

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Gray* [2024] QCAT 124

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
ANTHONY DAVID GRAY
(respondent)

APPLICATION NO/S: OCR177-23

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 28 March 2024

HEARING DATE: 29 January 2024

HEARD AT: Brisbane

DECISION OF: Burns J

Assisted by:

Mr Ross Perrett, Practitioner Panel Member
Dr Julian Lamont, Lay Panel Member

ORDERS:

- 1. In respect of each of Charges 1 and Charge 2 there is a finding of professional misconduct.**
- 2. The Tribunal recommends that the name of the respondent be removed from the roll of legal practitioners in Queensland.**
- 3. The respondent shall pay the applicant's standard costs of the application, such costs to be assessed as if this were a proceeding before the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – OTHER MATTERS – where the respondent together with another person operated a Ponzi scheme over many years – where the respondent used the scheme to defraud 46 separate complainants of approximately \$12.5 million – where the respondent also defrauded a client of \$150,000 that had been entrusted for a specified purpose but which was retained by him for his own purposes – where the respondent was later convicted on his own plea of guilty of two counts of fraud in contravention of s 408C of the *Criminal Code* (Qld) and imprisoned – where, by a

discipline application, the applicant alleged that the respondent had by the conduct constituting his criminal convictions engaged in professional misconduct and/or unsatisfactory professional conduct – whether the respondent engaged in professional misconduct and/or unsatisfactory professional conduct – whether there should be an order recommending that the respondent’s name be removed from the local roll or some lesser sanction

Legal Profession Act 2007 (Qld), s 5, s 9, s 359, s 373, s 418, s 419, s 420, s 456, s 462

A Solicitor v Council of the Law Society of New South Wales (2004) 216 CLR 253; [2004] HCA 1, followed
Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand [2018] QCA 66, cited
Barristers’ Board v Darveniza [2000] QCA 253, discussed

In the matter of an application by GBK for admission to the Legal Profession [2022] QCA 129, cited

In the matter of an application for admission as a legal practitioner by MCF [2015] QCA 154, cited

Legal Services Board v McGrath (No 2) (2010) 29 VR 325; [2010] VSC 332, cited

Legal Services Commissioner v Madden (No 2) [2009] 1 Qd R 149; [2008] QCA 301, cited

Legal Services Commissioner v Williams [2005] LPT 6, cited

New South Wales Bar Association v Cummins (2001) 52 NSWLR 279; [2001] NSWCA 284, cited

New South Wales Bar Association v Evatt (1968) 117 CLR 177; [1968] HCA 20, cited

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

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

Ziems v The Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279; [1957] HCA 46, followed

APPEARANCES & REPRESENTATION

Applicant:	A Angeli, instructed by the Legal Services Commission
Respondent:	The respondent appeared on his own behalf

[1] By a discipline application filed on behalf of the applicant Commissioner and amended on 30 August 2023, it is alleged that the respondent, Anthony David Gray, engaged in professional misconduct and/or unsatisfactory professional conduct between 30 June 2009 and 25 May 2017 amounting to serious criminal offending and for which he was

dealt with in the District Court of Queensland on 29 April 2022.

- [2] Mr Gray was admitted to practice in this State on 9 June 1987 and at all times material to the filed application was an Australian lawyer as defined in s 5(1) of the *Legal Profession Act 2007* (Qld). From 1 July 2002 to 30 June 2009 he held an unrestricted principal practising certificate issued by the Queensland Law Society and from 20 February 2012 to 30 June 2016 he held a practising certificate issued by the Bar Association of Queensland.

Charge 1

- [3] Between 30 June 2009 and 25 May 2017, Mr Gray operated a Ponzi scheme whereby he promised risk-free investments with high returns and thereby induced 46 separate complainants to part with over \$18 million. In the main, those funds were deposited with companies controlled and ultimately owned by Mr Gray. Funds deposited by later “investors” were used to make repayments to older “investors” and, in that way, give the illusion that the scheme was generating profits from legitimate sources.¹ When the scheme inevitably collapsed in late 2016, the complainants were left out of pocket in an amount totalling \$12.5 million.
- [4] Each of the complainants was personally or professionally known to Mr Gray or had been referred by an associate to him. He used his standing as a solicitor and, later, as a barrister, to induce the complainants to invest. Several complainants received a letter signed by Mr Gray after initially discussing the “investment opportunity” with him. In addition to guaranteeing the capital and interest and promising attractive terms regarding important features such as security and redemption, Mr Gray claimed that the scheme was a “bespoke operation of refined process” which was not extended to just “anyone” but was being opened up “to you, especially as you are a longstanding associate and friend” of either Mr Gray or his associate.
- [5] Most of the complainants were issued with a “certificate of investment” after depositing their funds and many also received a monthly “statement of investment” for at least some period after their initial deposit. These statements of investment purported to show accumulating “interest” and set out the expiration of the term of the agreement. In addition to the monthly statements, Mr Gray as well as his associate spoke positively about the “investments” and encouraged the “investors” to make additional deposits. Some complainants were also encouraged to “roll over” their investments for greater returns and most were given a raft of manufactured excuses when funds were not repaid when requested.
- [6] Mr Gray was later dealt with in the District Court on the basis that he had no intention of advancing any of the money obtained from the complainants as “bridging loans”. It was expressly admitted that none of the money was applied for that purpose, that no interest accrued in any of the ways represented by him to the complainants and that the source of any money that was repaid was money deposited by other complainants.
- [7] Although a significant proportion of the funds taken by Mr Gray or his associate were used to repay complainants, the balance “allowed him to maintain his lifestyle”. Indeed, he benefited substantially from the overall fraud. For example, a financial analysis of

¹ Mr Gray (and his associate) told the “investors” that their funds would be applied to “short-term bridging loans” to real estate developers or other companies.

the distribution of proceeds from the account of one of his companies revealed that over \$1.4 million was paid to Mr Gray between February 2009 and October 2017 via transfers to members of his family with significantly greater sums withdrawn in cash and by cheque or electronic transfer.

- [8] Otherwise, it will be seen that the conduct constituting Charge 1 commenced at the end of the period during which Mr Gray held an unrestricted principal practising certificate from the Queensland Law Society (30 June 2009). It also pre-dated the period during which he held a practising certificate from the Bar Association of Queensland (20 February 2012 to 30 June 2016), continued throughout that period and persisted afterwards (until 25 May 2017). On the hearing of the application, Mr Gray submitted that the relevant transactions took place outside the scope of his legal practice:

“The transactions ... actually commenced at a time when I was in legal practice, but at a time when I was not actually practising, if I can make that distinction. I was running legal practices, but not doing anything at the front-line. But it extended – the fund that existed ... started when I was still practising as a solicitor. Then I became a barrister and the fund continued.”

- [9] Be that as it may, the position so far as the losses occasioned to the complainants for Charge 1 are concerned appears to be that no claim could be made on the Legal Practitioners' Fidelity Guarantee Fund established under s 359 LPA because the particular default relates to financial services or investments: s 373. Of course, no claim could be made on the Fund in any event for any default when Mr Gray practised as a barrister: s 357. In the result, the complainants have been left out of pocket to a combined extent of \$12.5 million with no avenue of recourse.

Charge 2

- [10] In contrast to Charge 1, the conduct alleged to constitute Charge 2 occurred when Mr Gray was in practice as a solicitor.
- [11] In October 2015, he was acting for a client when judgment was entered against that client in favour of an insurance company. At Mr Gray's suggestion, the client transferred \$150,000 in January 2016 to one of Mr Gray's companies on the understanding that Mr Gray needed that sum to attend a meeting with the insurer to attempt settlement of the judgment debt. However, no such meeting ever took place.
- [12] Between February and August 2016, the client followed up Mr Gray on several occasions but, when he did, Mr Gray gave him “general assurances” to the effect that he was “trying to achieve the outcome requested” and that he was “almost there now”. In March 2018, the client engaged another lawyer to investigate the status of the “settlement negotiations”. It was then discovered that Mr Gray had never met with the insurer.
- [13] Mr Gray was dealt with in the District Court on the basis that he did not consult with the insurer and instead intended to retain the \$150,000 provided by his client for his own purposes and not for the purpose agreed with the client.

The convictions

- [14] In February 2017, Mr Gray left the country. He was apprehended in New Zealand in January 2019 and extradited to Queensland two months later where he was charged with a number of offences and remanded in custody.
- [15] On 30 November 2021, an indictment was presented in the District Court at Brisbane against Mr Gray and his associate. It alleged three counts of fraud to the value of \$30,000 or more,² although, as it turned out, one of those counts (count 1) was not proceeded with. Also, although Mr Gray refused to participate in a record of interview with police on his arrest, he did indicate a willingness to plead guilty at an early stage in the committal proceedings and this had the effect of narrowing the focus of the investigation and saving considerable resources of the State.
- [16] On 29 April 2022, Mr Gray pleaded guilty to counts 2 and 3 on the indictment. These counts directly correspond with the disciplinary charges because the conduct constituting counts 2 and 3 is relied on by the Commissioner to constitute Charge 1 and Charge 2 respectively.
- [17] When handing down sentence, his Honour Judge Byrne QC rightly described Mr Gray's conduct as "disgraceful" and, later, as involving a "high level of criminality". His Honour observed that the offending involved breaches of trust at both a personal and professional level, that the fraud was sophisticated and that it was maintained for a long period of time (just under eight years).
- [18] On count 2, Mr Gray was sentenced to imprisonment for ten years and six months and, on count 3, to imprisonment for two years. Those terms were ordered to be served concurrently. Pre-sentence custody of 1,192 days was declared to be time served and 22 July 2022 was set as the date on which Mr Gray could apply for parole. It was therefore ordered that Mr Gray be eligible for release on parole after he had served three years and six months of his effective head sentence of ten years and six months.
- [19] Mr Gray was subsequently released on parole. The fulltime expiry date of his sentence is 22 July 2029.

This application

- [20] Consistent with the approach taken in the criminal proceedings, Mr Gray admitted the conduct constituting both charges before the Tribunal. Further, he did not dispute that it amounted to professional misconduct (as opposed to unsatisfactory professional conduct). Indeed, Mr Gray went so far as to concede that "ordinarily, striking [him] off the roll would be a *fait accompli*". However, he submitted that it would be better to leave him with a limited right to practise on a *pro bono* basis.
- [21] Before dealing with that extraordinary submission, it is necessary to make some brief observations.
- [22] In order for there to be jurisdiction to make a disciplinary order under s 456 LPA, the Tribunal must first be satisfied that the practitioner engaged in unsatisfactory professional conduct or professional misconduct. That requires a consideration of the

² See *Criminal Code* (Qld), ss 408C(1)(e) and 408C(2)(d).

proven conduct in light of the statutory definitions of those expressions in ss 418 and 419 LPA respectively. Of relevance here is s 419(1)(b) LPA. It is in these terms:

“(1) Professional misconduct includes –

(a) ...

(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.”

- [23] When considering whether an Australian legal practitioner is a fit and proper person to engage in legal practice, regard may be had to the same suitability matters as would be considered if the practitioner were an applicant for admission to the legal profession or for the grant or renewal of a local practising certificate: s 419(2) LPA. By s 9(1) LPA, those suitability matters include whether the person has been convicted of an offence in Australia and, if so, the nature of the offence, how long ago the offence was committed and the person’s age when the offence was committed.³ In addition, a finding of professional misconduct must be founded on an assessment of the nature and seriousness of the conduct judged without reference to subsequent events including the practitioner’s subsequent rehabilitation or reformation of character.⁴ Subsequent events such as those will, however, be relevant when deciding the appropriate disciplinary order if a disciplinary finding is made.⁵
- [24] It is also important to keep in mind that it is necessary in most cases to look behind the conviction for an offence in order to consider what Fullagar J described in *Ziems v The Prothonotary of the Supreme Court of New South Wales* as the “real facts of the case”.⁶ It is only when that exercise is undertaken that a court or tribunal may properly assess the conduct underlying the conviction and then decide how, if at all, such conduct bears on an overall assessment of the person’s fitness to practise as a lawyer.⁷
- [25] Those observations having been made, there can be no doubt that the conduct relied on to prove Charge 1 and Charge 2 (and admitted by Mr Gray) amounts to professional misconduct. He used his position as a legal practitioner to perpetrate an elaborate fraud over many years causing enormous loss to those innocent members of the community who had the misfortune to be drawn in by him. He was aged 43 to 53 at the time of the offences and had been in and out of legal practice for over two decades. Over a long period he falsely represented to each of the complainants the purpose for which deposited funds would be applied. At the time when he received their funds, Mr Gray had no intention of applying them for the purpose represented. He then engaged in

³ Also, s 420 (i)(c) LPA when read with the definition of “serious offence” in Schedule 2 to the Act has the effect of providing that a conviction for an indictable offence or an offence involving dishonesty is capable of constituting unsatisfactory professional conduct or professional misconduct.

⁴ *Legal Services Commissioner v Shand* [2018] QCA 66, [20].

⁵ *Legal Services Board v McGrath* (No 2) (2010) 29 VR 325, [12]; *In the matter of an application for admission as a legal practitioner by MCF* [2015] QCA 154, [10].

⁶ *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, 288.

⁷ *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253, 268; *In the matter of an application for admission as a legal practitioner by MCF* [2015] QCA 154, [8]; *In the matter of an application by GBK for admission to the Legal Profession* [2022] QCA 129, [22].

further deception by creating the illusion that the funds had been properly invested and were generating interest from legitimate sources when they were not. He encouraged a number of the complainants to roll over their deposits and/or deposit even greater sums in the scheme and advanced false explanations for why funds were not repaid when requested. In short, the nature and seriousness of his offending would amply justify a finding that he is unfit to engage in legal practice within the meaning of s 419(1)(b) LPA.

[26] Turning to sanction, it is well-established that disciplinary penalties are not imposed as punishment; they are imposed for the protection of the community. Accordingly, in determining what order the Tribunal might now make, regard should primarily be had to that purpose⁸ as well as the maintenance of proper professional standards.⁹ Importantly, though, the question of Mr Gray’s fitness to remain a solicitor is to be ascertained as at the date of the hearing rather than at the date of the conduct the subject of the charges.¹⁰

[27] Furthermore, an order recommending the removal of the name of a practitioner from the local roll should only be made when the probability is that the practitioner is permanently unfit to practise.¹¹ This test of “probable permanent unfitness” is “a way of identifying that the character of the practitioner is so indelibly marked by the misconduct that he cannot be regarded as a fit and proper person to be upon the roll”.¹² As to this, the following observations made by Thomas JA (with whom McMurdo P and White J agreed) in *Barristers’ Board v Darveniza* are in this case apposite:

“Generally speaking the quality most likely to result in striking off is conduct which undermines the trustworthiness of the practitioner, or which suggests a lack of integrity or that the practitioner cannot be trusted to deal fairly within the system in which he or she practises.”¹³

[28] Unsurprisingly, the Commissioner submitted that the only appropriate order was a recommendation that Mr Gray’s name be removed from the local roll of practitioners.

[29] Mr Gray on the other hand, although accepting that the usual disciplinary order for his admitted conduct would be “striking off”, submitted in writing that he should be allowed to continue to practise as a lawyer on a restricted basis because this would “benefit others and the profession by providing a useful and much needed service, encouraging co-operation, and making good”. In oral submissions he explained that he was seeking an “opportunity ... preferably as counsel, to advocate in the community legal service area, not for profit, in a restricted sense, because [he believes] that would best serve the interests of the public and the profession”. He suggested that such restrictions could continue until the end of his parole (22 July 2029).

[30] In support of that submission, Mr Gray asserted that his “experience” since being apprehended had “improved [him] and motivated [him] to help others”. He swore in an

⁸ *New South Wales Bar Association v Evatt* (1968) 117 CLR 177, 183.

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

¹⁰ *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253.

¹¹ *Prothonotary of the Supreme Court of New South Wales v P* [2003] NSWCA 320; *Watts v Legal Services Commissioner* [2016] QCA 224, [46].

¹² *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66, [57].

¹³ *Barristers’ Board v Darveniza* [2000] QCA 253, [33].

affidavit that he expected that he “could be a much better criminal lawyer now with the benefit of this experience”. He pointed to voluntary work he performed in custody and since being released for the benefit of other prisoners and placed evidence before the Tribunal to verify what he had done and offered to do in that regard. He emphasised his existing qualifications, including what he described as “honours in psychology”, as well as research he was assisting in the area of rehabilitation together with his provisional admission by an institution in Switzerland to study for a doctorate in psychology. He maintained that he expected to work for at least another 25 years and submitted that, in that time, “much good work can be done, including service to the law and the profession and achieving redemption”. Lastly, he advanced a report under the hand of his treating psychologist in which she expressed the opinion that Mr Gray had developed “considerable insight into his own offending and what he might do to make amends” and predicted that he would “adhere strictly to any conditions set for him to allow him to maintain his ability to lawfully perform legal work, solely as a community service provider and to advocate on behalf of those in need”. She added that Mr Gray “has developed excellent insight into his past offending and has demonstrated good judgement and moral reasoning in the time [she has] been working with” him (since 2021).

- [31] It is difficult to place much weight on the psychologist’s opinions. They are premised in substantial part on a finding that Mr Gray has an appropriate degree of insight into the nature of his offending. In the Tribunal’s view, he does not. In the first place, the proposition Mr Gray advanced to the effect that it might be open to the Tribunal to allow him to continue to hold himself out as a legal practitioner after such a demonstration of entrenched dishonesty is deeply concerning. Second, despite all that has gone on, Mr Gray continues with attempts to minimise the seriousness of his offending. For example, in his sworn affidavit, Mr Gray deposed that his offending was not motivated for “personal reward”. He continued:

“Despite the investment scheme which went horribly wrong, I was actively engaged throughout these many years in legal practice often without reward, had a social enterprise element within my practice for pro bono work, conducted legal aid matters, performed administrative work and advocacy for the marginalized, and solved problems for others who needed my help.”

- [32] Any notion that Mr Gray’s deceit was motivated by anything other than greed is as absurd as his description of the Ponzi scheme as an “investment scheme which went horribly wrong”. That he is prepared to swear to these things not only establishes an absence of any proper insight, it evidences how readily he is prepared to resort to deception to suit his own purposes.
- [33] The Tribunal does not overlook that Mr Gray has no prior disciplinary record, that he cooperated in the investigation of the charges, agreed the facts and accepted both the proper characterisation of his conduct and the likely sanction for the purpose of this proceeding. But those features hardly register in the balance when proper regard is had to the enduring harm he caused to the victims of his predations and the reputation of the profession. Even more to the point, when one looks behind the convictions to the true facts of the case, Mr Gray’s overall conduct was revealing of defects of character

that are simply incompatible with fitness to practise as a lawyer.¹⁴ Honesty and integrity are of course qualities that form the bedrock of any person's fitness to engage in legal practice,¹⁵ but Mr Gray has shown himself to be fundamentally dishonest and devoid of any integrity.

- [34] For these reasons, the Tribunal is satisfied that Mr Gray is permanently unfit to practise. Nothing less than a recommendation that Mr Gray's name be removed from the roll will be sufficient to protect the community and the reputation of the profession.

Orders

- [35] There will be a finding of professional misconduct in respect of each of the charges along with a recommendation that Mr Gray's name be removed from the roll of legal practitioners in Queensland.
- [36] There being no exceptional circumstances within the meaning of s 462(1) LPA, Mr Gray will also be ordered to pay the Commissioner's standard costs of the application, with such costs to be assessed as if this were a proceeding before the Supreme Court of Queensland.

¹⁴ *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, 298; *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253, 267-268.

¹⁵ See to similar effect, *New South Wales Bar Association v Cummins* (2001) 52 NSWLR 279, [19]-[20]; *Legal Services Commissioner v Williams* [2005] LPT 6, 4-5.