SUPREME COURT OF QUEENSLAND

CITATION:	*Jessup v Queensland Housing Commission* [2001] QCA 312
PARTIES:	**IAN DAVID JESSUP** (applicant/respondent) **v** **QUEENSLAND HOUSING COMMISSION** (respondent/appellant)
FILE NO/S:	Appeal No 409 of 2001 SC No 108 of 2000
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Cairns
DELIVERED ON:	10 August 2001
DELIVERED AT:	Brisbane
HEARING DATE:	20 July 2001
JUDGES:	McPherson and Davies JJA, Philippides J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal dismissed with costs**
CATCHWORDS:	EQUITY – TRUSTS AND TRUSTEES – EXPRESS TRUSTS CONSTITUTED INTER VIVOS – DECLARATION OF TRUST – NECESSITY FOR INTENTION – whether, in receiving funds, the payee was constituted a trustee of those funds on the terms of the Funding Agreement. STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – PARTICULAR WORDS AND PHRASES – SPECIFIC INTERPRETATIONS – whether funds constituted "public moneys" under the *Financial Administration and Audit Act* 1977 (Qld). *Financial Administration and Audit Act* 1977 (Qld), s 6, s 23(1), Schedule 3. *Associated Alloys Pty Ltd v ACN 001 452 106 Pty Ltd* (2000) 74 ALJR 862, considered. *Australian Elizabethan Theatre Trust, Re* (1991) 30 FCR 491, considered. *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567, considered. *Hardoon v Belilios* [1901] AC 118, considered.

Schebsman, Re [1944] Ch 83, considered.
Scott v Scott (1963) 109 CLR 649, considered.

COUNSEL: D B Fraser QC for the appellant
A J Morris QC for the respondent

SOLICITORS: Crown Solicitor for the appellant
Gadens Lawyers (Cairns) for the respondent

[1] **McPHERSON JA**: This appeal concerns the right to a sum of approximately $124,000.00 standing to the credit of Cairns Career Training Inc (CCT), in its current account with the Lake Street Branch of Westpac Banking Corporation in Cairns. The money is claimed by the respondent Mr I D Jessup, who is the liquidator of CCT appointed on 19 July 1999, and also by Queensland Housing Commission (QHC), which is the appellant in this Court. Its claim to be entitled to that money was rejected by Jones J in an application made by Mr Jessup in the Supreme Court at Cairns, and it is against that decision that QHC now appeals. At the hearing before his Honour, the appellant's claim was based on an allegation that CCT was trustee for QHC of the money standing to the credit of the account; but on appeal QHC has sought to supplement or to broaden its claim by submitting that the sum in question is "public money" to which it is entitled as a matter of statutory or, it may be, constitutional right.

[2] With one exception to be mentioned, money in the CCT Westpac account came from HA/S payments made by QHC. The abbreviation HA/S stands for Home Assist Home Secure program, which was a combination of two earlier programmes of government funding designed to relieve some of the practical concerns and difficulties experienced by older or disabled people and other pensioners who wish to continue living in their own homes. The programme contemplated the provision to eligible persons of free information, advice and other services in relation to home maintenance, repairs, minor modifications and security. It distinguished between work that was subsidised, such as small jobs requiring the services only of a handyman, lawn mowing, yard clearing and the like; and non-subsidised work, which would involve the "eligible client" engaging tradesmen or specialists, from whom quotations would be obtained by CCT for doing the work.

[3] It was the task of CCT to provide the co-ordination or supervision required to provide the information or advice to eligible persons and to see to the carrying out of the work. The payments received from QHC were used to pay wages of CCT employees, leasing and associated expenses of a motor vehicle, and no doubt administrative expenses. Payments to CCT by QHC were made under a series of formal contracts described as Conditional Funding Agreements. One of the agreements exhibited in the material is for the first quarter of the financial year 1998/99; there is another for the remainder of that year running from October, and a supplementary funding agreement dated 11 January 1999. Because the terms of the first two of those agreements are not materially different, it is convenient to refer only to the second of them.

[4] The Funding Agreement for the year 1998/99 is a document dated 2 October 1998 executed under the seals of QHC and "the Funded Organisation". That expression is defined in cl 23.8 to mean "the incorporated body named at Item 1 of

Schedule 1 agreeing to receive public moneys from the QHC for the purposes specified in Schedule 2 under the conditions of this Agreement", which in this instance was, of course, CCT. The Agreement recites that the QHC may provide funds from public monies on such conditions as it thinks fit", to be used for the management of housing related services; and, further, that QHC is "legally obliged to ensure the proper expenditure and accounting of these public funds"; and that, in turn, the Funded Organisation also accepts that it is responsible for the proper expenditure of taxpayer's (*sic*) money". Clause 1 provides that QHC will provide conditional funding to the Funded Organisation on the basis that the funds are to be provided in instalments and are to be spent within the funding period (which in this instance was 1 October 1998 to 30 June 1999) for the purposes in schedule 2 (which are broadly those already described) in providing quality services to meet those purposes for the location, which was Cairns, Port Douglas, and Mossman.

[5] Clause 1.5 deals with unspent funds. By cl 1.5.1 any funds not spent by the end of that period may be carried over to a future period only with the approval of QHC, and by cl 1.5.4:

> "The Funded Organisation must return all funds not spent to the QHC immediately if the QHC has not approved the carry over of unspent funds, or if the Funded Organisation at any time ceases to operate."

Clause 7.1.1 provides that the Funded Organisation must organise its accounting system so that the income, expenditure, assets and liabilities for each amount of QHC funding can be accurately identified. By cl 7.2:

> "7.2.1 All funds provided must be deposited with an agreed Financial Institution and operated or retained in an account nominated to the QHC.
>
> 7.2.2 All income generated by the Funded Organisation under this Agreement and all interest earned on the funds must be deposited in the nominated account and used only for the purposes in Schedule 2."

There is provision in cl 8 regulating title and ownership of assets purchased with funding. The Funded Organisation must seek QHC approval before buying an asset valued at more than $1,000 and must ensure that it obtains immediate title and ownership in its name to any asset so purchased (cl 8.2). Assets purchased from those funds may be sold, but the proceeds must be deposited in the account nominated under cl 7.2.1 and used for the purposes listed in schedule 2 or, if not so used, must be treated as unspent funds under cl 1.5. Clause 16 makes the Funded Organisation "fully responsible" for its obligations and precludes it from transferring or assigning to anyone else any part of the Agreement or the funds procured under it.

[6] The Funding Agreement is a formal contract designed to impose on the parties binding and legally enforceable obligations. That, as was established in the *Quistclose* case, does not prevent the co-existence of a trust. See *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567, which was described by Gibbs ACJ in *Australasian Conference Association Ltd v Mainline Constructions Pty Ltd* (1978) 141 CLR 335, 353, as authority for the proposition that:

> "Where money is advanced by A to B, with a mutual intention that it should not become part of the assets of B, but should be used exclusively for a specific purpose, there will be implied (at least in the

> absence of a contrary intention) a stipulation that if the purpose fails the money will be repaid, and the arrangement will give rise to a relationship of a fiduciary character, or trust."

The statement is broad, but its operation depends on finding the necessary element of intention, which, as Gummow J said in *Re Australian Elizabethan Theatre Trust* (1991) 30 FCR 491, 503, "is to be inferred from the language employed by the parties in question, and to that end the court may look also to the nature of the transaction and the relevant circumstances attending the relationship between them".

[7] Authorities on the matter are now quite numerous, but they were so thoroughly reviewed and analysed in the reasons for judgment of Gummow J in the *Theatre Trust* decision that there is no point in attempting it again. The present case is not one that raises questions about whether the intention was, as it sometimes is, to create a trust in favour of third persons, such as creditors of the payee: see, for example, *Carreras Rothmans Ltd v Freeman Mathews Treasure Ltd* [1985] Ch 207. Mr D B Fraser QC for QHC was reluctant to abandon that position entirely; but to conjure up a trust in favour of the "eligible clients" would be contrary to cl 1.5.4 which requires unspent funds to be returned to QHC. Here the trust, if any, is throughout in favour of QHC, which has the incidental advantage of avoiding debate about whether there is a primary and a secondary trust, and, if so, whether some form of non-charitable purpose trust is being attempted. The immediate question, which can be more easily stated than answered, is straightforward enough. It is whether, in receiving the funds paid to it by QHC, the payee was constituted a trustee of those funds on the terms of the Funding Agreement.

[8] In approaching that question, it is difficult to ignore the fact that in all the lengthy and detailed provisions of the Agreement there is nowhere any reference to the existence of a trust at all. It is true that, at various points, the Agreement imposes on CCT some obligations characteristic of trustees. The funds, which are provided "conditionally", are to be spent only for the purposes described (though not with great specificity) in schedule 2, and within a limited period of time. They must be returned to QHC "immediately" if not spent within that period, or if CCT at any time ceases to operate, which is what happened here. In the meantime, the funds must be deposited and retained in a nominated and agreed bank account, from which interest that is generated by those funds may be used only for the specified purposes. With QHC approval, funds may be used to purchase assets in the name of CCT; but, if sold, the proceeds must be deposited in the nominated account and also used only for the specified purposes; or, if unspent, dealt with under the regime laid down in cl 1.5.4.

[9] All of these are or resemble obligations like those imposed by equity on a trustee in similar circumstances. In the end, however, they tell against rather than in favour of the existence of a trust. If QHC as settler had intended to create a trust, it would have been simple to have said so, instead of descending to the detail it did in the Agreement; or, if the reason for including the detail was to point up the specific obligations of CCT as trustee, it would have been cautionary to have done both. It is true, said du Parcq LJ in *Re Schebsman* [1944] Ch 83, 104, that:

> "by the use of possibly unguarded language, a person may create a trust, as Monsieur Jourdain talked prose, without knowing it, but unless an intention to create a trust is clearly to be collected from the language used and the circumstances of the case, I think that the court ought not to be astute to discover indications of such an intention."

If the purpose of QHC was to inspire the poetry of trusts, it is odd that it chose to express itself in common law prose. The instrument in which its intention is to be derived is a 16 page bipartite contract containing some 23 composite paragraphs which was executed under seal. Because QHC is an instrumentality of government and the supplier of the funds, it was in an unusually strong position to dictate to CCT whatever terms it chose.

[10] The truth is that the Funding Agreement says rather too much rather than too little to lend itself to being readily brought within the principle in *Quistclose*. There is not much room or reason to imply any further intention beyond that which is expressed. Moreover, if a trust was intended, the Agreement left unsaid some things which ought to have been said. Clause 7.2.1 requires that funds provided by QHC must be deposited with a financial institution and operated or retained in an account nominated to QHC. It says nothing to the effect that other money not derived from QHC may not be deposited, and so intermixed, with those funds. Indeed, on one view, it may be thought to contemplate that such an admixture might take place. Clause 7.1.1 requires the Funding Organisation to organise its accounting system so that income and expenditure for each amount of QHC funding can be accurately identified. This would scarcely be needed if there were an obligation to keep those funds in a bank account separately and apart from money derived from other sources. In fact, at one time in the past, it was a requirement of QHC that funding be separately banked in that way. Mr Malcolm Gray, who since September or October 1998 has been responsible on behalf of the Department of Housing for the Home Assist/Secure Program in Far North Queensland, deposes that before 1997 all funded organisations were required to maintain separate bank accounts for Home Assist/Secure Program funds. However, this requirement was, he says, removed in 1997.

[11] In at least one instance other funds were paid into the CCT bank account at the Lake Street branch of Westpac. Running parallel to the Home Assist/Secure Program was another programme known as Home and Community Care (HACC) with somewhat similar but not identical objects, including services such as personal grooming, domiciliary nursing, the provision of meals, and so on, as well as lawn mowing. That programme is co-ordinated not by QHC but by the State Department of Health, from funding provided by both the State and Commonwealth. It was at one time managed locally by the Cairns City Council, but late in 1998 the Council surrendered its functions and funding under HACC, which at the end of that year were transferred to CCT. After that, a single payment in an amount of $10,144.00 from that source was made to CCT before it became insolvent. In February 1999, that sum was banked to the credit of CCT in the nominated account at Lake Street. Mr Gray says he cannot recall being told by CCT that this was being done, but that, if he had known, he would not have objected to it. In my view there was nothing in the Funding Agreement that would have justified such an objection.

[12] The obligation to keep trust funds separate and not to mix them with money from other sources has been described as “a hallmark duty of a trustee”: *Associated Alloys Pty Ltd v ACN 001 452 106 Pty Ltd* (2000) 74 ALJR 862, 870; and see *Burdick v Garrick* (1870) LR 5 Ch 233, 243, cited in *Cohen v Cohen* (1929) 42 CLR 91, 100. Failure to do so may not be conclusive of the absence of a trust because it may in fact be no more than some evidence of a breach of trust. But when the alleged trust instrument, while expressly providing for payment of funds into a nominated and agreed account, deliberately refrains from prohibiting any such intermixing of funds,

it is some indication, and possibly a strong one, that no trust of those funding payments was intended. Despite the provision in cl 7.1.1 requiring an accounting system capable of identifying income emanating from QHC funding, it ill accords with the notion that QHC was, from the beginning and throughout, the beneficial owner of the funds it supplied and that CCT was simply the legal title holder of those funds for QHC.

[13] Much the same may be said of the provision in cl 8 regulating the purchase of assets from funds provided by QHC. The proceeds of their sale or, as cl 8.6 adds parenthetically, "the proportion of sale proceeds that relate to QHC funding", must be deposited in the nominated account. The parenthetical reference plainly contemplates that, in acquiring the asset, QHC funds may be mixed with other funds, which is not something that a trustee is ordinarily permitted to do. Some controversy surrounds the correct principles to be applied when a trustee is made to account for proceeds of property acquired partly by means of trust funds and partly of his own : see *Scott v Scott* (1963) 109 CLR 649; *Foskett v McKeown* [2001] 1 AC 102, and Professor Burrows in (2001) 117 *LQR* 412. In addition, where the item of property has, in accordance with cl 8 been acquired solely with QHC funds, it would have been incumbent on CCT to use it exclusively for HA/S trust purposes, which, in a practical sense, would no doubt be virtually impossible in the case of chattels such as cars, photocopiers, computers, telephones and other items of office equipment commonly used in administering programmes like these. This may seem like straining at the proverbial gnat; but scrupulous care in such matters is in the nature of a trustee's duty, and cannot simply be passed over if a trust exists.

[14] Behind all this, there is another difficulty, which may not have been fully appreciated by QHC at the time the form of the Funding Agreement was settled. If in carrying out its functions in relation to the Home Assist Home Secure programme, CCT was a trustee for QHC, then as trustee it is entitled to indemnity or reimbursement out of the assets in respect of liabilities properly incurred in that way. See *Trusts Act 1973*, s 72 (which is not capable of being excluded: s 65), and *Kemtron Industries Pty Ltd v Commissioner of Stamp Duties* [1984] 1 Qd R 576, 584-586. In providing in cl 1.5.4 that unspent QHC funds are to be returned to it immediately, the Funding Agreement takes no account of this invariable right of trustees. Furthermore in the case of a simple trust (if that is what it is) like this, there may, on the principle in *Hardoon v Belilios* [1901] AC 118, be a further right to be indemnified by QHC personally. The material in support of the application is not sufficient for it to be said what those liabilities are, or what the overall deficiency in total assets is; nor are we asked to determine any matter relating to the right of indemnity. What is clear, however, is that, if there is a trust, cl 1.5.4 of the Agreement cannot operate to deprive CCT or its liquidator of their right under s 73 to indemnity out of the sum of $124,000 standing to the credit of CCT's bank account in respect of liabilities reasonably incurred by it in acting as trustee for QHC. The inclusion of cl 1.5.4 is a further indication that a trust was not intended.

[15] This leaves for consideration the new element which Mr Fraser has sought to raise in support of the QHC claim to the money in the bank account. This is that it is "public monies" within the "dictionary" in schedule 3 of the *Financial Administration and Audit Act 1977* (the *FAA Act*), which defines it to mean all of the following:

> "(a) monies received or held by a person for the State;

> (b) moneys that, under this Act or another Act, are directed to be paid to, or to form part of, the consolidated fund or a departmental financial-institution account, other than other moneys."

It is on para (a) of this definition, taken with the references to public monies that appear variously in the recitals, in cl 7.4.1, and in the definition of "Funded Organisation" and "Funding" in cl 23.8 of the Funding Agreement, that reliance is placed to support this submission. It is said that the recital to each of the Agreements makes it clear that, until spent, the funding payments remain "public monies" because, until then, the monies are "held for" the State. The implication, although not fully spelled out in the submissions, is that QHC has a proprietary claim of some kind to the unspent money in the account.

[16] The submission seeks to give a wide scope to the terms of the recitals which, as has been seen, provide, so far as material, only that QHC "may provide funds from public monies on such conditions as it thinks fit". Still, there are further references in cl 7.4.1, and in the definitions in cl 23.8 of "Funded Organisation" and of "Funding or funds", to "public monies" provided by QHC to CCT. Precisely where the argument leads is much less clear; but its starting point is the proposition that by s 6 of the *FAA Act*:

> "All public monies and public property are the property of the Crown in right of the State."

It is, however, one thing for a statute to say what are "public monies" and that they are the property of the State, and quite another for the parties to extend the meaning of that expression by agreement. Of course, their agreement to that effect is binding on them as a matter of contract; but it cannot enlarge the ambit of the statutory definition or provision, so as to convert into "public property of the State" within the meaning of s 6 something that, apart from their agreement, is not otherwise within the enacted meaning or definition.

[17] It is, of course, well settled in countries which follow the English tradition of parliamentary democracy that money in the consolidated fund or its equivalent does not become available to be paid away by the executive government except under and in accordance with the authority of legislation validly appropriating it for purposes approved by Parliament. See *Auckland Harbour Board v The King* [1924] AC 318; *Brown v West* (1990) 169 CLR 195, 205-209. Any payment made without such authority is, said Viscount Haldane in the first of those two cases, "simply illegal and ultra vires, and may be recovered by the Government if it can, as here, be traced" ([1924] AC 318, 327). By the reference to "tracing" (which has puzzled some commentators), his Lordship may have had in mind his own speech and decision in *Sinclair v Brougham* [1914] AC 398, which, to the extent that it rests on the need to establish the right to trace, has since been departed from in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669. It may conceivably have been some version of this concept that the QHC had in mind when it insisted on describing the funding payments to CCT as "public monies".

[18] But, although it may have been a salutary reminder to CCT of the source of the payments it received, this and the reference elsewhere in the Agreement to "taxpayers' money" cannot of their own force attract the rule in *Sinclair v Brougham* that public moneys paid out of consolidated revenue without legislative authority are recoverable from the payee as ultra vires payments. There is nothing at all in the material to suggest that the funds paid to CCT, which are now represented wholly or in part by

the credit in the Westpac bank account, were paid out by QHC without the authority of some Appropriation Act or other legislative enactment of that kind. The contrary is suggested by the submissions now being advanced by the appellant that the money is recoverable by QHC as money held in trust for it by CCT. If the sum of $124,000 in the account is held on trust for QHC, then it is in equity the property of that corporation or of the Crown in right of the State, and it requires no assistance from s 6 of the *FAA Act* in order to reach that conclusion. On the other hand, if it or they are not trust money or monies, then they are not "held by a person for the State" within the meaning of the dictionary definition in schedule 3 to that Act. For these reasons the submission based on their being public moneys adds nothing extra or new to the submission based on an alleged trust of the money.

[19] What it does, however, is to point up the extent to which, in framing the Funding Agreement, QHC was relaying its statutory powers and duties in paying out public money to CCT. Quite correctly, it set out to fulfil its obligations and responsibilities under the *FAA Act*. It even set out to ensure, as far as it could, that CCT acknowledged and agreed to accept corresponding obligations in respect of the money received. The Funding Agreement and associated documents are redolent with language savouring of the principles of accounting for the use of public money. The insistence in cl 1.5 on spending funds by what cl 1.5.1 describes as the "cease date", and which cl 1.5.4 requires to be "returned" if unspent at the end of that date, corresponds to the requirement of s 23(1) of the *FAA Act* limiting the power to spend amounts from a departmental vote once the year of appropriation has expired. This is yet another prominent feature of Parliamentary appropriation. As *Halsbury* observes (4th ed, vol 8(2) §712, at 432), any money voted for a particular year, which is not needed to meet expenditure in question, is surrendered to the Consolidated Fund and cannot be carried forward into the next financial year. It results from the constitutional rule or convention that public funds are appropriated annually, and a similar practice is followed in Australia: *Halsbury's Laws of Australia*, vol 5, §90-6165.

[20] No doubt in this sense, QHC is correct in viewing unspent funds at the "cease date" as, in a loose sense, public money "belonging" to it or to the State Department to which it is responsible; but that is not to stamp those funds with a proprietary character in right of the State in such a way as to remove them in law or equity from the assets of the incorporated association that the liquidator is entitled and is bound to apply in accordance with the statutory scheme for winding up. On the contrary, it is simply to ensure that, in accordance with the provisions of the *FAA Act*, money paid out in conformity with the authority of the annual appropriation is, if unspent, returned to consolidated revenue and not used in the year following appropriation for purposes for which it may, in the end, not be authorised by Parliamentary vote.

[21] There is no compelling reason why the State should not be a trustee, or the beneficiary of a *Quistclose* trust constituted in its favour, although there seem to be few reported instances in which it has been held to be so. Mr Fraser was able to refer us only to *Commonwealth v South Pacific Cruise Lines Ltd* (1998) BC 9801527, FC, 22 April 1998; but, as can be seen from the reasons of Foster J in the Federal Court, it was an express term in that case that the funds there were to be deposited and retained in an account to be to be used "exclusively" for discharging particular liabilities. In the present case, I am persuaded that the government subsidy (for that is what it really was) paid over to CCT to sustain its activities was not intended to bear the character of, or to be administered as, trust money. Rather it seems to me that, in framing the

terms of the Funding Agreement in the way that it did, QHC was looking to ensure that its own obligations under the *FAA Act* were fully satisfied. To adopt or adapt the words of Megarry V-C in *Tito v Waddell (No 2)* [1977] Ch 106, 228 (the *Ocean Island Case*), the Agreement was intended to operate:

> "only in the sphere of government and not by way of imposing any justiciable trust … I do not think that a statutory duty to administer money in a particular way can be said necessarily or even probably to impose a fiduciary obligation upon the person subjected to the duty. Many statutory duties exist without giving rise to any fiduciary obligation, and before such an obligation can arise, I think there must be something to show that the imposition of such an obligation was a matter of intention or implication."

The present case seems to me to be comparable in the sense that what QHC was intending to do was to impress CCT not with a trust of the money, but as far as it could, with accounting and other obligations similar to those of QHC under the *FAA Act*. That was something that could be done by agreement, but not so as to extend to the funding payments made by QHC to CCT the statutory character of "public moneys and public property" constituting it property of the Crown in right of the State within the meaning of s 6 of the *Financial Administration and Audit Act* 1977. In the absence of a trust (and I consider there was none), the money paid to CCT ceased to be public monies or public property when it was paid out to CCT in accordance with a valid Parliamentary appropriation.

[22] In my opinion the decision of Jones J was correct. The appeal should be dismissed with costs.

[23] **DAVIES JA:** I agree with McPherson JA that the money in question in this case is not held by CCT on trust for the appellant. I agree with his Honour's reasons for that conclusion. I wish only to add my own reasons for rejecting the further argument of the appellant that, because of the use of the term "public monies" in the Funding Agreement, the money in question in this case is held by CCT as public monies, that is, held for the State pursuant to the *Financial Administration and Audit Act* 1977.

[24] The phrase "public monies" is used in a relevantly meaningful way only in the first two recitals to the Funding Agreement and in the definitions of "Funded Organisation" and "Funding or funds" in cl 23.8. The recitals do no more than recite that the monies are provided "from public monies". That is self-evident but it does not make them public monies once received by CCT. Similarly the definition of "Funded Organisation" simply described CCT as the body named in the schedule which has agreed to receive public monies and "Funding or funds" is defined to mean public monies provided to the funded organization. None of these provisions purport to affect the character of the money after it has come into the hands of CCT.

[25] The appellant also sought to call in aid the definition of "public monies" in the *Financial Administration and Audit Act* 1977 as "monies received or held by a person for the State" but to do so in a way which would stand this definition on its head. The effect of the definition is that where monies are received or held by a person for the State they are public monies. But the appellant somehow sought to argue that, if monies were described as public monies they were therefore held by a person for the State. Such a proposition is self-evidently illogical.

[26] For these reasons the argument that because the Funding Agreement described the source of the monies provided by QHC to CCT as public monies they were, after receipt by CCT, held by it on behalf of the State, must fail.

[27] **PHILIPPIDES J:** I agree with the orders proposed by McPherson JA and with his reasons.