QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Legal Services Commissioner v Ioannides* [2020] QCAT 479
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **BRIANA CHRISTINE IOANNIDES** (respondent)
APPLICATION NO/S:	OCR098-20
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	17 December 2020
HEARING DATE:	10 December 2020
HEARD AT:	Brisbane
DECISION OF:	Justice Daubney, President Assisted by: Mr Peter Sheehy, Legal Panel Member Dr Susan Dann, Lay Panel Member
ORDERS:	**1. The Tribunal recommends that the name of the respondent, Briana Christine Ioannides, be removed from the Roll of Legal Practitioners in Queensland.** **2. The respondent shall pay the applicant's standard costs of and incidental to this discipline application, such costs to be assessed as if this were a matter 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 pled guilty to multiple criminal offences, including the trafficking of dangerous drugs and breaches of bail undertakings – where the respondent was sentenced to eight years six months' imprisonment – where the respondent's conduct did not occur in connection with legal practice – where the conduct amounted to protracted criminality involving serious and persistent criminal offending – whether the respondent's conviction for serious offences warrants a finding of professional

misconduct – whether the respondent's conduct was likely, to a material degree, to bring the profession into dispute such as to warrant a finding of professional misconduct

PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – DISCIPLINARY PROCEEDINGS – QUEENSLAND – ORDERS – where orders in the disciplinary jurisdiction are shaped in the interests of protecting the community from unsuitable practitioners – where the respondent has led some evidence of remorse, of suffering from a substance abuse disorder which significantly impacted upon her judgment, and of undertaking rehabilitation – whether the respondent's conduct is demonstrative of a character which is incompatible with the personal qualities essential for the conduct of legal practice – whether the current probability is that the respondent is permanently unfit to practise, such as to warrant the making of an order recommending the removal of the respondent's name from the Roll of Legal Practitioners

Legal Profession Act 2007 (Qld) s 419, s 420, sch 2

Attorney-General for the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand [2018] QCA 66
Council of the Law Society of New South Wales v Parente [2019] NSWCA 33
Legal Services Commissioner v Madden (No 2) [2008] QCA 301
Legal Services Commissioner v Munt [2019] QCAT 160
Stanoevski v The Council of the Law Society of New South Wales [2008] NSWCA 93
Ziems v The Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279

APPEARANCES & REPRESENTATION:	
Applicant:	J Crawford, instructed by the Legal Services Commission
Respondent:	R A Pearce, instructed by Hannay Lawyers

REASONS FOR DECISION

[1] When this discipline application, brought by the applicant Legal Services Commissioner under the *Legal Profession Act* 2007 (Qld) ("*LPA*"), came on for hearing before the Tribunal, counsel for the respondent, Briana Christine Ioannides, informed the Tribunal that the respondent did not oppose the relief sought by the applicant. After hearing argument from the parties, the Tribunal decided the matter by making the following orders:

1. The Tribunal recommends that the name of the respondent, Briana Christine Ioannides, be removed from the Roll of Legal Practitioners in Queensland.

2. The respondent shall pay the applicant's standard costs of and incidental to this discipline application, such costs to be assessed as if this were a matter before the Supreme Court of Queensland.

[2] These are the reasons for the Tribunal's decision.

[3] By the discipline application, the applicant brought the following charges against the respondent:

(a) Charge 1 – that on 16 April 2019, the respondent was convicted in the Supreme Court of Queensland at Brisbane of serious offences; and

(b) Charge 2 – between November 2015 and November 2018, the respondent engaged in conduct which was likely to a material degree to bring the profession into disrepute, contrary to r 5.1.2 of the *Australian Solicitors Conduct Rules* 2012.

[4] The respondent is presently 31 years old. She was admitted as a legal practitioner in Queensland in October 2014. She was granted a restricted employee-level practising certificate and worked as an employed solicitor for a law firm from October 2014 until the end of November 2015, at which time she was charged with criminal offences. It appears that the respondent then surrendered her practising certificate and gave an undertaking to the Queensland Law Society to abstain from legal practice and employment until resolution of the criminal charges. She then went to work for some time in an administrative capacity in a commercial business on the Gold Coast.

[5] The respondent has no professional disciplinary history.

[6] On 20 December 2018, the respondent pleaded guilty before the Supreme Court of Queensland to a nine-count indictment in relation to offences committed between 24 November 2015 and 31 December 2015. On 22 March 2019, she pleaded guilty to another 14-count indictment. The most serious charge on that indictment was that she trafficked in the dangerous drugs methylamphetamine and GHB for a period of about five months from October 2016. She was trafficking at both a wholesale and retail level.

[7] On 16 April 2019, the respondent came before Mullins J (as her Honour then was) for sentence. The respondent also pleaded guilty to 21 summary charges, some of which were associated with the offending on the first indictment, one of which was associated with the offending on the second indictment, and others which were committed outside the offending periods under the indictments.

[8] The respondent was convicted and sentenced to an effective head sentence of eight years six months' imprisonment, with a parole eligibility date of 20 February 2021.

[9] In the course of her sentencing remarks, Mullins J said:

> You were a successful solicitor practising in criminal law. I am sure that prior to 2015 you did not envisage standing in the dock yourself and being sentenced. You exemplify what happens to a young person with a promising career who becomes addicted to drugs and you allowed your life basically to get out of control and the result is you are being sentenced today for over 40 offences. After a long-term relationship ended you commenced a new relationship with the man who is your co-offender on indictment 1961 of 2018.

> Aggravating aspects of your offending are that you committed offences after having been charged with some offences or were on bail for other offences. Sentences that were imposed on you, particularly in the Magistrates Court on 18 February 2016 and in the Supreme Court on 10 August 2018, did not deter further offending. Even a period held in custody for over three months when your bail was revoked or when you did not have bail between March and June 2017 did not deter your offending. Eventually the Prosecution obtained an order from the Court revoking your bail on 12 December 2018 and you have been in custody since that time.

[10] Charge 1 on the discipline application particularises the 22 offences of which the respondent was convicted, including the serious offence of drug trafficking. Each of the offences particularised under Charge 1 was a "serious offence" as that term is defined in Schedule 2 of the *LPA*. Not surprisingly, conduct for which there is a conviction for a serious offence is conduct which is capable of constituting unsatisfactory professional conduct or professional misconduct.[1]

[11] Charge 2, which contended that the respondent engaged in conduct which was likely to a material degree to bring the profession into disrepute, invoked the criminal offences relied on under Charge 1, and also particularised the broader aspects of the respondent's extended period of offending conduct, including:

(a) charges laid after police executed a search warrant at the respondent's residence in December 2015 when police found and seized a variety of drugs and drug paraphernalia, including a number of items used for the purpose of producing drugs, and instructions and other property for use in commercial production;

(b) the fact that on 24 November 2015, police had executed a search warrant at the respondent's residence at which time they seized a variety of drugs and drug paraphernalia;

(c) the fact that the respondent's drug trafficking enterprise over a period of about five months from October 2016 was for profit. She was engaged in a business which involved significant wholesale and retail sales of drugs. She also assisted others to set up trafficking businesses with clientele, and was aware that she was not just selling to end users;

(d) the size of the drug trafficking business was masked by the use of covert communications, but it was clearly an operation of significant scale. For example, the respondent and her co-offender supplied as much as 112 grams of methylamphetamine at a time, supplied as much as eight litres of GHB at a time, and purchased up to 24.5 litres of GHB at a time. Debts owed by customers to the respondent or her co-offender were as much as $268,200 on an unknown date in January 2017; and

(e) between 17 February 2016 and 16 October 2019, the respondent committed further offences while she was on bail, and was dealt with in the courts for having committed those further offences.

[12] After setting out details of these matters, including the many instances of further offending by the respondent, the applicant particularised her case under Charge 2 as follows:

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1 *LPA* s 420(1)(c)(i).

> 2.10 The respondent has engaged in conduct which is likely to a material degree to bring the profession into disrepute by:
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> (a) engaging in illegal, criminal conduct, which resulted in her own financial gain;
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> (b) continuing to engage in criminal conduct, including many breaches of bail conditions (an undertaking to the court), despite being arrested and charged on multiple occasions;
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> (c) compromising her position as an officer of the court, whose duty is not only to obey the law, as with all Queensland citizens, but also to uphold the law; and
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> (d) being charged with, convicted of and sentences to a period of imprisonment for serious offences.

[13] Whilst the conduct referred to under Charge 1 did not happen in connection with the practice of law, it was conduct by which the respondent committed serious criminal offences. It amounted to protracted criminality which involved the serious offence of trafficking in dangerous drugs, as well as many other offences, including breaches of bail undertakings given to the court.

[14] The seriousness and persistence of the offending conduct was completely at odds with all norms which the community expects of those engaged in legal practice; and, as noted above, conduct for which there is a conviction for a serious offence is conduct which may be held to constitute professional misconduct. The respondent's criminal conduct, including, of course, the drug trafficking, undoubtedly demonstrated that, at the time, she was not a fit and proper person to engage in legal practice. By s 419(1)(b) of the *LPA*, the term "professional misconduct" includes conduct of a 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".

[15] There can be no question that it is appropriate that there be a finding of professional misconduct under Charge 1.

[16] Similarly, the respondent's conduct particularised under Charge 2 was anathema to that expected of members of an honourable profession. The respondent engaged in a protracted period of conduct which was both seriously criminal and irreconcilable with the proper standards of the legal profession. It was clearly conduct which was likely, to a material degree, to bring the profession into disrepute, and warrants characterisation as professional misconduct.

[17] In approaching the consequent question of sanction, it is convenient to repeat the following observations made in *Legal Services Commissioner v Munt* ("*Munt*"):[2]

> [42] It is appropriate and necessary for this Tribunal to make a finding that the respondent engaged in professional misconduct.
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> [43] In approaching the question as to the orders which ought be made as a consequence of that finding, the following propositions are well-established:

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[2] [2019] QCAT 160, and omitting citations.

(a) In this disciplinary jurisdiction, orders are shaped in the interests of the protection of the community from unsuitable practitioners, and in determining what orders should be made 'regard should primarily be had to the protection of the public under the maintenance of proper professional standards'.

(b) 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.

(c) The determination is as to present fitness, not fitness at the time of the offending conduct.

[44] The respondent has already been punished in the criminal court for his offending conduct. This disciplinary hearing is not an occasion to punish him again; rather, the primary object of making orders under s 456 of the *LPA* is to seek to ensure that public confidence in members of the legal profession can be assured and maintained.

[45] Whilst undoubtedly serious, the criminal conduct occurred in the respondent's private life. No legal practitioner should be engaged in any criminal conduct, let alone the seriously culpable business of drug trafficking. But it is relevant to have regard to the fact that this conduct was not committed as part of or in the course of the respondent's practice as a lawyer. The distinction between misconduct which occurs in connection with legal practice and misconduct in one's private life has long been recognised. That being said, in *Prothonotary of the Supreme Court of New South Wales v P*, Young CJ in Eq recounted a number of established propositions, including:

(a) the fact that a practitioner is convicted of a serious offence is not necessarily sufficient reason for a striking off order;

(b) the fact of conviction and imprisonment is, however, far from irrelevant and may be regarded as carrying a degree of disgrace itself;

(c) the conduct in question must be examined to see whether it is of such personally disgraceful character that the practitioner should not remain a member of the profession;

(d) the fact that the practitioner pleaded guilty will usually be counted in their favour;

(e) conduct not occurring in the course of professional practice may demonstrate unfitness if it amounts to incompatibility with the personal qualities essential for the conduct of the practice.

[18] In *Munt*, the respondent had been convicted of a number of drug offences, including trafficking in methylamphetamine, and was sentenced to a term of three years' imprisonment wholly suspended for four years. On a discipline application before this Tribunal, it was not in issue that a finding of professional misconduct was warranted. The Tribunal determined that the practitioner should be suspended for five years.

[19] In submissions filed in the present case, the respondent sought to rely on *Munt*. That case was, however, distinguishable from the present. The offending conduct by the present respondent was objectively more serious than that engaged in by Munt. Moreover, the present respondent's criminal conduct was marked by a degree of

persistence and repetition. Mention has already been made of the fact that she persisted with her offending despite having been dealt with for other offending, and her conduct included breaches of bail undertakings given to the court. Moreover, there was extensive evidence before the Tribunal in *Munt* of his rehabilitation. That rehabilitation was present at the time he was sentenced, but there was further evidence before the Tribunal of ongoing rehabilitation, including employment and community engagement.

[20] The present respondent filed an affidavit before the Tribunal in which she said that throughout the time she was offending, she was suffering from, and affected by, severe drug addiction which heavily impacted her judgment and decision-making abilities. She said:

> My life spiralled out of control and I was unable to escape my addiction, it consumed and destroyed everything I had worked hard to achieve. I rapidly went from a young, driven, successful person to a drug addict who was all too familiar with being arrested and charged with drug related offences.

[21] The respondent said that in 2018, in an effort to rehabilitate herself, she engaged the services of a psychologist, who diagnosed the respondent as suffering from severe substance abuse disorder. Before being sent to prison, the respondent was gainfully employed in an administrative capacity for a business. She has the support of that employer. The respondent also deposed to the limited opportunities for rehabilitation while incarcerated, including completion of a drug intervention program, and participation in a program in which rescue dogs are trained to assist returned veterans. These steps towards rehabilitation are to be commended, and indicate a willingness on the part of the respondent to get her life back in order. They are, however, a far cry from the very significant extended rehabilitation which was able to be demonstrated by the respondent in *Munt*.

[22] The Tribunal has also had regard to the psychologists' reports included in the respondent's material. One is a brief report from Ms Tricia Stewart which was provided to the learned sentencing judge. That report asserts that prior to being incarcerated the respondent was suffering from a severe Substance Abuse Disorder which impacted significantly upon her judgment and ability to make clear and rational decisions. The psychologist commented on the respondent's relationship with her partner / co-offender, saying that this relationship was "the beginning of her complete downfall" with the respondent experimenting with drugs, spiralling out of control and becoming dependent on methamphetamine. The psychologist noted that, at that time, the respondent had completed two drug recovery programs while incarcerated and otherwise stayed productive by working, studying and exercising.

[23] The second psychologist's report dated 26 May 2020 was by Mr Peter Stoker and was prepared in support of an application by the respondent for exceptional circumstances bail. Mr Stoker says that, amongst other things, the respondent reported being remorseful for her offending and said that the reality of her situation "hit her hard" when she had to resign from her job as a solicitor. He expressed the opinion that the respondent had developed a Methamphetamine Dependency Disorder, but this was now in remission.

[24] The material put before this Tribunal also included a number of personal references which were obviously obtained for the purposes of the exceptional circumstances bail application. Those included a reference from her more recent employer. It is fair to say that these references spoke well of the respondent's personal character.

[25] In approaching the question of sanction, it must be recalled that this jurisdiction is protective of the public and not punitive against the practitioner. The respondent is not being punished again for having committed criminal offences. Rather, the Tribunal must have primary regard to the need to protect the public from unsuitable practitioners and ensure maintenance of proper professional standards.[3]

[26] As to the respondent's suitability for membership of the profession, the Tribunal's view is that her conduct provides "instant demonstration of unfitness" for membership of the legal profession.[4] It is not just a question of the fact that the respondent committed the very serious offence of drug trafficking, although that is highly relevant. The respondent's charged conduct as a whole, including that revealed by the criminal offending, bespeaks a character which lacks integrity, or at least the high standard of integrity required of all legal practitioners. She persistently broke the law, and did so even after having been dealt with for related forms of offending. She repeatedly flouted the law, and in so doing demonstrated a character which had no respect for the fundamental obligation of all legal practitioners to protect and maintain the rule of law. Her conduct demonstrates that she is a person who, at this point in time, cannot be trusted by clients, fellow practitioners, the judiciary, or the public at large. The courts, the legal profession, and the public depend on maintenance of the highest standards of integrity in the legal profession. To adapt what was said in a somewhat similar case in New South Wales, it would be incongruous to accept that a person still serving a lengthy term of imprisonment for serious drug offending could be described as meeting the highest standards of integrity.[5]

[27] Whilst it has been authoritatively said that an order for the striking off of a legal practitioner should only be made where the probability is that the practitioner is permanently unfit to practise, this does not mean that the applicant has to prove that in no circumstances would the practitioner be fit to practise. Rather, it "has the shade of meaning of being likely to be unfit to practice for the indefinite future".[6] The respondent's departures from the essential qualities of integrity required for legal practice were so fundamental as to provide ample justification for a finding that she is presently not a fit and proper person to practise law. In other words, the conduct referred to in the charges, while not having occurred in the course of legal practice, is demonstrative of a character which is incompatible with the personal qualities essential for the conduct of legal practice. Nothing has been put before the Tribunal to persuade it that this is not still the case. It appears that the respondent has commenced steps towards rehabilitation, and aspires to continue with that rehabilitation while she remains in custody and after her eventual release. Whether those aspirations and intentions are fulfilled remains to be seen. As noted above, this is not a case like *Munt*, in which the practitioner was able to lead extensive evidence of long-standing and successful rehabilitation. On the present material, the Tribunal's conclusion is that the current probability is that the respondent is permanently unfit to practise.

[28] The further aspect for consideration is the maintenance of proper professional standards. One element of that is the fact that the inclusion of a person's name on the

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3 *Legal Services Commissioner v Madden (No 2)* [2008] QCA 301, [122].
4 *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, 298.
5 *Council of the Law Society of New South Wales v Parente* [2019] NSWCA 33, [26].
6 *Stanoevski v The Council of the Law Society of New South Wales* [2008] NSWCA 93, [53]–[54].

roll of practitioners amounts to the granting of an imprimatur by the Supreme Court of a person's fitness to practise:

> The community needs to have confidence that only fit and proper persons are able to practise as lawyers and if that standing, and thereby that confidence, is diminished, the effectiveness of the legal profession, in the service of clients, the courts, and the public is prejudiced. The Court's Roll of practitioners is an endorsement of the fitness of those who are enrolled.[7]

[29] For the reasons noted above, it would be incongruous for a person who has engaged in the conduct committed by the respondent, and who finds themself in her current position, to continue to hold the Court's endorsement of fitness to practise. Retention of her name on the roll of practitioners would tend to undermine community confidence in the profession and in the Court's endorsement of fit and proper practitioners.

[30] Accordingly, the conclusion of this Tribunal is that it should be recommended that the respondent's name be removed from the Roll of Legal Practitioners in Queensland.

[31] There was no argument in the present case that the costs order mandated by s 462 of the *LPA* ought not be made.

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[7] *Attorney-General for the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66, [55].