

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Irving* [2025] QCAT 197

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
SHAUNE KERRY IRVING
(respondent)

APPLICATION NO/S: OCR110-24
OCR181-24

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 30 May 2025

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Burns J

Assisted by:

Mr Geoffrey Sinclair, Practitioner Panel Member

Mr Keith Revell, Lay Panel Member

- ORDERS:
1. **In respect of each of Charges 1, 2 and 3 in disciplinary application 110 of 2024 and Charges 1, 2 and 3 in disciplinary application 181 of 2024, there is a finding of professional misconduct.**
 2. **In respect of Charge 4 in disciplinary application 110 of 2024, there is a finding of unsatisfactory professional conduct.**
 3. **The Tribunal recommends that the name of the respondent be removed from the local roll.**
 4. **The respondent pay the applicant's costs of and incidental to the disciplinary applications, such costs to be agreed or assessed on the standard basis as if the applications were proceedings before the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – CRIMINAL OFFENCES – where the respondent pleaded guilty to a series of criminal offences including making false declarations, supplying dangerous drugs, fraud, money laundering, perjury and attempting to pervert justice –

where the applicant filed two separate discipline applications in which the conduct underlying the convictions was relied on to ground several disciplinary charges – where the respondent did not dispute that his conduct, again for the most part, constituted professional misconduct – where the respondent accepted that his conduct overall ought result in the removal of his name from the local roll – where the Tribunal was called to exercise the discretion confirmed by s 456(1) of the *Legal Profession Act 2007* (Qld) – whether it should be ordered that the respondent’s name be removed from the local roll

Legal Profession Act 2007 (Qld), s 5, s 6, s 9, s 418, s 419, s 420, s 424, s 456, s 462

Legal Services Commissioner v Madden (No 2) [2009] 1 Qd R 149, cited

Legal Services Commissioner v Munt [2019] QCAT 160, considered

Prothonotary of the Supreme Court of New South Wales v P [2003] NSWCA 320, cited

Watts v Legal Services Commissioner [2016] QCA 224, cited

APPEARANCES & REPRESENTATION:

Applicant: S An, instructed by the Legal Services Commission

Respondent: The respondent was self-represented

REASONS FOR DECISION

- [1] There are two disciplinary applications before the Tribunal which have been brought pursuant to the provisions of the *Legal Profession Act 2007* (Qld) by the applicant Commissioner against the respondent, Shaune Kerry Irving. The first in time alleges three charges arising out of conduct of the respondent between June 2019 and February 2020.¹ The second alleges four charges arising out of conduct of the respondent between November 2019 and April 2020.²
- [2] Both applications proceeded on agreed statements of facts. The respondent accepted he engaged in conduct which amounted to professional misconduct for most of the charges brought against him. He also accepted his conduct overall demonstrates that he is not a fit and proper person to remain on the roll of the practitioners admitted to the legal profession, and that the appropriate sanction includes removal of his name from the local roll.
- [3] The respondent was admitted to practice in Queensland on 8 October 2018. At all times thereafter, he was an Australian lawyer as defined by s 5(1) of the Act and a

¹ Application 110 of 2024.

² Application 181 of 2024.

local legal practitioner as defined by s 6(2) of the Act. He held a restricted employee practising certificate from 24 October 2018 to 1 May 2020 and, in that capacity, was employed by Moloney MacCallum Abdelshahied Lawyers (“MMA Lawyers”). He surrendered his practising certificate to the Queensland Law Society on 1 May 2020.

The conduct

- [4] As for the first application, **charge one** was concerned with the respondent having made a false statutory declaration. He had been the driver of a motor vehicle that was travelling in excess of the speed limit on 20 May 2019. A traffic infringement notice was issued four days later. After receiving that notice, the respondent signed a statutory declaration to the effect that another person was the driver. As the result of an error in that declaration, the respondent signed a second statutory declaration to the same effect. On 1 February 2023, the respondent pleaded guilty in the District Court of Queensland to two counts of making a false declaration in breach of s 194(1) of the *Criminal Code 1899* (Qld). He was sentenced to a term of 12 months imprisonment, which term was wholly suspended for an operational period of two years.
- [5] **Charge two** was based on conduct on the part of the respondent which was detected during the course of an investigation undertaken by the Crime and Corruption Commission (“CCC”). Surveillance carried out by the CCC revealed that the respondent was involved in the supply of cocaine on 14 November 2019, 8 December 2019 and 22 December 2019. On 29 April 2020, the respondent made full admissions to the police regarding these offences and, at the District Court appearance to which I have already referred, he pleaded guilty to three counts of supplying a Schedule 1 dangerous drug in contravention of s 6(1)(c) of the *Drugs Misuse Act 1986* (Qld). He was sentenced to a term of six months imprisonment, which term was wholly suspended for an operational period of two years.
- [6] **Charge three** was also detected during the CCC investigation. Between 14 August 2019 and 17 February 2020, the respondent received cash payments from nine clients of MMA Lawyers totalling \$15,500 but, rather than depositing those payments into the trust account of MMA Lawyers, he dishonestly applied it to his own use. On 2 February 2023, the respondent pleaded guilty to one count of fraud in contravention of s 408C of the *Criminal Code*. He was sentenced to a term of two years imprisonment, which term was wholly suspended for an operational period of two years. He was also ordered to pay a portion of the money he defrauded by way of compensation.
- [7] **Charge four** concerned the respondent’s representation of a client who engaged MMA Lawyers to prepare a Binding Financial Agreement and to represent the client in relation to domestic violence matters. Between 16 July 2019 and 24 February 2020, the client paid the respondent a total of \$4,500 in cash, but the respondent failed to make the required costs disclosure to the client in accordance with the requirement of the Act.
- [8] As to the second application, **charge one** was also revealed by the CCC investigation. On four occasions between 1 November 2019 and 15 January 2020, the respondent received \$13,050 on account of legal fees. Although those funds were deposited to the credit of the trust account of MMA Lawyers, they were received by the respondent knowing that the money had been derived by the client from selling dangerous drugs.

The respondent was subsequently charged with one offence of money laundering in contravention of s 250(1)(a) of the *Criminal Proceeds Confiscation Act 2002* (Qld). He pleaded guilty to that offence in the District Court of Queensland on 7 May 2024 and was sentenced to a term of imprisonment of 12 months, which term was wholly suspended for an operational period of three years.

- [9] **Charge two**, again, concerned the same investigation. The respondent had been summonsed to appear before an investigative hearing at the office of the CCC on 8 January 2020. When called to give evidence, he was asked several questions about working at MMA Lawyers and the protocol he followed for receiving payment from clients. In the evidence he gave, the respondent stated he had never received cash payments from a client without depositing those payments into the trust account of MMA Lawyers. That evidence was, of course, deliberately false. On 29 April 2020, he participated in a formal record of interview with police during which he admitted that he had received and pocketed cash payments from a number of clients while working at MMA Lawyers. At his appearance in the District Court of Queensland on 7 May 2024, the respondent pleaded guilty to one count of perjury in contravention of s 124 of the *Criminal Code*. He was sentenced to a term of three years imprisonment, which term was wholly suspended for an operational period of three years.
- [10] **Charge three** also emerged from the investigative hearing at the CCC on 8 January 2020. After giving evidence, the respondent was warned that the CCC would contact his then partner to ask her questions about the respondent receiving cash from his clients. After he left the CCC, the respondent called his then partner and told her she was going to be approached by the CCC and that, if asked, she needed to tell the investigators that she was, amongst other things, not aware of any cases in which she had received cash directly from clients. His then partner was later summonsed to appear before the CCC and, upon receipt of the notice to appear, she called the respondent. The respondent told her to give false evidence about their relationship status, her residence and his involvement in criminal activities. At his appearance in the District Court of Queensland on 7 May 2024, the respondent pleaded guilty to one count of attempting to pervert justice in contravention of s 140 of the *Criminal Code*. He was sentenced to a term of imprisonment of two years, which term was wholly suspended for an operational period of three years.
- [11] It will be noticed that the convictions on which the first three charges alleged by the first application and all the charges alleged by the second application are convictions for serious offences, as defined by s 424 of the Act.

Characterisation of the conduct

- [12] If the Tribunal is satisfied that the respondent has engaged in “unsatisfactory professional conduct”³ or “professional misconduct”,⁴ the Tribunal may make any order as it thinks fit. Because there are admitted convictions for a serious offence, s 420(1)(c) of the Act provides that this conduct is capable of constituting unsatisfactory professional conduct or professional misconduct. But, regardless of that provision, it cannot be doubted that, with the exception of **charge four** in the first application, the conduct engaged in by the respondent amounts to professional

³ Within the meaning of s 418 of the Act.

⁴ Within the meaning of s 419 of the Act.

misconduct. As defined, that includes conduct by a legal practitioner in connection with the practice of the law or happening otherwise than in connection with the practice of the law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.⁵

- [13] In determining whether a practitioner is not a fit and proper person to engage in legal practice, regard may be had to suitability matters that would be considered if the practitioner were an applicant for admission, or for the grant or renewal of a local practising certificate.⁶ These include whether the practitioner has been convicted of an offence in Australia and, if so, the nature of the offence and how long ago the offence was committed.⁷
- [14] Here, the charges which are based on the respondent's convictions for making false declarations, committing perjury, and attempting to pervert justice, go to the very heart of the administration of the system of justice of which the respondent was a privileged participant. The charges of fraud and money laundering are of a similar order. The charge of supplying dangerous drugs is yet another example of the respondent being prepared to knowingly contravene the criminal law, and in a serious way. Overall, the respondent's conduct must be regarded as reprehensible, as the respondent himself accepts. It has not only brought shame on himself, it has damaged the reputation of the profession. The public are not only entitled to expect a high degree of integrity from legal practitioners, they are entitled to expect that legal practitioners will obey the law. The respondent failed to do so on multiple occasions over a protracted period.
- [15] The Tribunal has no hesitation in finding the charges proved to the requisite standard and in concluding that each charge amounts to professional misconduct, save for **charge four** in the first application.⁸ That charge – failing to make a costs disclosure – amounts in the Tribunal's view to unsatisfactory professional conduct.

Sanction

- [16] When deciding what orders should follow in consequence of the findings which the Tribunal has just made, regard should primarily be had to the protection of the public and the maintenance of proper professional standards.⁹ Furthermore, an order removing a practitioner's name from the roll should only be made when the probability is that the practitioner is permanently unfit to practise.¹⁰ That determination is as to present fitness, not fitness at the time of the offending conduct.¹¹
- [17] The Tribunal is satisfied that, on the whole of the evidence, the respondent is permanently unfit to practise. Accordingly, it will be ordered that his name be removed from the local roll in Queensland.
- [18] In addition, there being no exceptional circumstance to justify an order departing from the usual position as to costs reflected by s 462(1) of the Act, the respondent will be

⁵ Section 419(1)(b) of the Act.

⁶ Section 419(2) of the Act.

⁷ See s 9(1) of the Act.

⁸ That is to say, application 110 of 2024.

⁹ *Legal Services Commissioner v Madden (No 2)* [2009] 1 Qd R 149, [122].

¹⁰ *Watts v Legal Services Commissioner* [2016] QCA 224, [46].

¹¹ *Prothonotary of the Supreme Court of New South Wales v P* [2003] NSWCA 320, [17].

ordered to pay the costs of and incidental to the applications, such costs to be assessed on the standard basis for matters in the Supreme Court of Queensland.

- [19] Despite the making of those orders, it should be recorded that there was a considerable, and impressive, body of medical and other evidence which was relied on at the respondent's sentence hearings in the criminal courts. Indeed, it might be said this body of evidence was especially important to the exercise of the sentencing discretion, on each occasion, in a way that did not result in a sentence involving actual custody. It disclosed that the respondent had a significant history of mental illness which included a chronic and severe post-traumatic stress disorder in consequence of his active service in the Army in Iraq, Afghanistan and East Timor. His military service was, to say the very least, meritorious. The psychological conditions with which the respondent was afflicted went largely undiagnosed and certainly untreated until after the conduct that resulted in his criminal convictions. He has since that time been in receipt of specialist psychiatric treatment and other medical assistance, and his prospects of rehabilitation are regarded as excellent. The respondent has been gradually reintegrating into the workforce under the supervision of his psychiatrist, but he has no intention of returning to the practice of the law. It should also be made plain that the respondent fully cooperated in the Commission's investigative process, as well as this proceeding, and he surrendered his practising certificate in a timely manner. However, unlike the respondent in cases such as *Legal Services Commissioner v Munt*,¹² he did not seek to persuade the Tribunal that he is now fit to practise, whether by reason of the extent of his recovery, or at all.

¹² [2019] QCAT 160.