

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Lawler* [2025] QCAT 260

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)

v

NEIL ROBERT LAWLER
(respondent)

APPLICATION NO/S: OCR198 of 2023
OCR050 of 2025

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 10 July 2025

HEARING DATE: 26 November 2024 (Tribunal hearing part heard)
10 July 2025 (on the papers)

HEARD AT: Brisbane

DECISION OF: Hon. Judicial Member Duncan McMeekin KC

Assisted by:

- Mr Richard Barnes, practitioner panel member
- Dr Julian Lamont, lay panel member

ORDERS:

1. Pursuant to s 456(2)(a) of the *Legal Profession Act 2007 (Qld)*, an order is made recommending that the name of the respondent be removed from the local roll; and
2. The respondent pay the applicant's costs of and incidental to the two discipline applications, such costs to be agreed or assessed on the standard basis in the manner in which costs would be assessed if the matter were in the Supreme Court of Queensland.

CATCHWORDS: [PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – where the applicant applied for disciplinary orders against the respondent – where the discipline application arose out of conduct that involved the respondent appearing as a practitioner before a court intoxicated and misleading a court during a sentencing hearing for a criminal conviction against the respondent - where the respondent contested the sanction the applicant submitted was appropriate – where the applicant applied for further disciplinary orders for conduct arising out of breaches against domestic violence orders - where the

parties reached an agreed position as to sanction – whether the Tribunal is satisfied the sanction should be as agreed – whether the respondent’s name should be removed from the local roll.

Australian Solicitors Conduct Rules 2012 r 5, r 43

Legal Profession Act 2007 (Qld) s 57(1)(a), s 417, s 418, s 419, s 452, s 456

Adamson v Queensland Law Society Incorporated (1990) 1 Qd R 498

Attorney-General v Bax [1999] 2 Qd R 9

Attorney-General v Legal Services Commissioner & Anor;

Legal Services Commissioner v Shand [2018] QCA 66

Giudice v Legal Profession Complaints Committee [2014] WASCA 115

Legal Practitioners Conduct Board v Phillips (2002) 83 SASR 467

Legal Profession Complaints Committee v Staffa [2020] WASAT 58 (S)

Legal Services Commissioner v Dwyer [2012] VCAT 886

Legal Services Commissioner v Madden (No 2) [2008] QCA 301

Legal Services Commissioner v Thomas [2009] LPT 13

New South Wales Bar Association v Thomas [1989] NSWCA

FIRST HEARING (OCR198-23 PART HEARD)

APPEARANCES & REPRESENTATION:	R C Taylor i/b Legal Services Commissioner R O’Gorman KC with H J Rafter i/b Mackenzie Mitchell Solicitors
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SECOND HEARING (OCR198-23 PART HEARD & OCR050-25)

APPEARANCES & REPRESENTATION:	This matter was heard and determined on the papers pursuant to s 32 of the <i>Queensland Civil and Administrative Tribunal Act 2009</i> (Qld)
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REASONS FOR DECISION

- [1] There are two discipline applications before the Tribunal brought pursuant to s 452 of the *Legal Profession Act 2007* (Qld) (‘the Act’). In each application, the Legal Services Commissioner alleges that Neil Robert Lawler (‘the respondent’) engaged in professional misconduct and/or unsatisfactory professional conduct and seeks that disciplinary orders be made against Mr Lawler pursuant to s 456 of the Act.

Jurisdiction

- [2] The respondent was admitted to the legal profession in Queensland on 13 July 1998. At all material times he was an Australian lawyer pursuant to s 5(1) of the Act and until 27 November 2020 held an unrestricted practising certificate. The respondent

was then also a legal practitioner director of Bell Miller Pty Ltd, trading as Lawler Magill Lawyers.

- [3] As mentioned, there are two applications before the Tribunal. The respondent's practising certificate was cancelled by the Queensland Law Society ('the Society'), effective from 27 November 2020. Thereafter, the respondent remained an Australian lawyer but not an Australian legal practitioner as those terms are defined in the *Act*. The distinction is relevant to note regarding conduct the subject of the second application (between 22 October 2020 and 28 June 2021) that took place after his practising certificate was cancelled.
- [4] Despite losing his practising certificate the respondent remained subjected to the disciplinary legislative scheme. Section 417(1) of the *Act* provides that Chapter 4 of the *Act* (wherein ss 452 and 456 appear) applies to Australian lawyers in relation to conduct happening while they were Australian lawyers (but not Australian legal practitioners) in the same way it applies to Australian legal practitioners, and with any necessary changes. Thus, ss 452 and 456 of the *Act*, under which these applications are heard and under which disciplinary orders can be made, apply.

A change in approach

- [5] The second application was made after the first application had been part heard and adjourned at the respondent's request to enable him to obtain further evidence. Following the filing of the second application the parties agreed that the applications should be heard together, that the parties did not require to be further heard at an oral hearing, and consented that the Tribunal hear and determine the matters on the papers.
- [6] That change of approach was adopted as the respondent determined that he would not contest any factual issue, accepted the Commissioner's submission as to the characterisation of his conduct, and accepted that the Tribunal ought to recommend that his name be removed from the roll. Nonetheless, it remains necessary for the Tribunal to be satisfied that the charges are established to the requisite standard, that the conduct should be so characterised as agreed, and that the sanction should be as agreed.
- [7] Given the parties' agreed position it is not necessary to detail the charges to any great degree.

The first application

- [8] The first discipline application, in summary form, concerned these five charges:
 - (1) engaging in conduct that fell short of the standard of competence expected of a legal practitioner;
 - (2) bringing the profession into disrepute;
 - (3) making misleading statements to a court;
 - (4) failure to be open and frank with regulatory authorities; and
 - (5) failure to correct misleading or inaccurate statements made to the court.

Charge (1)

- [9] On 29 January 2020, the respondent appeared before a Magistrates Court for a client when he, the respondent, was grossly intoxicated. He was observed to be red and

flushed, unsteady on his feet, and there was the smell of liquor in the courtroom. After the sentence concluded, the respondent returned to his vehicle and was intercepted by police. He was unsteady on his feet and slurring his words. His roadside breath test blood alcohol reading was 0.274%, while his formal breath analysis was 0.27%.

Charge (2)

- [10] On 5 March 2020, the respondent entered a plea of guilty to one offence of being in charge of a motor vehicle while under the influence of liquor and over the high alcohol limit, the subject of his conduct under charge (1). The respondent was convicted and sentenced to 12 months' probation and 100 hours community service. A conviction was recorded. The details of the charge and conviction were published in the media. This conduct was contrary to r 5 of the *Australian Solicitors Conduct Rules 2012* ('the Rules').

Charge (3)

- [11] At his sentence on 5 March 2020, the respondent represented himself and conveyed the following misleading information to the Court, either knowingly or recklessly:
- (1) he had purchased alcohol after leaving the courthouse and then drunk that alcohol;
 - (2) he had returned to his vehicle to charge his phone and had no intention of driving his vehicle; and
 - (3) he was intending to stay the night in Maroochydhore.

- [12] The only disputed issue between the parties at the initial hearing, which is no longer disputed, was whether the misleading information was conveyed knowingly or recklessly.

Charge (4)

- [13] Following the conduct comprising charges one to three, the Legal Services Commission ('the Commission') commenced an investigation into the respondent's conduct. The Commission sought a full explanation from the respondent and made several specific enquiries in correspondence. The Society also sought information from the respondent under the *Act*, before sending him a show cause notice that contended he was no longer a fit and proper person to engage in legal practice, and invited a response. Throughout his communications with the Commission and the Society the respondent failed to be open and frank about the conduct under investigation, contrary to r 43 of the *Rules*.

Charge (5)

- [14] To date, the respondent has taken no steps to correct the misleading statements he made to the Magistrates Court on 5 March 2020, the subject of charge three.

The second application

- [15] The charges in the second application include four charges of bringing the profession into disrepute contrary to r 5 of the *Rules*, and one charge of failing to give notice of a conviction.
- [16] The charges arise out of the respondent's conduct between 22 October 2020 and 28 June 2021. The first four charges involved the respondent breaching a domestic

violence order made under the *Domestic and Family Violence Protection Act 2012* (Qld) on six separate occasions, each of which resulted in a conviction for contravening a domestic violence order under s 177 of that Act. The order contained a mandatory condition requiring the respondent to be of good behaviour and not commit domestic violence towards the aggrieved. The order was varied on occasion, including on 21 October 2020, when conditions were added that required the respondent to refrain from contacting the aggrieved or approaching within 100 metres of her or her residence. The six breaches involved the respondent contacting the aggrieved in a harassing manner, attending the aggrieved's home when intoxicated, and communicating in an abusive and demeaning manner towards the aggrieved.

- [17] The fifth charge relates to the respondent's failure to declare his first conviction, with respect to contravening the domestic violence order, to the Society.

Characterisation of the conduct

The relevant tests

- [18] The Tribunal's power to make a disciplinary order is dependent on a finding that the respondent has engaged in 'unsatisfactory professional conduct' or 'professional misconduct'.¹ The statutory definitions are set out in ss 418 and 419 of the *Act*. They are inclusive in their terms and hence recourse to common law tests is permissible, if helpful.

- [19] Section 418 provides:

Unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

- [20] Section 419 provides:

(1) ***Professional misconduct*** includes –

- (a) unsatisfactory professional conduct of an Australian legal practitioner, if the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- (b) conduct of an Australian legal practitioner, whether happening in connection with the practice of law or happening otherwise than in connection with the practice of law that would, if established, justify a finding that the practitioner is not a fit and proper person to engage in legal practice.

- [21] The dictum of Thomas J in *Adamson v Queensland Law Society Incorporated* (1990) 1 Qd R 498 at 507 is often cited:

The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.

¹ *Legal Profession Act 2007* (Qld), s 456(1) ('the Act')

- [22] Contravention of a regulation or legal profession rules (such as rr 5 and 43 of the *Rules*) is capable of amounting to unsatisfactory professional conduct or professional misconduct.²

Discussion

- [23] There is no dispute as to the facts that underlay the charges under both applications. The evidence gathered by the applicant is uncontroverted and compelling.

The first application

- [24] It hardly needs to be said that for a legal practitioner to attend court intending to represent a client when grossly intoxicated justifies a finding that the practitioner is not a fit and proper person to engage in legal practice. However, the respondent's conduct went further, following the court appearance he operated a vehicle, which resulted in a criminal conviction because of his intoxication level, and then mislead the court as to his movements surrounding the conviction in what is a blatant attempt to minimise the seriousness of his conduct. The respondent's conduct violated the standard of professional conduct observed or approved by members of the profession of good repute and competency.
- [25] The debate at the hearing of the first application concentrated on the distinction between whether the misleading information the subject of charge (3) was conveyed knowingly or recklessly. The applicant referred to the helpful discussion of the distinction in this context by Martin CJ in *Giudice v Legal Profession Complaints Committee* [2014] WASCA 115 where the Chief Justice concluded, at [8]:

... if, assessed subjectively, the practitioner is either aware that the statement or information is false or misleading, or wilfully indifferent to its truth, in the absence of special circumstances one would ordinarily expect a finding of either category of conduct to be characterised as a substantial departure from the standards of conduct reasonably expected of a practitioner such as to constitute professional misconduct, within the taxonomy of the Act.

- [26] There are no special circumstances here justifying any different approach. At the first hearing, the respondent admitted, as he does now, that the providing of misleading statements to the Court should be characterised as professional misconduct. The intent of the respondent's submissions was to argue that the misleading of the Court fell into the less serious category, that is recklessly made statements, and sought a downgraded sanction of a suspension for a specific period. That is no longer pursued. How the respondent did not know that his statements about his own movements and intentions were false was explained, it was submitted, by his then gross intoxication. That argument had its difficulties, and they were considerable, but it is now moot.
- [27] Nonetheless, it is worth recording too that the conduct the subject of charge (4)—not being frank and open with the Society and the Commissioner—reflects in some ways the nature of the misleading information provided to the Magistrate. The respondent made the misleading statements to the Court some five weeks after his arrest. These statements shared similarities with the respondent's different and misleading account of the conduct provided to the Commissioner via a letter dated 21 April 2020, some six weeks after the respondent's court appearance. If this is explained by a wilful indifference to the truth, then that indifference consisted in different forums, over an

² The Act, s 420(1)(a); *Acts Interpretation Act 1954* (Qld), s 7(1); *Statutory Instruments Act 1992* (Qld), s 7.

extended period, with substantial time to reflect, and despite the fact the misleading nature of his statements had been drawn to his attention.

- [28] The respondent's claim to the investigative bodies that he had 'co-operated with all parties and gave the best of my recollections at the time'³ cannot be accepted. The respondent failed to discharge the duty of honesty and frankness that the authorities assert extend to the investigative steps anterior to the consideration of the case by the court or tribunal.⁴ That duty is justified by reference to the lawyer's duty as an officer of the court as regulatory bodies are statutorily appointed to perform an aspect of the court's disciplinary (protective) function.⁵
- [29] The remaining charge is that the respondent has not asked for his criminal conviction to be re-opened to permit him to inform the Magistrate of the more accurate account of his actions. He remains sentenced on a false basis. His conduct is tied in with the charge of making misleading statements and should be similarly characterised.

The second application

- [30] The subject of the second application, the repeated offending against the *Domestic and Family Violence Protection Act* resulting in criminal convictions, can only be described as disgraceful and involved a substantial departure from the standard expected of members of an honourable profession. The seriousness of these convictions is evidenced by the maximum penalty imposed for breaching domestic violence orders of five years' imprisonment. These offences did not involve actual physical violence but did cause the aggrieved justifiable distress. As the Magistrate commented, the respondent came very close to a term of actual imprisonment. Such repeated offending demonstrates a lack of respect for the law.
- [31] As the Commissioner submitted repeated breaches of the law are inherently serious and in this case:
- (i) involved contraventions of a domestic violence order, and some of the individual charges involved instances of grossly demeaning behaviour that amounted to domestic violence;
 - (ii) such breaches compromised the respondent's position as an officer of the court whose duty is to obey and uphold the law; and
 - (iii) when lawyers do not uphold the law, this is likely to lead to a loss of confidence in the profession from members of the public.⁶
- [32] Plainly the conduct should be characterised as professional misconduct.
- [33] The fifth charge, relating to the respondent's failure to declare his first conviction to the Society, should be characterised as unsatisfactory professional conduct. His obligation to inform the Society of his conviction arises under s 57(1)(a) of the *Act*. It is only relevant to the first conviction as he held a practising certificate only until then and not after that time. He well knew of the obligation as he had reported his

³ Affidavit of Bradley Mark Fitzgerald affirmed 19 January 2024, Exhibit BMF-09.

⁴ *New South Wales Bar Association v Thomas* [1989] NSWCA 152, 19.

⁵ *Legal Practitioners Conduct Board v Phillips* (2002) 83 SASR 467, [34] (Gray J); *Legal Services Commissioner v Dwyer* [2012] VCAT 886, [40]; *Legal Profession Complaints Committee v Staffa* [2020] WASAT 58 (S), [14].

⁶ Applicant's Outline of Submissions dated 27 May 2025, [32].

conviction to the Society following the drink driving offence some months before. His failure to report his conviction seriously impairs the Society's duty to properly regulate the profession and so undermines the public policy that underlines these requirements of protecting the public and the public trust in the profession.

- [34] His failure is best described as falling short of the standard of competence and diligence a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.

Sanction

The applicable principles

- [35] It is well established that the purpose of making an order pursuant s 456 of the *Act* is not to punish the respondent, but to protect the public.⁷
- [36] In seeking to protect the public principles of personal and general deterrence are relevant.⁸ The need to deter both the respondent and other practitioners from engaging in similar conduct also protects the public. As well, the removal of the name of an unfit practitioner from the local roll serves the interest of the public by 'the preservation of the good standing of the legal profession and of the Roll as the Court's endorsement of the fitness of those enrolled'.⁹
- [37] The removal of the practitioner's name from the roll requires that the Tribunal reaches the view that the respondent is permanently unfit to practise. Justice Philip McMurdo (with the agreement of Morrison JA and Brown J) pointed out in *Attorney-General v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* that because the roll represents the Court's endorsement of the fitness of those who are enrolled, if a practitioner is not a fit and proper person to engage in legal practice, then:

... all of the purposes which I have described required that his name be removed from the Roll, absent something which indicated that he was likely to become a person who was fit to be a legal practitioner.¹⁰

- [38] In reaching the view that the respondent in this matter is permanently unfit to practice, the Tribunal needs to bring into account the mitigating features both in relation to the conduct itself and the events that have taken place since the conduct in question.¹¹

The mitigating features

- [39] The mitigating features that are advanced, the accuracy of which can be accepted, are:
- (a) The respondent expressed to the Tribunal, both in his affidavit and in the submissions made, his remorse and shame for his conduct.
 - (b) The respondent has admitted all disciplinary charges. He accepts the gravity and seriousness of his misconduct. He accepts that his conduct amounts to a

⁷ *Legal Services Commissioner v Madden (No 2)* [2008] QCA 301, [122] ('*Madden*') citing *Harvey v Law Society of NSW* (1975) 49 ALJR 362; *Attorney-General v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66 ('*Shand*'); *Adamson v Queensland Law Society Inc* [1990] 1 Qd R 498, 504.

⁸ *Attorney-General v Bax* [1999] 2 Qd R 9, 22 ('*Bax*').

⁹ *Shand*, [58]. See also *Shand* [54]-[55]; *Madden*, [122]; *Bax*, 22.

¹⁰ *Shand*, [56]

¹¹ See, eg, *Legal Services Commissioner v Thomas* [2009] LPT 13.

significant departure from the standards expected of a member of the legal profession.

- (c) The respondent has no prior disciplinary history over his 20-year career as a legal practitioner.
- (d) The respondent was suffering from a alcohol use disorder at the time of the conduct underpinning the disciplinary charges. He was also dealing with a number of personal and professional stressors.
- (e) The respondent offered significant cooperation in these proceedings by admitting all charges at an early stage, limiting the issues in dispute for the first hearing, and ultimately conceding all issues following the filing of the second disciplinary application.
- (f) The respondent has suffered significant loss as a result of his conduct and the disciplinary charges. He had his practising certificate cancelled on 27 November 2020. He has lost his career, his firm, and his reputation.
- (g) The respondent has suffered public shaming and humiliation as a result of his conduct and the disciplinary charges, including being the subject of a number of media articles.

Conclusion

- [40] The conduct the subject of the two applications involving repeated offending against the law and the respondent's very poor behaviour in his dealings with the Court and the regulatory authorities justifies him being struck off the roll.
- [41] It is evident that the respondent's conduct is very much explained by his alcoholism. The psychiatrists explain that the respondent has an alcohol use disorder for which he has long sought treatment. He accepts that his rehabilitation from his disorder is ongoing. As the evidence presently stands he is unfit to practise. To address the issue identified by McMurdo JA in *Shand*: there is no reason to think that he is likely to become a person who is fit to be a legal practitioner. The mitigating features do not address that critical issue.
- [42] The parties now agree that the proper course is to have an order made recommending that the name of the respondent be removed from the local roll.

Costs

- [43] The Commissioner seeks an order, pursuant to s 462 of the *Act*, that the respondent pay the Commissioner's costs of and incidental to the two discipline applications. That is the usual order unless it can be shown there are exceptional circumstances. The respondent does not oppose the order.

Orders

- [44] The orders are:
 - (a) pursuant to s 456(2)(a) of the *Legal Profession Act 2007* (Qld), an order is made recommending that the name of the respondent be removed from the local roll; and
 - (b) the respondent pay the applicant's costs of and incidental to the two discipline applications, such costs to be agreed or assessed on the standard basis in the

manner in which costs would be assessed if the matter were in the Supreme Court of Queensland.