

LEGAL PRACTICE COMMITTEE OF QUEENSLAND

OFFICE: Brisbane
NUMBER: 004/06

Applicant: LEGAL SERVICES COMMISSIONER

AND

Respondent: MICHAEL EDMUND LEAHY

DISCIPLINE APPLICATION

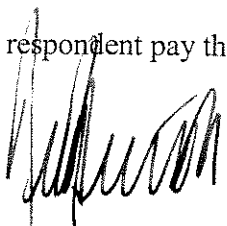
A. DETAILS OF APPLICATION

This application is made under section 276 of the *Legal Profession Act 2004* ("Act").

On the facts stated in the particulars of charge set out below, the applicant seeks the following orders:

1. Pursuant to section 282 of the Act that the respondent is guilty of unsatisfactory professional conduct.
2. Such further or other orders or directions as may be just.
3. The respondent pay the applicant's costs of the application.

Signed:



Description: Legal Services Commissioner

Dated:

9 January 2006

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B. PARTICULARS OF CHARGE

The Commissioner alleges that the following charges constitute unsatisfactory professional conduct:

1. The respondent dealt with clients' trust moneys by wrongfully drawing against, and causing payments to be made from the trust account for certain matters in circumstances where:
 - (a) the amount of the withdrawal or the payment from the trust account exceeded the amount of cleared funds held for such matters, in breach of Section 10(1) of the *Trust Accounts Regulation 1999*; and
 - (b) the respondent knew or ought to have known that a particular client's trust ledger was deficient at the time of making the withdrawal or the payment.

Particulars

- 1.1 At all material times, the respondent was:
 - (a) a legal practitioner;
 - (b) the sole principal of the law practice of Hardings Solicitors, Annerley;
 - (c) the trustee of trust property, namely various clients' trust moneys.

- 1.2 During the period June 2003 to October 2004, the respondent caused or permitted payments to be made from the firm's trust account in the various matters referred to in the Schedule below, in circumstances where the respondent knew or ought to have known that insufficient cleared trust funds were held for each of those matters.

Schedule

No	Matter	Date Overdrawn	Amount Overdrawn (Debit balance)	Beneficiary of Trust Overdraw (general account, third party, client)	Date Restored
1.	Drew/Narson P/L	04.07.03	\$6,900.00 - Insufficient funds held to pay trust chq for \$7,396.47	Third party	18.05.04 - \$6,353.49 restored by client
		02.08.04	\$546.51 - transferred to another client's ledger	Third party	28.05.04 - balance of \$546.51 (restored from another client's ledger) 07.02.05 - restored by respondent

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No	Matter	Date Overdrawn	Amount Overdrawn (Debit balance)	Beneficiary of Trust Overdraw (general account, third party, client)	Date Restored
2.	Rameka & Cullen/Narson P/L	30.06.03	\$9,500.00 – Insufficient funds held	Third party & general account	09.07.03 - \$241 deposited by client
		09.07.03	\$9,259.46 – debit balance after part restoration		05.05.04 - \$500 restored by respondent
		05.05.04	\$8,759.46 – debit balance after part restoration		13.05.04 - \$4,600 restored by respondent
		13.05.04	\$4,159.46 –debit balance after part restoration		
		28.07.04	\$4,705.97 – incorrect transfer to another ledger		
		29.07.04	\$546.51 – debit balance after transfer to gen a/c		29.07.04 - \$9,259.46 restored by client
					02.08.04 – transferred back from other ledger
3.	Ninnes Enterprises P/L /Martin	27.06.03	\$316.10 – Insufficient funds held to pay trust chq of \$556	Client	
		29.06.03	\$149.06 – balance after part restoration		29.06.03 - \$149.06 restored by respondent
					23.02.04 - \$167.04 restored by respondent
4.	Pascoe/Sam	06.02.04	\$19.00 – Insufficient funds held to pay trust chq of \$22	Client	
					23.02.04 - \$19 restored by respondent
5.	Davies/McCrea	12.02.04	\$492 – Insufficient funds	Third party & general a/c	23.02.04 - \$492 restored by respondent
6.	McCawley & Hurley/Probate	01.03.04	\$65 – Insufficient funds	General account	26.05.04 - \$65 restored by respondent

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7.	Simpson & Haddon/Peterson	15.10.04	\$78.85 – Insufficient funds	General account	21.10.04 - \$78.84 restored by respondent
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- 1.3 The respondent caused or permitted the various trust deficiencies to remain outstanding for the times particularised in the Schedule above, until each payment was restored by the respondent.
2. The respondent maintained and operated various investment accounts at the Commonwealth Bank, Stones Corner in breach of section 16(2) of the *Trust Accounts Regulation 1999*.

Particulars

- 2.1 During the period December 2002 to February 2005, the respondent maintained and operated 19 separate investment accounts for deposits held on behalf of his client, Attitude & Latitude Pty Ltd, the vendor of certain properties and the purchasers of those properties, which accounts were closed as and when settlement of the respective properties were effected.
- 2.2 As at February 2005, the respondent continued to maintain four such investments accounts as follows:

Date of Deposit at CBA	Investment Amount	Client (Vendor)	Purchaser
14.11.2003	\$28,950.00	Attitude & Latitude Pty Ltd	Brierley (Lot 43)
14.11.2003	\$28,950.00	Attitude & Latitude Pty Ltd	O'Keefe (Lot 23)
08.12.2002	\$1,000.00	Attitude & Latitude Pty Ltd	Bennett & Mallum (Lot 47)
12.01.04	\$27,950.00	Attitude & Latitude Pty Ltd	Bennett & Mallum (Lot 47)

- 2.3 In respect of each investment account referred to above, the respondent failed to keep and maintain a separate investment ledger account for each such investment in breach of section 16(2) of the *Trust Account Regulation 1999*.

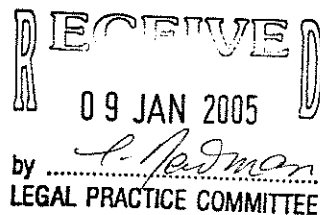
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C. TO THE RESPONDENT(S)

Mr Michael Edmund Leahy
Hynes Harding Lawyers
PO Box 628
Annerley Qld 4103

This application will be heard by the Committee at a time and date to be fixed.

Filed with the Committee on 9/1/2006



Secretariat:

If you wish to contest this application, or to make submissions on penalty, you must lodge a Notice of Address for service with the Secretariat within fourteen [14] days of service of this application on you. The Notice should be in Form 8 to the Uniform Civil Procedure Rules. If you fail to file a Notice of Address for service with the Secretary within fourteen [14] days of service of this application on you, the matter will be heard in default of your appearance, on a date to be fixed being not less than twenty one [21] days after service of this application on you.

D. SERVICE

APPLICANT'S ADDRESS FOR SERVICE:

Name:	Legal Services Commission
Applicant's business address:	Level 25, 307 Queen Street. Brisbane Qld 4000
Address for service:	As Above
DX:	DX 40118 Brisbane Uptown
Telephone:	(07) 3406 7737
Fax:	(07) 34067749
E-mail address:	www.lsc@lsc.qld.gov.au