

DIRECTOR OF PUBLIC PROSECUTIONS

v

NORMAN O'BRYAN

JUDGE: DALZIEL
WHERE HELD: Melbourne
DATE OF HEARING: 16 April, 5 May 2026
DATE OF SENTENCE: 14 May 2026
CASE MAY BE CITED AS: DPP v O'Bryan
MEDIUM NEUTRAL CITATION: [2026] VCC 587

REASONS FOR SENTENCE

Subject: Sentence
Catchwords: Criminal Law – Sentence – Attempting to Obtain Financial Advantage by Deception – unknown quantum – delay – plea of guilty
Legislation Cited: *Sentencing Act 1991*
Cases Cited: *Boulton v The Queen* (2014) 46 VR 308; *DPP v Hadjina* [2025] VSC 786; *DPP v Bulfin* [1998] 4 VR 114; *R v De Simoni* (1981) 147 CLR 383
Sentence: Community Correction Order of 4 years with 600 hours of community work

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Michael Stanton SC Greg Buchhorn	Office of Public Prosecutions
For the Accused	Neil Clelland KC Julian R Murphy	Stary Norton & Halphen

HER HONOUR:

Overview

- 1 Between 9 November 2017 and 16 February 2018, Norman O'Bryan tried to claim legal fees to which he was not entitled, using various deceptions. He ultimately did not receive any of those fees, hence the charge to which he has pleaded guilty is one of attempting to obtain financial advantage by deception.
- 2 The charge is very confined. Whilst the deceptions were used in respect to all the fees claimed, the charge itself only relates to the portion of the fees to which Mr O'Bryan was not entitled. Due to Mr O'Bryan's poor record keeping neither the prosecution nor defence can put cogent evidence before the court as to the value of the fees which are captured by the charge.
- 3 Some of surrounding conversations and conduct cast Mr O'Bryan in a poor light, and some of his acts afterwards could amount to other criminal offending. I have taken care to sentence for the charged conduct only.
- 4 Defence counsel submitted, it would be open to the Court to impose a non-custodial sentence, in particular, a community correction order. The prosecution agreed that such a sentence was open, with the rider that it would also be possible to impose a sentence combining custody and a community correction order.
- 5 Mr O'Bryan's dishonest conduct was a breach of the trust of his clients. Although he ultimately was not paid, his offending still caused harm to the victims. His conduct is to be condemned, and he must be punished.
- 6 Those sentencing principles are not, however, the only ones I must take into account. For the reasons I will now give, I have concluded that the sentencing purposes can be met by the imposition of an onerous community correction order.

Summary of Offending

7 The prosecution filed a lengthy and detailed Summary of Prosecution Opening¹ for the plea hearing, which defence counsel agreed I could treat as a statement of agreed facts. Whilst I will sentence on the basis of the relevant parts of that Opening, I will provide a much-shortened version of the facts in these reasons for sentence.

Background

8 At the time of the offending, in 2017 and 2018, Mr O'Bryan was a barrister who had been appointed senior counsel in 2000.

9 A lending company called Banksia Securities Ltd ("Banksia") collapsed in October 2012, owing around \$663 million to more than 16,000 debenture holders. A solicitor, Mark Elliot, briefed Mr O'Bryan to commence a group proceeding against Banksia and Trust Co, the company appointed to oversee Banksia following its collapse.

10 Proceedings were commenced in the Supreme Court of Victoria in December 2012, with Mr Elliot and Mr O'Bryan representing the principal plaintiff, Mr Bolitho, and the other debenture holders.

11 Mr O'Bryan was supposed to enter a written costs agreement with his client or instructors, and to issue invoices for legal work as the matter progressed. He did not do either. He kept scant records of his time spent on the litigation.

12 Between December 2015 and April 2016, there was a partial settlement of \$5.2 million against all but one of the defendants, Trust Co. Following a mediation on 9 November 2017, Mr O'Bryan wrote to his junior and Mr Elliot, recommending acceptance of the settlement offer from Trust Co of \$64 million.

¹ Summary of Prosecution Opening for Plea dated 13 April 2026 – Exhibit P1

Offending

- 13 The charge covers a course of dishonest conduct by Mr O'Bryan between 9 November 2017 and 16 February 2018.
- 14 After the in-principle settlement with Trust Co, between 15 November 2017 and 4 January 2018, Mr O'Bryan directed his assistant to generate invoices and memoranda relating to the work done on the proceeding. She did so by looking at emails and Mr O'Bryan's calendar, and sent the resulting documents to Mr O'Bryan for approval.
- 15 On 15 November 2017, Mr O'Bryan's assistant sent him two versions of 18 invoices and fee memoranda covering the period of June 2016 to November 2017. The first version of the table was sent in the morning. The fee rate applied was \$990 per hour and \$9,900 per day. On this version, he claimed 954 billable hours, resulting in a combined bill of \$1,049,300.
- 16 A second version was sent to him later that day. The rate applied to these invoices was \$1,100 per hour and \$11,000 per day, with the same number of billable hours, resulting in a combined bill of \$1,154,230.
- 17 Up to this point in time, the prosecution does not allege that the invoices prepared claimed for work which had not been done.
- 18 That same afternoon, Mr Elliot sent an email to Mr O'Bryan which read:
- I need your invoices and a table of their totals on a month by month basis
from 1/7/16 to Xmas 2017
- I confirm that they total \$2.65M plus GST
- Please advise.
- 19 There followed a series of emails between Mr O'Bryan and Mr Elliot in which Mr O'Bryan varied his charge rate between \$11,000, \$12,500, and \$15,000 per day. Mr O'Bryan emailed his assistant saying:
- I also need to compute more time for evidence preparation for trial. I don't have adequate computer access for the next few days, so please proceed with the current work and I will increase later.

- 20 Mr Elliot suggested that Mr O'Bryan charge a "cancellation fee" of \$300,000, calculated at 20% of 100 days' charge at \$15,000 per day. Mr O'Bryan responded that this was a good idea and noted also that the fees "*need to look respectable.*"
- 21 On 22 November 2017, Mr O'Bryan instructed his assistant to add 76 days of time to his fee claims. He set out days for this claimed work, in September, October and December 2016, and January to June and August 2017. His assistant prepared new invoices as directed, using the fee rate of \$15,000 per day. The total amount of these invoices was \$2,842,950. Then, at his direction she prepared another version of those invoices, at the rate of \$11,000. This resulted in a total of \$2,084,830. Mr O'Bryan sent the revised figures to Mr Elliot.
- 22 An hour or so later, Mr O'Bryan asked his assistant to prepare a third iteration of these invoices at the rate of \$12,500 per day to be applied to the fees claimed for work from July 2017. This new calculation led to a total of \$2,151,655.
- 23 On 24 November 2017, Mr Elliot emailed Mr O'Bryan and stated:
- OK for your \$200K cancellation fee.
- Counsel hourly rates approved by [the costs consultant].
- Fees for December OK if property [*sic*] described.
- 24 Mr O'Bryan replied that he would get his assistant "*to amend accounts accordingly*".
- 25 On 4 December 2017, Mr Elliot asked Mr O'Bryan when he would receive the invoices. Mr O'Bryan replied that he would "*endeavour to complete these over the next few days*" and asked: "*Do you want the invoices shown as paid or unpaid? I prefer paid & so will Trimbos*". Mr Trimbos was the costs consultant who was to prepare a report for the purposes of the settlement approval process.
- 26 On 18 December 2017, Mr Trimbos requested cost agreements relating to work undertaken from 1 July 2016 to date from Mr O'Bryan and others. Later that day,

Mr O'Bryan prepared a costs agreement, backdated to 30 May 2016, and signed it. Mr O'Bryan then sent the document to Mr Trimbos and falsely stated:

I believe Mark Elliot signed the counterpart of this for the litigation funder, but I have not been able to locate the signed counterpart.

I will continue searching for it.

In any event, my work on the Banksia class action continued and my accounts were duly paid by the litigation funder.

I increased my fees on 1 July 2017 to \$1,250/hr; \$12,500/day by notification to my clients, including BSL Litigation Partners Ltd.

My fees were paid at that amended rate from that date onwards. No new agreement was signed.

- 27 The invoices claimed 1,876 billable hours, resulting in a combined bill of \$2,350,975.
- 28 The documents provided to the costs consultant deceived him, so that his report in turn inaccurately represented that the costs had been calculated and charged in accordance with a costs agreement.
- 29 The work Mr O'Bryan claimed to have done was not documented in any, or adequate, contemporaneous records. The joint position of the parties, for the purposes of the plea, was that it was unlikely that Mr O'Bryan would have been able to satisfy the costs consultant or the Court that all of the claimed work had been undertaken by him or that it was "fair and reasonable" that he be remunerated for it.
- 30 On 7 December 2017, a summons was filed in the Supreme Court seeking approval of the Trust Co Settlement. The debenture holders were notified of the proposed settlement, including that a portion would be used for 'reimbursement' of legal costs. This was a false representation as no fees had been paid.
- 31 One of the debenture holders, Mr Pitman, objected to the settlement. He tried to inspect the documents behind the settlement proposal, but the solicitor did not

respond. Mr O'Bryan and other lawyers contacted Mr Pitman, seeking to persuade him to withdraw his objection.

Post-Offence Conduct

- 32 On 16 February 2018, Croft J of the Supreme Court of Victoria approved the Trust Co Settlement terms.
- 33 Another of the debenture holders, Ms Botsman, appealed the approval, on the grounds that the legal fees were excessive, and a contradictor should have been appointed. Mr O'Bryan and Mr Elliot tried to persuade her to abandon the appeal. They threatened her with a claim for personal costs, applied for security for costs against her, and sought an injunction against her proceeding with her appeal.
- 34 The matter was eventually remitted to the Supreme Court ("the Remitter Proceeding"). In March 2019, the contradictor raised issues which would reduce or disallow fees claimed through the funder, including Mr O'Bryan's fees. Mr O'Bryan returned his brief.
- 35 Ultimately, Mr O'Bryan, his junior, and their instructing solicitor were joined as parties to the Remitter Proceeding. In April 2020, Mr O'Bryan swore and filed an affidavit in which he tried to explain issues regarding his fees, and maintained that the tax invoices and costs agreements were authentic. This uncharged act post-dates the offending by more than 2 years, and I have no regard to it in reaching my assessment of the gravity of the offending.
- 36 Hearings in the Remitter Proceeding were held between 27 July 2020 and March 2021. On 3 August 2020, Mr O'Bryan ceased to defend the allegations against him in that proceeding. Through counsel, he accepted the Supreme Court should remove his name from the Roll of legal practitioners, and he abandoned his claim for fees.

37 On 11 October 2021, John Dixon J delivered his judgment in the Remitter Proceeding, and on that day, Mr O’Bryan’s name was removed from the roll of people admitted to practice in Victoria.

Victim Impact

38 Whilst the offending was not ultimately successful, it nevertheless impacted people. Three Victim Impact Statements were tendered.

39 The first is from Keith Pitman. He was one of the many debenture holders. He said he felt a responsibility to stand up on behalf of the debenture holders. He described the time since his objection to the settlement in 2017 as “*seven years of hell*”. He wrote:²

The effect on me and my wife has been devastating. Not so much the monetary part of it, more the principle.

I am 90 years old and have been retired for 25 years. This has put a dark shadow on our latter years of retirement. I feel like it has been slow-motion robbery. It has taken my peace of mind, and it has been very unsettling for me.

In my working life I have managed various businesses, including being a licenced Australia Post agent. I understood the need for honesty and trust I understood the money trail and audit process. I understood client confidentiality and trust. I don't understand how a lawyer of such high standing; he was Queen's Counsel, could think that he might get away with such deception.

40 Ms Botsman, and her son who assisted her in the litigation, also provided Victim Impact Statements. Ms Botsman is a retired nurse and she had limited assets. She wrote, in her victim impact statement that she appealed the decision because:³

The fees and commission being claimed by the lawyers acting for us seemed deeply unfair to the ordinary people - retired teachers, farmers and nurses - who had invested their savings with Banksia.

41 The warning she received from Mr O’Bryan about the potential of costs being awarded against her, in the range of half to one million dollars, made her feel

² Exhibit P3 – Victim Impact Statement of Keith Pitman signed 31 March 2026

³ Exhibit P4 – Victim Impact Statement of Wendy Botsman signed 9 April 2026

stressed, intimidated and anxious. She was faced with the prospect of losing not only her investment in Banksia but also her home. In 2018 she suffered from shingles, and she attributed the stress of the proceedings, as a contributing factor, to that illness. She went on:

I did not have lawyers to fight for me. I did not have access to professional support. I had my son, who stepped in at great personal cost to himself and his family. That I was ultimately vindicated does not undo what was done to me in the process.

42 Ms Botsman's son, who assisted her in the litigation, also provided a victim impact statement setting out how very stressful that process was for himself and his mother.

43 The harm suffered by the victims of the offending was caused by the actual attempt to dishonestly claim fees to which Mr O'Bryan was not entitled, and his conduct in seeking to perpetuate that claim.

44 The debenture holders were, eventually, paid their share of the settlement moneys, and some compensation was paid by Mr O'Bryan.

Personal Circumstances

45 Mr O'Bryan is now 68 years old. He has five siblings and a wide family circle, with whom he is close. He is married and has two children, who are now in the 30's and independent.

46 Mr O'Bryan studied law at Melbourne University and was awarded the Supreme Court Prize in 1980. He was a Rhodes Scholar in 1981. Whilst at Oxford University he was awarded the Vinerian Scholarship, for having given the best performance in the examination for the degree of Bachelor of Civil Law.

47 Mr O'Bryan worked as a solicitor for some years, before joining the Victorian Bar in 1993. He took silk in 2000. His practice was in the commercial and regulatory arenas. Two of his major clients were the ACCC and ASIC.

- 48 Eighteen letters of support were provided to the Court. I will not list or summarise each of these but note some of the matters arising from them.
- 49 Mr O'Bryan was described as outstanding in his work for his knowledge and ability as an advocate. The offending was described as out of keeping with observations of his integrity as a lawyer and a person.
- 50 A number of personal kindnesses were described. For example, Neil Cole described the unstinting support Mr O'Bryan gave him when Mr Cole was struggling with a serious mental health crisis, and his contribution to Mr Cole's work as a playwright for many years.
- 51 Many of the writers referred to contributions made by Mr O'Bryan to the community or to themselves.
- 52 His pro bono work was recognised by the Victorian Bar in 2017. One instance of pro bono work was described by Professor Hill AO in his letter to the Court: Mr O'Bryan acted pro bono for the Cancer Council of Victoria when that organisation was sued by the Tobacco Institute of Australia. Professor Hill also wrote of seeking his advice on other matters, and that Mr O'Bryan was committed to making the law "a tool for obtaining fair outcomes" even when doing so was unpopular.
- 53 Other writers described pro bono assistance and advice for more personal legal issues and the real impact of his contribution to their lives, for no benefit to himself. I was told, also, of pro bono work for Environment Victoria and Justice Connect, as well as advice to charities and non-profit organisations.
- 54 Mr O'Bryan was a board member and then President of the Baker Institute and involved with that organisation for many years. His contribution to the Board and fundraising was described by Mr Gurry AO as outstanding. Mr Gurry also referred to Mr O'Bryan's efforts in setting up the Norman M O'Bryan Scholarship, named after his father, for students at Melbourne University Law School.

55 More recently, since being charged, Mr O'Bryan established a mentoring program for secondary students in the Mornington Peninsula, a task requiring considerable organisation and coordination. Once that program was established one of the schools considered Mr O'Bryan should not attend their campus, and this led to him withdrawing from the whole scheme. This shunning of him, in the face of his efforts, was another deep blow. The program collapsed following his departure from it.

56 He also is a member of a local group promoting ecological repair of the land near his home.

57 The letters from Mr O'Bryan's family and friends set out the impact of these matters coming to light upon him. His wife described the impact of the publicity and charges upon all of the family. She said that Mr O'Bryan feels that he has lost everything, including his sense of identity. He is shunned by people he had considered to be close friends and colleagues. He is never happy, carries the burdens of shame and distress, and feels there is nothing to live for.

58 Mr O'Bryan was previously involved in the Peninsula Golf Club. Following these matters he withdrew from that club, fearing being shunned or being asked to leave. He lives primarily away from Melbourne, and has lost contact with friends and colleagues, even those who did wish to maintain their friendship with him. He has also withdrawn from family celebrations.

59 He has had a number of physical conditions requiring treatment and surgery, limiting his capacity for physical exercise, which was previously an outlet and enjoyable pastime.

60 A letter from Mr O'Bryan's treating psychologist attributes his current mental state to the court proceedings. The focus of treatment is amelioration of the risk that Mr O'Bryan may attempt suicide – he has expressed the belief that a finding of guilt against him would mean that life was not worth living. His psychologist wrote that he considered that Mr O'Bryan is at considerable risk of self-harm.

61 The letters speak to Mr O'Bryan's sense of shame about the impact of his public disgrace on his family members who are still part of the legal system as lawyers and judicial officers, and on his family's legacy of contribution to the justice system.

Matters Raised In Mitigation

62 Defence counsel relied upon the numerous consequences of the offending already impacting his client's life and circumstances. They noted, in particular:

- (a) The lengthy and highly publicised hearings and adverse findings made by John Dixon J;
- (b) Mr O'Bryan's voluntary removal from the Roll of practitioners, with the consequential loss of his career;
- (c) His public fall from grace, leading to him returning his Order of Australia, and more personal shame and social isolation; and
- (d) Following orders made by John Dixon J Mr O'Bryan paid \$1.25m compensation for the benefit of the debenture holders. He has since declared bankruptcy.

63 In addition to those consequences, further specific matters were raised in mitigation.

1. Delay

64 The offending occurred in late 2017 and early 2018. It came to light in the ensuing proceedings, with the hearings in the Remitter Proceeding taking place between June 2020 and March 2021. The judgment was delivered in October 2021.

65 Mr O'Bryan was interviewed by police in July 2022. Charges were not filed until June 2024. There were various adjournments in the Magistrates' Court and in October 2025 a further charge, of conspiracy to defraud, was filed.

66 Mr O'Bryan was committed to this Court on 16 October 2025. A sentencing indication hearing was conducted on 23 March 2026, with Mr O'Bryan being arraigned and pleading guilty on 26 March 2026.

67 Thus, it is some 8 years since the offending, and nearly 4 years since Mr O'Bryan was interviewed.

68 During that time the proceedings have been hanging over his head. The material before me shows that the prosecution and potential consequences have weighed very heavily upon Mr O'Bryan. The authorities establish that should be taken into account in mitigation of sentence, which I do.

69 During that time he has not committed any further offence, and has contributed to the community to the extent he could.

2. Plea of Guilty & Remorse

70 The plea of guilty resolved this prosecution without the need for a trial. The prosecution accepts that it was a plea entered at an early stage.

71 I accept that there is a significant utilitarian benefit for that reason, and that this gives rise to significant mitigation of sentence.

72 For more than two years following the offending Mr O'Bryan demonstrated his lack of remorse by maintaining his position that he had properly and without dishonesty claimed those fees. In holding that position he committed at least two further serious offences, and extended the proceedings and stress for the victims.

73 When Mr O'Bryan withdrew from the Remitter Proceeding, his counsel said, on his behalf:

Mr O'Bryan seeks to convey and give some measure of effect to his contrition and his very deep regret at his actions and to do what he is now able to do to assist in these proceedings being brought to conclusion.

74 Mr O'Bryan's acceptance of being struck-off was a practical act acknowledging that his conduct was improper.

75 The letters of support also indicate that Mr O'Bryan has expressed regret for his actions and the impacts on his family.

76 I therefore accept that Mr O'Bryan is now remorseful for his actions.

3. Good Character

77 A person who has reached the age of 60 and lived a normal decent life could usually call upon that history as a powerful factor in mitigation.⁴ In "white collar" offending, however, it is very often the good character and standing of the accused which enabled them to commit the offence, and so less weight is given to their past good character.⁵

78 Defence counsel submitted that the contributions made by Mr O'Bryan to the community by way of his pro bono and charitable works went beyond ordinary good character evidence. I accept that Mr O'Bryan has done extensive pro bono work, and provided real value to the community through his contributions to many organisations. It is this work over and above simply living his life in a lawful way, that has a real mitigatory impact on his sentence.

4. Prospects of rehabilitation

79 I accept that there is little to no chance of Mr O'Bryan committing any other offence, and therefore consider that there is no need for weight to be given to specific deterrence in the sentencing discretion.

Other Sentence Principles

Gravity of Offending

80 The maximum penalty which applies to this charge is 5 years' imprisonment.

81 In summary, the conduct for which Mr O'Bryan is to be sentenced is as follows:

⁴ *R v Okutgen* (1982) 8 A Crim R 262, 266

⁵ *R v Bulfin* [1998] 4 VR 114, *R v Gent* (2005) 162 A Crim R 29

- (a) he caused invoices to be generated, which falsely represented that they had been created and paid earlier. They also falsely represented to whom they had been directed, to support the appearance of having been issued and paid contemporaneously with the date on the invoice;
- (b) he created and signed a backdated costs agreement;
- (c) he provided those documents to the costs consultant representing them as accurate, and he did so knowing that the advice of the costs consultant would be presented to the Supreme Court in support of the Trust Co Settlement; and
- (d) he included the false and misleading representation, that his claim for legal costs was a reimbursement, in the Notice to Group Members.

Quantum

82 By his plea Mr O'Bryan admits he claimed fees to which he was not entitled, by deception. The charge is of one attempt because he ultimately did not get paid.

83 The prosecution conceded that the invoices prepared up to 15 November 2017, which came to \$1,154,230, and some of the later claimed hours, were for work done, despite the overarching dishonesty. Even following the prompt by Mr Elliot to increase the amount claimed, the prosecution does not allege that *all* the claimed fees were for work not done.

84 The discussions surrounding the creation of these invoices demonstrated that Mr O'Bryan varied and increased his charge rate not as a true reflection of his actual charge rate at the time of the purported work, but to bring his claim for fees close to the amount suggested by Mr Elliot, \$2.65 million.

85 The prosecution cannot, however, quantify the number of hours, or the dollar figure of the fees claimed, to which Mr O'Bryan was not entitled. Nor can the defence establish that Mr O'Bryan *did* do work equivalent to all the total hours claimed.

Both point to the difficulties presented in coming to any accurate quantification of the amount to which Mr O'Bryan was or was not entitled, due to his poor record keeping.

86 Whilst the prosecution have pointed to some instances where a claim for fees on the Banksia matter overlapped with a claim for fees on another matter, or when Mr O'Bryan was overseas, these matters are not conclusive proof of overclaiming, or by how much.

87 The result is that the fees which are actually the subject of the charge are unquantified.

Uncharged Conduct

88 The Prosecution Opening included uncharged acts by Mr O'Bryan prior to the approval of the Settlement on 16 February 2018.

89 Leading up to the review of the settlement by the Court, Mr O'Bryan and his junior prepared an opinion supporting the settlement as "fair, proper and appropriate". The joint opinion contained false or misleading statements in relation to Mr O'Bryan's and others' fee arrangements and the payment of legal costs and disbursements. The purpose of the opinion was to persuade the Supreme Court to approve the Trust Co Settlement. The Court, in approving that settlement, referred to and relied upon the opinion of Mr O'Bryan and his junior.

90 The Prosecution originally alleged those deceptions as part of the charge before me. In later submissions the prosecutor acknowledged that conduct amounted to deceiving the Supreme Court, and therefore was or could amount to the offence of attempting to pervert the course of justice. This was differentiated from providing the invoices to Mr Trimbos, knowing that they would be used to prepare a report for the Court. The prosecutor submitted that providing the documents to Mr Trimbos was merely preparatory and could not amount to an attempt to pervert the course of justice.

91 It is a well-established principle of law that:⁶

... a judge, in imposing sentence, is entitled to consider all the conduct of the accused, including that which would aggravate the offence, but cannot take into account circumstances of aggravation which would have warranted a conviction for a more serious offence.

92 Mr O'Bryan was not charged with attempting to pervert the course of justice. It is a more serious offence than the one for which I must sentence him, carrying a maximum penalty of 25 years' imprisonment. I therefore have no regard to that portion of the Opening in assessing the gravity of the offending before me.

93 Furthermore, I am not sentencing Mr O'Bryan on the basis of findings made against him by John Dixon J.

Culpability

94 Mr O'Bryan was a senior member of the bar who, by multiple and continuing acts, sought to deceive his clients and a costs consultant as to the amount of his fees. The offending itself spanned around three months.

95 No explanation - or excuse - was provided to me for this offending. I note, in this context, the comments by Charles JA in 1998, in the case of *DPP v Bulfin*,⁷ which have some relevance to this case:

The motivation to engage in conduct of the kind here under consideration may spring from many sources: a position of trust and the easy ability to abuse it; the enormous rewards that may be available; a position of high authority in some substantial enterprise and the offender's assumption that discovery or proof of wrongdoing can be avoided; greed or the burden of funding an extravagant lifestyle; weakness in succumbing to outside pressures to use deceitful means for business ends; and personal or corporate ambition, to name but a few. Whatever the motivation, offences of the kind here in question almost invariably involve a carefully calculated course of conduct over a long period, repeated deliberate acts of dishonesty, substantial amounts of money, and, frequently, losses (often tragic in their impact) to large numbers of small investors.

⁶ *R v De Simoni* (1981) 147 CLR 383, 389

⁷ *DPP v Bulfin* [1998] 4 VR 114, 131-132

96 Of course, in this matter there was no ultimate financial loss to the victims, as Mr O'Bryan was not paid any of the fees claimed. Nevertheless, the impact on the victims has been real.

97 This was not a subtle crossing of the line. The dishonesty was blatant and would have been obvious to Mr O'Bryan as he carried it out. He breached the trust of his clients and failed to act with the integrity required of lawyers in general and senior counsel in particular.

Conclusion on Gravity

98 In assessing the gravity of such an offence I would usually have regard to the amount of financial advantage in issue, going both to the objective seriousness of the offence, and culpability. Here, as I have explained, that is unknown. Thus, whilst Mr O'Bryan was clearly dishonest, the unknown quantum means that a final assessment of the gravity of the charge is difficult. I cannot treat it as a serious instance of this offence, nor as one at the lowest end of the range for such offending.

General deterrence

99 When a lawyer fails to act with integrity this can impact public perception of the profession in general. It is important for such conduct to be condemned by the Court and for the penalty imposed to reflect that such conduct is treated seriously.⁸

Conclusion

100 The law requires a sentence no more severe than is necessary to achieve the purpose or purposes for which the sentence is imposed.⁹

101 The Court of Appeal has clearly articulated that a community correction order:¹⁰

may be suitable even in cases of relatively serious offences which might previously have attracted a medium term of imprisonment The sentencing judge may find that, in view of the objective gravity of the

⁸ See, for example, *DPP v Hadjina* [2025] VSC 786, [85]

⁹ *Sentencing Act 1991* (Vic) s5(3)

¹⁰ *Boulton v The Queen* (2014) 46 VR 308, [131]

conduct and the personal circumstances of the offender, a properly-conditioned CCO of lengthy duration is capable of satisfying the requirements of proportionality, parsimony and just punishment, while affording the best prospects for rehabilitation.

102 Sentencing requires the distillation of many competing issues. General deterrence, denunciation and just punishment do not outweigh the other sentencing considerations; rather all relevant factors and principles must be considered and taken into account.

103 I have concluded that all the sentencing purposes and principles can be encompassed by the imposition of a community correction order with a significant number of hours of community work attached.

104 I therefore impose a community correction order of 4 years duration, with conviction. Under that order Mr O'Bryan must complete 600 hours of community work, the maximum amount which can be ordered.

105 Whilst subject to the order Mr O'Bryan must comply with the requirements set out in s45 of the *Sentencing Act 1991*.

106 Pursuant to s6AAA of the *Sentencing Act* I state that if Mr O'Bryan had not pleaded guilty I would have sentenced him to 2 years' imprisonment with a non-parole period of 1 year.