2004 Rules;
  - iii. did not reconcile and prepare reconciliation statements for his trust records as required by rule 57 of the 2004 Rules.
- d. Between in or about 1 March 2009 and 18 November 2011 he contravened section 228(3) of the 2008 Act by failing to maintain books of account in the manner required by the *Legal Profession Regulations 2009 (2009 Regulations)* in that he:
  - i. did not record the particulars for trust account transactions, as required by regulations 49(2)(a)(b) and (c), 49(4)(a)(b)(c)(d) and (e), 49(5)(a)(b)(c) and (d) and 49(6)(a)(b)(c)(d) and (e) of the 2009 Regulations;
  - ii. did not keep a trust account receipts cash book and a trust account payments cash book, as required by regulation 46 of the 2009 Regulations; and
  - iii. did not reconcile the firm's trust records each month, as required by regulation 51(2) of the 2009 Regulations.
- e. Between 1 March 2009 and about April 2012, by failing to give notice to the Legal Practice Board of irregularities with the practitioner's law practice's trust accounts and trust ledger accounts, in contravention of s 227(1) of the 2008 Act.
- f. From about 19 January 2012 by failing to respond to a letter from the Senior Trust Account Inspector dated 22 December 2011 requesting confirmation of the findings set out in a '*Report on Examination of Office and Practice Records on 21 November 2011 and completed 1 December 2011 of Dutton Legal*' dated 22 December 2011 (**Report**) and failing to take the action requested to be undertaken to rectify various matters referred to in the Report.

15. The Tribunal make and transmit a report on the findings of professional misconduct to the Supreme Court of Western Australia (Full Bench) with a recommendation that the name of the practitioner be removed from the roll of persons admitted to the legal profession under the *Legal Profession Act 2008* (WA).
16. The practitioner pay the applicant's costs fixed in the sum of \$3,500.
17. The amount specified in order 16 is to be paid to the Legal Practice Board by the practitioner within 30 days or as agreed by the Legal Practice Board.

### ***The legal principles***

6 Honesty and integrity are considered essential prerequisites to the right to practise law. Conduct most likely to lead to a practitioner's name being struck off the roll of practitioners is that which undermines the trustworthiness of a practitioner or which suggests a lack of integrity, so that the practitioner cannot be trusted to deal fairly within the system in which he or she practises: ***Legal Practitioners Complaints Committee v McKerlie*** [2007] WASC 119 Martin CJ at [8].

7 Where an order for removal from the roll is contemplated, the ultimate question is whether it is demonstrated that the practitioner is not a fit and proper person to remain a legal practitioner: ***A Solicitor v Council of the Law Society of New South Wales*** (2004) 216 CLR 253 at [15]; ***Law Society of South Australia v Rodda*** (2002) 83 SASR 541 at 545.

8 While not every incidence of unprofessional or illegal conduct will require the extreme penalty of striking off, there will be cases where the seriousness of the conduct demands such a disposition because it demonstrates unfitness to practice: ***Ziems v Prothonotary of the Supreme Court of NSW*** (1957) 97 CLR 279 at 298.

9 Dishonest conduct in relation to a trust account is plainly serious. It involves a core element of the relationship of trust between a solicitor and a client (***Legal Practitioners Complaints Committee v De Alwis*** [2006] WASCA 198 at [106] (***De Alwis***)).

10 ***De Alwis*** considered the case of ***In re a Practitioner*** (1982) 30 SASR 27 in which a practitioner failed to pay cheques into a trust account and instead disbursed the proceeds for profit. In that matter, the Court considered that the appropriate order was that the practitioner be removed

from the roll. King CJ said (at 31) that, despite the fact that the practitioner always intended to pay the money back, his conduct was:

... an affront to the sanctity of the practitioner's Trust Account and this Court has a duty to vindicate the inviolability of the trust imposed upon a practitioner to treat his clients' money in all respects as their money and to use their money for their purposes and no other. The public can feel confidence in legal practitioners and their handling of money only if they know that there is involved no element of judgment on the part of the practitioner, and that their money will remain in his Trust Account until it is disbursed in accordance with their discretion; because no matter how good the intentions of a practitioner might be, no matter how confident he might be that the money can be made good, whenever a client's money is deliberately used for a purpose other than the purpose for which the client entrusted it to the practitioner, there is an act of dishonesty on the part of the practitioner and one which exposes the client to some element of risk as to his money. ...

### ***Recommendation***

11 The dishonest conduct would of itself be sufficient to justify a recommendation to the Full Court that the practitioner be struck off. However, in addition, there are the other matters detailed above. No client could have any confidence in the honesty or integrity of Mr Dutton.

12 Mr Dutton has engaged in and admitted to persistent breaches of his obligations as a practitioner in that he has:

- a) used trust monies for his own benefit contrary to s 137(1)(b) of the *Legal Practice Act 2003* (WA) and s 226 of the LP Act, totalling \$64,001.55;
- b) failed to deposit trust monies in a general trust account as required by s 215(2) of the LP Act;
- c) failed to properly maintain trust accounts;
- d) failed to provide proper bills and trust statements;
- e) failed to give proper advice to his clients and to advise them of their obligations;
- f) failed to comply with his obligations to advise clients of costs under s 260 and s 262 of the LP Act and the *Family Law Rules 2004* (WA); and

g) failed to return telephone calls and respond to emails and letters.

13 Mr Dutton cannot be trusted to deal fairly within the system in which he practises. Plainly, the public need to be protected. Mr Dutton is not a fit and proper person to remain a legal practitioner.

14 It is to the credit of Mr Dutton that he apparently recognises and accepts both the seriousness of his conduct and its consequences and has consented to the order set out above that the Tribunal transmit a report on its findings to the Supreme Court with a recommendation for removal of the practitioner's name from the roll.

15 Based on his admissions by way of his signature on the minute of consent orders submitted to the Tribunal on 4 June 2014, we are satisfied and find that the practitioner engaged in professional misconduct within the meaning of s 404 of the LP Act in the way identified in para 1 of the proposed orders set out above. We consider that the order proposed by the parties, namely, that the Tribunal transmit a report on its findings to the Supreme Court (Full Bench), with a recommendation for removal of the practitioner's name from the roll, is an appropriate disposition of the matter by the Tribunal, and make the orders proposed by the parties.

16 These reasons and the schedule referred to in paragraph 14 of the consent orders constitute the report.

I certify that this and the preceding [16] paragraphs comprise the reasons for decision of the State Administrative Tribunal.

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**JUSTICE J C CURTHOYS, PRESIDENT**