QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Legal Services Commissioner v Meehan* [2019] QCAT 17
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **TIMOTHY VINCENT CHARLES MEEHAN** (respondent)
APPLICATION NO:	035 of 2018
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	18 February 2019
HEARING DATE:	30 August 2018
HEARD AT:	Brisbane
DECISION OF:	**Justice Daubney, President** Assisted by: **Mr Geoffrey Sinclair, Legal Panel Member** **Ms Patrice McKay, Lay Panel Member**
ORDERS:	**1. It is recommended that the name of the respondent, Timothy Vincent Charles Meehan, be removed from the roll of legal practitioners in Queensland;** **2. The respondent shall pay the applicant's costs of and incidental to this disciplinary application, such costs to be 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 – where respondent engaged in a fraudulent scheme for the receipt of cash fees – where the respondent procured fraudulently false records and provided these in response to notices to produce issued by the Crime and Corruption Commission Queensland – where respondent expressly admitted each and every particular of all charges – where respondent engaged in dishonest and disreputable conduct – where the respondent was convicted of a serious offence – where the Tribunal exercises its discretion under s 456(1) of the *Legal Profession Act* 2007 (Qld) to make any orders it

thinks fit – whether the name of the respondent should be recommended to be removed from the roll of solicitors

Australian Solicitors Conduct Rules, r 5
Legal Profession Act 2007 (Qld) s 418, s 419, s 452, s 456, s 462

Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand [2018] QCA 66
Attorney-General v Bax [1999] 2 Qd R 9; [1998] QCA 089
Barristers' Board v Darveniza (2000) [2000] QCA 253; 112 A Crim R 438
Legal Practitioners Conduct Board v Boylen [2003] SASC 241
Legal Services Commissioner v Madden (No 2) [2009] 1 Qd R 149; [2008] QCA 301
Legal Services Commissioner v McDonald [2018] QCAT 82
New South Wales Bar Association v Cummins (2001) 52 NSWLR 279; [2001] NSWCA 284
New South Wales Bar Association v Sahade [2007] NSWCA 145
Prothonotary of the Supreme Court of New South Wales v P [2003] NSWCA 320
Council of the Law Society of Queensland Inc v Whitman [2003] QCA 438
Re Mahoney Unreported, Supreme Court of South Australia, No 1616 of 1996, 11 December 1996
Watts v Legal Services Commissioner [2016] QCA 224
Ziems v Prothonotary of the Supreme Court of New South Wales (1957) 97 CLR 279; [1957] HCA 46

APPEARANCES & REPRESENTATION:

Applicant:	M Nicolson of counsel, instructed by Legal Services Commissioner
Respondent:	D W Marks QC, with R Gordon, of counsel, instructed by Moloney MacCallum AbdelShahied Laywers

REASONS FOR DECISION

[1] On 4 July 2018, the applicant, the Legal Services Commissioner, filed this discipline application against the respondent, Timothy Vincent Charles Meehan, pursuant to

s 452 of the *Legal Profession Act* 2007 ("*LPA*"). The application states and particularises two charges:

- That the respondent had engaged in dishonest and disreputable conduct, and
- That the respondent had been convicted of a serious offence.

[2] The applicant submitted that in each instance the respondent ought be found to have committed professional misconduct, within the meaning of that term in s 419 of the *LPA*, and that the Tribunal should order, pursuant to s 456(2)(a), that it be recommended that the respondent's name be removed from the roll of persons admitted to the legal profession in Queensland.

[3] The respondent, both in correspondence to the applicant and by his counsel in the hearing before this Tribunal, expressly admitted each and every allegation in the discipline application.[1]

[4] The respondent also did not contend that his conduct did not amount to professional conduct.[2]

[5] The only argument before this Tribunal went to the orders which ought be made against the respondent.

The respondent

[6] The respondent was admitted as a solicitor of the Supreme Court of Queensland in 2000, having graduated with degrees in Arts and Law from Griffith University and completed two years of articles of clerkship. In June 2000 he was employed as a solicitor at the firm then known as Ryan & Bosscher. Over the ensuing 16 years, he was employed as a solicitor, salaried partner and then equity partner at Ryan & Bosscher and subsequently at Bosscher Lawyers.

[7] The respondent was born in November 1975. He is divorced and has four children. In an affidavit filed in this discipline proceeding he recounted some detail of his personal and professional background. He said that he grew up in a dysfunctional and fractured family, and his affidavit descended into some detail of his unfortunate personal circumstances. He said, however, that he unequivocally accepted that his criminal offending was not the product of his difficult upbringing.

[8] As will be discussed shortly, the respondent has been imprisoned for the criminal conduct which underpins the present disciplinary charges. In his affidavit, he describes the effect of his conviction and imprisonment on himself, his family and his new partner.

[9] In his affidavit, the respondent frankly described his offending conduct in the following terms[3]:

> "28. Broadly speaking, my criminal conduct involved me encouraging my clients to pay their legal fees in Cash. Only portions of those sums paid in cash were deposited into my firm's trust account. The

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1 Respondent's submissions para 8.
2 Respondent's submissions para 9.
3 Respondent's affidavit affirmed 29 August 2018.

balance of the cash not deposited into the firms trust account was either kept by me or split with other members of the firm.

29. Without going into the specifics of each of the 8 counts (being counts 2-9) on the indictment I was convicted upon, the offending can be reduced to the generality that I, or that I caused, false documents to be produced and sent to the Crime and Corruption Commission Queensland ("**CCC**") in an attempt to hide from the CCC the fact that I, or my law firm, had received cash payments from clients that were the subject of the notices to produce.

30. In doing so I deliberately gave the CCC a false accounting of the legal fees charged to those clients and I accept that such deliberately false information frustrated confiscation proceedings against those clients.

31. Apart from which I am currently imprisoned for I have not committed any other offences and do not otherwise have a criminal history."

[10] The respondent also highlighted his post-offence conduct, saying[4]:

"33. I verily believe that my post offence conduct is highly relevant to the proceedings currently before the Tribunal.

34. On September 16, 2016 I voluntarily attended upon the CCC and made frank admissions to my offending. My attendance upon the CCC investigators was unprompted. Most significantly, there was no investigation at the time of my attendance upon the CCC. My admissions related to matters that the CCC investigators did not know about and could not have known about.

35. My attendance upon the CCC came after I had, on 16 August 2016, voluntarily surrendered to the Queensland Law Society "(**QLS**") my practising certificate. On 15 September 2016, I met with Mr Bill Hourigan of the QLS. In my meeting with Mr Hourigan I detailed specifics of my offending and that of the other participants in the illegal scheme."

[11] After referring in some detail to the sentence which had been imposed on him for the criminal conduct (including particular regard paid by the sentencing judge to certain factors which counted strongly in the respondent's favour in the exercise of the criminal sentencing discretion), the respondent said[5]:

"40. I hope, with the support of my partner, to re-integrate into society on my release from prison. I do not expect this to be easy. I know I must work to restore peoples trust in me.

41. I want to make a useful contribution to society, knowing that my principal experience was as a defence lawyer.

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4 Respondent's affidavit affirmed 29 August 2018.
5 Respondent's affidavit affirmed 29 August 2018.

42. I have suffered the inevitable and public shame entailed by my offending.

43. I am conscious my conduct on my release from prison will be scrutinised by everyone in the profession.

44. I can say that the day I handed my practising certificate to the QLS was the day I took the decision to turn my life around and put dishonesty behind me. I know I will be judged for my actions, and I started with that dealing with QLS, by making admissions to the CCC, and by pleading to the ex officio indictment in the Supreme Court.

45. If I should be allowed to remain on the roll of legal practitioners, I will seek suitable support, and put in place appropriate mentoring, to enable the QLS to have confidence in me returning to practice."

The offending conduct

[12] As already noted, the respondent expressly admitted each and every particular of each charge.

[13] Charge 1, which was that between 1 May 2012 and 17 August 2016 the respondent engaged in dishonest and disreputable conduct, contrary to r 5 of the Australian Solicitors Conduct Rules, comprised two forms of dishonest conduct. The first was engaging in a fraudulent scheme for the receipt of cash fees. The second was the procuring of fraudulently false records and providing those in response to notices produced issued by the Crime and Corruption Commission ("CCC").

[14] In relation to the first tranche of misconduct, the admitted facts are as follows[6]:

"1.2 In late 2011, the legal practice where the respondent was working collapsed due to financial strain and substantial debts.

1.3 On 11 November 2011, a new and incorporated legal practice (**the firm**) was formed with other parties including the respondent.

1.4 The respondent, as a result of debts from the previous firm, caused the respondent to be declared bankrupt from 20 March 2013 which lasted until 19 March 2016.

1.5 During the period of the respondent's bankruptcy, he was exposed to the possibility of the Trustee in Bankruptcy seizing half of any earnings over $70,000.00 per annum. The respondent and another party at the firm decided that they would limit their incomes on paper to the threshold amount and an agreement was reached where the parties, including the respondent, should encourage their clients to pay fees with cash. The cash would be distributed between the respondent and parties subject to the incorporated legal practice, thereby circumventing the Trustees in Bankruptcy and increasing

[6] Application or referral – Disciplinary Proceedings filed 7 February 2018.

their salaries to cover the shortfall in their incomes, defeating to the knowledge of the Trustees in Bankruptcy.

1.6 The respondent was encouraged to seek cash payments from clients and to accept payment of cash without providing an invoice or making a record of transaction (**the scheme**).

1.7 As a result of entering into the scheme, many of the respondent's clients paid the legal fees in cash throughout the period and due to the lack of records, many of the cash payments received cannot be identified or determined.

1.8 The estimated fees received by the respondent were about $200,000.00 in cash fees, at least. The respondent received fees without creating a costs agreement with the client and did not disclose all the fees received from clients to the Trustee in Bankruptcy.

1.9 During the charge period, the respondent received approximately $626,470.00 in cash. On one occasion he received a sum of approximately $150,000.00 on behalf of one client. Trust account records reveal that of the sum received, $200,400.00 was deposited into the firm's Trust account. The difference is approximately $426,000.00 to which the respondent received a split of cash proceeds by other members in the firm. The scheme was also used to avoid the AUSTRAC financial reporting obligations in respect to the sums of money received in the amounts of $10,000.00 or more, as well as avoiding obligations under the bankruptcy legislation as well as income tax obligations.

1.10 Between 19 November 2015 and 20 June 2016, the respondent was responsible for procuring fraudulently false records."

[15] The admitted facts of the second tranche of misconduct can be summarised as follows (in which, as per the particulars of Charge 1, specific individuals are referred anonymously as "X1", "X2" and "X3"):

- On 13 November 2015, the CCC served the respondent's firm with notices to produce for documents relating to payments made by X1 on behalf of X3 and documents relating to X2. Production of these documents was due by 18 November 2015.

- After receiving advice from another person in the firm, the respondent instructed a staff member to draft a false and pre-dated costs agreement for X2 in the amount of $29,700 to reflect the amount of money actually deposited into the firm's trust account, as opposed to the totality of the monies received in cash. Further, the respondent pre-dated another false costs agreement which was created in respect of X3 in the same manner. That document was backdated to 21 August 2015 and quoted fees of $70,000, which was the amount recorded as having been deposited into the firm's trust account.

- On 19 November 2015, these documents were, at the instigation of the respondent, emailed to the CCC.

- On 20 November 2015, the CCC requested provision of all outstanding invoices, trust account disbursements and copies of signed costs agreements relating to X1 and X2.

- On 23 November 2015, the respondent sent an email to the CCC which attached a false memorandum of fees for $79,688 relating to X3, a signed version of a costs agreement for X3 purportedly dated 21 August 2015 which estimated fees of $70,000, a false memorandum of fees for $3,740 in relation to X2 dated 6 November 2015 and a signed version of a costs agreement for X2 purportedly dated 27 October 2015 estimating a fee of $29,700.

- On 27 May 2016, the CCC wrote to the firm asking for confirmation of certain details and, in response, on 20 June 2016 the respondent sent an email to the CCC attaching further false memoranda of fees relating to X1. He also provided a false account which was designed to explain the fees charged and those not charged for previously nominated appearances.

[16] Charge 2 arises out of the respondent's conviction in the Supreme Court of Queensland, on one count of fraud subject to a condition to the value of more than $30,000 and eight counts of fraudulent falsification of records. The respondent pleaded guilty to an ex officio indictment on each of these counts. The sentencing hearing was conducted by Atkinson J on 13 July 2017, and her Honour passed sentence on 14 July 2017. For the reasons given by her Honour in her sentencing remarks, non-publication orders were made in respect of the identities of a number of individuals.

[17] The eight counts of fraudulent falsification of records relate to the documents which are particularised and admitted in the second tranche of Charge 1 of the present discipline application. Her Honour set out details of the respondent's fraud, and said[7]:

> "So in summary, based on your recollection and some independent sources of evidence, you received just over $600,000 in cash over the charged period before distribution of shares to the two other people. On one occasion, you received a sum of approximately $150,000 on behalf of one client, and you recall that there was an agreement for another person to pay $100,000 in cash on behalf of two clients, but at the time your services were terminated at the firm, that sum had not been paid. You do not know if it was paid subsequently. You do not suggest that that is the totality of the clients from whom you received cash over the charged period and therefore do not suggest that that is the totality of cash received by you over the period.
>
> Trust account records reveal that the sum received of $200,000 was deposited into the firm's trust account, although some of those payments into trust appear to predate the receipt of cash from the respective client. The difference is approximately just over $400,000. You also admit that you received your split of cash proceeds received by others in the firm. Accordingly, given the paucity of records, the prosecution is not able to specify precisely how much money was involved, although, on one

[7] Transcript of Proceedings, *R v Timothy Vincent Charles Meehan* (Supreme Court of Queensland, Indictment No 873/2017, 14 July 2017) 4-5.

> estimate, you could have received up to $500,000 in cash, but that is by no means certain and, all I can say is, based on the evidence before me, that it seems to be somewhere in excess of $200,000.
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> You believed, importantly, that a large percentage of the cash you were receiving was tainted properly (sic); that is, that it was, to your belief, the proceeds of crime.
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> You acknowledged that all sums of cash were received subject to a legislative condition imposed by the combined operation of sections 237, 242(1) and 248(1)(a) of the *Legal Profession Act* 2007, that sums of cash were to be paid into the firm's trust account upon receipt. It is important, particularly for people who work in criminal law firms, that cash moneys received must go into the trust account. It is a protection for the community and for the lawyers that moneys received in cash go into a solicitor's trust account rather than being distributed in the way in which it was in this case.
>
> You further acknowledge that the scheme was used to avoid AUSTRAC financial reporting obligations in respect of those sums of money received in amounts of $10,000 or more, as well as avoiding obligations under the bankruptcy legislation, as well as income tax obligations."

[18] It is correct, as was emphasised by counsel for the respondent in the course of the present hearing, that her Honour expressly took into account the fact that the respondent's conduct had not resulted in any loss to any clients. Atkinson J said[8]:

> "Another fact which I take into account, because it makes it really quite different from all the comparable cases to which I have been referred, is that there was no defalcation against any of your clients. Each of your clients received the services they paid for. They received the services of a competent and hard-working solicitor of prior good character."

[19] Of particular note for present purposes, however, is the fact that, in the course of sentencing submissions before Atkinson J, Queen's Counsel who appeared for the respondent in that hearing made express concessions to the effect that the inevitable consequence of the respondent's criminal conduct was that he would be struck off. Indeed, it was submitted that this was a factor which ought be taken into account by the sentencing judge, because the respondent would need to seek employment in areas for which he had neither skills nor qualification. The respondent's counsel submitted[9]:

> As my learned friend indicated, he has handed in his practising certificate and, as one would expect, given the nature of the offences, his prospects of ever practising as a lawyer again are, in my submission, non-existent. [The prosecutor] makes the point that this is a natural consequence of his offending. And that's accepted as correct. It is not only natural but appropriate to the circumstances.

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8 Transcript of Proceedings, *R v Timothy Vincent Charles Meehan* (Supreme Court of Queensland, Indictment No 873/2017, 14 July 2017) 9.

9 Transcript of Proceedings, *R v Timothy Vincent Charles Meehan* (Supreme Court of Queensland, Indictment No 873/2017, 13 July 2017) 1-26.

> However, what it does mean is that it's part of the punishment which he suffers for that which he has done. He will – as he will inevitably go to prison, he will come out of prison as a man of somewhat – a roundabout his mid-40s or a little younger with no relevant qualification and no relevant experience for any job other than that from which he is qualified. He will have to rebuild a working life and for which he has neither skills nor qualification. That will mean a significant effort on his part and, in my submission, although it's an appropriate outcome, it also is part of his punishment."

[20] In her sentencing remarks, Atkinson J said[10]:

> "However, your convictions for these offences make it, as your counsel submitted, most unlikely that you would ever be able to work as a legal practitioner again in spite of your qualifications and your experience."

[21] After setting out other details relating to the respondent's pre-sentence custody, her Honour referred to the prosecution submission, which she accepted, that an overwhelming feature of the respondent's criminal conduct was that he was, at all relevant times, a legal practitioner "and it was because of that privileged position that [he was] able to carry out the scheme that forms count 1 and then the separate, but related offences found in counts 2 to 9 inclusive".[11] Her Honour continued[12]:

> "There is an expectation that all citizens will obey the law. However, as a legal practitioner, you have specifically sworn or affirmed that you will, as it says in the oath or affirmation of office which you took in this court when you became a legal practitioner – that you will truly and honestly conduct yourself in the practice of a lawyer of this court according to law and to the best of your knowledge and ability. You have grossly breached that solemn promise that you made.
>
> A legal practitioner is afforded a number of privileges, including a favourable presumption concerning honesty and integrity in your professional conduct. Members of the public, other legal practitioners and the court are entitled to rely on the honesty and integrity of legal practitioners, no less is expected of any legal practitioner, and it is a presumption that lies at the heart of the effective and efficient administration of justice, both civil justice and, in particular, criminal justice. Unfortunately, your conduct has breached that important presumption of honesty and integrity. That means that your conduct is regarded more seriously than conduct by someone who is not a legal practitioner."

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[10] Transcript of Proceedings, *R v Timothy Vincent Charles Meehan* (Supreme Court of Queensland, Indictment No 873/2017, 14 July 2017) 8.

[11] Transcript of Proceedings, *R v Timothy Vincent Charles Meehan* (Supreme Court of Queensland, Indictment No 873/2017, 14 July 2017) 8.

[12] Transcript of Proceedings, *R v Timothy Vincent Charles Meehan* (Supreme Court of Queensland, Indictment No 873/2017, 14 July 2017) 8.

[22] Her Honour then expressly referred, in consideration of mitigation of sentence, to the impact on the respondent's future working life, saying[13]:

> "As your counsel submitted, it is a consequence of your conviction that it's likely you will be unable ever again to obtain employment as a legal practitioner. The prosecution has submitted that the mitigation is moderated by the fact that you must have anticipated that if this scheme was discovered, it would be the inevitable consequence of the offending."

[23] Further, when considering an appropriate structure for the sentence, Atkinson J said[14]:

> "As well as the loss served to the shareholders of the practice, the taxation authorities, the creditors under your bankruptcy, as the prosecution submits, and as I have already adverted to, the consequences of this offending are more widespread. Your conduct has brought you into disrepute, but it also brings the legal profession into disrepute because it suggests that this behaviour is acceptable in the legal profession, which it most certainly is not. It serves to feed a public perception that lawyers are greedy and self-serving whereas, by ethical obligations and statute and their obligation to the legal profession and the court, they must not be."

[24] Her Honour imposed a head sentence of five and a half years' imprisonment, with parole eligibility after serving 18 months' imprisonment. Her Honour also declared that the time spent in pre-sentence custody be deemed time served under the sentence.

Characterisation of the conduct

[25] The respondent did not contest findings that the conduct referred to in each of counts 1 and 2 constituted professional misconduct.

[26] In that regard, the relevant definitions in the *LPA* are as follows:

> "**418 Meaning of unsatisfactory professional conduct**
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> "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.
>
> **419 Meaning of professional misconduct**
>
> (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 keep a reasonable standard of competence and diligence; and

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[13] Transcript of Proceedings, *R v Timothy Vincent Charles Meehan* (Supreme Court of Queensland, Indictment No 873/2017, 14 July 2017) 9.

[14] Transcript of Proceedings, *R v Timothy Vincent Charles Meehan* (Supreme Court of Queensland, Indictment No 873/2017, 14 July 2017) 10.

> (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.
>
> (2) For finding that an Australian legal practitioner is not a fit and proper person to engage in legal practice as mentioned in *subsection (1)* , regard may be had to the suitability matters that would be considered if the practitioner were an applicant for admission to the legal profession under this Act or for the grant or renewal of a local practising certificate."

[27] There can be no doubt, on the admitted facts, that the conduct engaged in by the respondent not only fell short of the standards of competence and diligence that the public could expect of a reasonably competent practitioner, it involved both substantial and consistent failures to keep reasonable standards of competence and diligence.

[28] It is uncontroversial that the conduct is to be characterised as at the date the conduct was committed. Again, on the admitted facts, there can be no doubt that this conduct would justify a finding that the respondent was not a fit and proper person to engage in legal practice. To the extent that one would need to have regard to "suitability matters" for the purposes of s 419(2), it is sufficient to note that one of the suitability matters enumerated in s 9 of the *LPA* is whether the person has been convicted of an offence and if so the nature of the offence, the timing of the offence, and the person's age when the offence was committed.[15]

[29] It is therefore appropriate for the Tribunal to make formal findings that, in respect of each of charges 1 and 2, the respondent engaged in professional misconduct.

Appropriate orders

[30] Having made findings that the respondent engaged in professional misconduct, the discretion of the Tribunal is enlivened under s 456(1) of the LPA to "make any order it thinks fit". Without constraining the Tribunal's discretion, the following subsections of s 456 then enumerate a wide variety of specific orders which the Tribunal is empowered to make.

[31] In approaching the exercise of this discretion, it is appropriate to recall the well-established proposition that the purpose for imposing orders in the legal professional disciplinary jurisdiction is to protect the public, not to punish the practitioner. In the present case, the respondent was punished for his criminal conduct, which is co-extensive with the professional misconduct, by being sentenced to five and a half years' imprisonment (albeit with the possibility of serving part of that sentence in the community on parole). 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 and the maintenance of proper professional standards".[16]

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[15] *LPA*, s 9(1)(d).

[16] *Legal Services Commissioner v Madden (No 2)* [2009] 1 Qd R 149; [2008] QCA 301 at [122].

[32] The applicant has contended that the only appropriate sanction in the present case is an order recommending that the name of the respondent be removed from the roll, arguing[17]:

> "The respondent's conduct is in the worst category of offending for a solicitor. He was involved in a scheme that was designed to defeat the trustee in bankruptcy, AUSTRAC financial reporting obligations and income tax obligations. It is aggravated by the conduct when an external body sought information in relation to an investigation, the respondent attempted to cover up the conduct by producing and submitting false documents to hide the trail from a crime fighting body."

[33] Despite the concessions made before the learned sentencing judge, and her Honour having taken those matters into account in the exercise of the criminal sentencing discretion, counsel who appeared before this Tribunal (different counsel to that briefed in the criminal matter) were instructed to advance a quite different position, namely that the respondent's legal career should not be ended, and that his name ought not be struck from the roll.

[34] In advancing this present case, counsel for the respondent pointed to:

(a) the respondent's personal and work histories;

(b) the fact that he had surrendered his practising certificate on 16 August 2016 and that the practising certificate was cancelled the following day;

(c) the respondent's pleas of guilty to an ex officio indictment, and the sentence imposed;

(d) the respondent's significant and ongoing co-operation with the authorities;

(e) the fact that none of his clients suffered any harm.

[35] These, it is noted, are all matters to which the learned sentencing judge also had regard when fixing the appropriate criminal penalty.

[36] Counsel for the respondent also relied on:

(a) the fact that the respondent "turned himself in" which was said to be indicative of remorse;

(b) the fact that it is unlikely that the respondent's actions would have been uncovered by the police but for his attendance on the CCC;[18]

(c) the fact of the respondent's imprisonment and the work, including tutoring other prisoners, undertaken during his incarceration.

[37] Ordering the removal of a practitioner's name from the roll is a matter of utmost gravity, because striking off is "reserved for the very serious cases where the character

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[17] Applicant's submissions para 31.

[18] This having been taken into account by the sentencing judge in accordance with the principles stated in *AB v The Queen* (1999) 198 CLR 111.

and conduct of the practitioner is seen to be inconsistent with the privileges of further practice".[19]

[38] In *Prothonotary of the Supreme Court of New South Wales v P*[20], the New South Wales Court of Appeal considered an application to remove from the roll a solicitor who had pleaded guilty to importing a trafficable quantity of cocaine and served a sentence of imprisonment. The Court was, therefore, dealing with a case in which the practitioner had engaged in conduct characterised as professional misconduct which occurred outside the course of legal practice. Young CJ in Eq, with whom Meagher and Tobias JJA agreed, noted a series of principles derived from the authorities which are applicable in such a case. This list of propositions has been referred to with approval in this State[21], and it is useful to recount them here[22]:

> "16 However, the Court does not decide this type of case by some draconian rule of thumb, but looks closely at the facts of each individual case. The decision in this case might be devastating for the opponent; however, whether this be so or not the Court must keep its eye firmly on the basic feature of the case, which is the protection of the community and the profession should this person continue to be on the Roll of Legal Practitioners.
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> 17. A series of propositions as to the law clearly have appeared from the cases and I will briefly summarise them.
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> (1) The onus is on the claimant to show that the opponent is not a fit and proper person. It is a civil onus: **Re Evatt; Ex parte NSW Bar Association** (1967) 67 SR (NSW) 236. However **Briginshaw v Briginshaw** (1939) 60 CLR 336, 362 shows the particular standard that must be applied when working out the civil onus of proof.
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> (2) An order striking off the Roll should only be made when the probability is that the solicitor is permanently unfit to practice: **Prothonotary v Richard** (NSWCA 31.7.1987 per McHugh JA) and see **NSW Bar Association v Maddocks** (NSWCA 23.8.1988).
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> (3) The fact that the opponent has a conviction for a serious offence is not necessarily sufficient reason for an order striking that person off the Roll; see **Ziems v Prothonotary** (1957) 97CLR 279, 283.
>
> (4) The fact of conviction and imprisonment is, however, far from irrelevant and may be regarded as carrying a degree of disgrace itself. See **Ziems** case at 288.
>
> (5) The Court needs to consider the conduct involved in the conviction and see whether it is of such personally disgraceful

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19 *Barristers' Board v Darveniza* [2000] QCA 253 at [38].
20 [2003] NSWCA 320.
21 See, for example, *Jensen v Legal Services Commissioner* [2017] QCA 189.
22 *Prothonotary of the Supreme Court of New South Wales v P* [2003] NSWCA 320.

character that the opponent should not remain a member of an honourable profession: **Re Weare** [1893] 2 QB 439, 446; **Barristers' Board v Darveniza** (2000) 112 A Crim R 438 (QCA).

(6) The fact that the opponent pleaded guilty to the charge will usually be counted in her favour: **NSW Bar Association v Maddocks**. Though we do not assume that all pleas of guilty necessarily show remorse, it is significant that in the instant case Keleman DCJ said that it did.

(7) 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 practice. There may not even have been any criminal conviction with respect to that conduct. This is particularly so where the conduct over a long period shows systematic non-compliance with legal and civic obligations: **NSW Bar Association v Cummins** (2001) 52 NSWLR 279, 289; **NSW Bar Association v Somosi** (2001) 48 ATR 562.

(8) The concept of good fame and character has a twofold aspect. Fame refers to a person's reputation in the relevant community, character refers to the person's actual nature: **McBride v Walton** (NSWCA 15.7.1994 per Kirby P); **Clearihan v Registrar of Motor Vehicle Dealers** (1994) 117 FLR 455, 459.

(9) The attitude of the professional association is that the application is of considerable significance.

(10) The question is present fitness, not fitness as at the time of the crime: **Prothonotary v Del Castillo** [2001] NSWCA 75 at para 71."

[39] Having regard to the seriousness of a striking off order, it is settled law in this State that 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 practice.[23]

[40] But the application of that test is not without nuance, nor does it occur in a vacuum. So much was made clear in *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand*[24] in which McMurdo JA, with whom Morrison JA and Brown J agreed, said:

> "[52] The discretion conferred by s 456 is a broad one and, as noted by the Tribunal, not subject to any express constraint. It is to be exercised for the purposes which are established by the authorities. It is well established that the purpose is not to punish the respondent, but to protect the public.

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[23] *Watts v Legal Services Commissioner* [2016] QCA 224 at [46].
[24] [2018] QCA 66.

[53] The protection of the public, of course, is a purpose also served by an order which affects an existing or future practising certificate. By an order affecting a practising certificate, the public is immediately protected from the risks to which those who would encounter an unfit person would be exposed.

[54] However the removal of the name of an unfit practitioner from the Roll serves the interest of the public in more extensive ways. In *Attorney-General v Bax*,[25] Pincus JA said that the remedies of suspension or striking off are for the protection of the public and of the profession's standing and that further, there is also a deterrent element. And in *De Pardo v Legal Practitioners Complaints Committee*,[26] French J (as he then was and with whom the other Members of the Full Federal Court agreed) said that:

> '[The protection of the public] extends beyond protection against further default by the particular practitioner to protection against similar defaults by other practitioners.'

[55] The reference by Pincus JA in *Bax* to the protection of the profession's standing is important. 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.

[56] Consequently, the respondent's disavowal of any intention to engage in legal practice was not the end of the matter. If he was not a fit and proper person to engage in legal practice, 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.

[57] In this way, the test of probable permanent unfitness is, as the Attorney-General submits, 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."

[41] In *Barristers' Board v Darveniza*[27], Thomas JA, with whom McMurdo P and White J agreed, said:

> "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 which he or she practises."

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[25] [1999] 2 Qd R 9 at 22 ("*Bax*").
[26] [2000] FCA 335 at [42]; (2000) 170 ALR 709 at 724 [42].
[27] [2000] QCA 253 at [33].

[42] The reason for the primacy of honesty as a necessary and intrinsic virtue of legal practice was explained in *New South Wales Bar Association v Cummins*[28] in which Spigelman CJ, giving the judgment of the Court, said:

> "19 Honesty and integrity are important in many spheres of conduct. However, in some spheres significant public interests are involved in the conduct of particular persons and the state regulates and restricts those who are entitled to engage in those activities and acquire the privileges associated with a particular status. The legal profession has long required the highest standards of integrity.
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> 20 There are four interrelated interests involved. Clients must feel secure in confiding their secrets and entrusting their most personal affairs to lawyers. Fellow practitioners must be able to depend implicitly on the word and the behaviour of their colleagues. The judiciary must have confidence in those who appear before the courts. The public must have confidence in the legal profession by reason of the central role the profession plays in the administration of justice. Many aspects of the administration of justice depend on the trust by the judiciary and/or the public in the performance of professional obligations by professional people."

[43] An example of the wider interests to be protected by adherence to honesty in the course of legal practice is found in *Attorney-General v Bax*[29], which was a case in which a solicitor had backdated documents and lied to creditors about that in order to assist his client. McPherson JA said[30]:

> "In the present case the solicitor's action in backdating documents was compounded by his announcement at the meeting of creditors in May 1994 that the bill of mortgage was executed in (or 'on') March 1993. The spectacle of a solicitor, who was chairman of the meeting, falsely asserting a date for the execution of an instrument is one that is not likely to be readily forgotten by the large number of business people who were present on that occasion. It conveys a very poor image of the honesty and integrity of solicitors and so tends to bring the whole profession and its standards into disrepute. It cannot in my opinion be excused by resorting to the explanation that the solicitor in this appeal was young and, it was said, inexperienced. In a matter like this, and perhaps in most others, basic honesty is not a quality that is ordinarily acquired through experience, or by lengthy practice of trying one's best to be honest."

[44] The respondent pointed to a variety of previous disciplinary decisions, whilst properly conceding that sanctions imposed in previous matters are not binding on this Tribunal and that there is no rule that later cases religiously follow earlier ones. This is consistent with the observation by de Jersey CJ in *Council of the Law Society of Queensland Inc v Whitman*[31] that the issue of fitness to practice "is not necessarily to

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28 (2001) 52 NSWLR 279.
29 [1999] 2 Qd R 9.
30 At [13].
31 [2003] QCA 438 at [38].

be determined by a close comparison of circumstances from case to case". It is necessary, however, to recount the cases to which the respondent referred:

(a) *Re Mahoney* (a practitioner)[32] in which some $300,000 for professional fees were banked into the practitioner's private account to avoid tax. There was, however, no criminal charge or conviction. The majority in that case held that a three year suspension was sufficient on the basis that a striking off order would be too draconian in all the circumstances.

(b) *Ziems v Prothonotary of the Supreme Court of New South Wales*[33], which was a case in which the High Court was called on to consider the appropriateness of striking off a barrister who had been convicted of manslaughter. The barrister, who was driving while affected by alcohol, struck and killed a bicyclist. This serious offence, clearly enough, had not been committed in the course of or as part of the practitioner's practice. A majority of the High Court overturned a decision to strike the barrister's name from the Roll, and instead ordered that he be suspended. The reasons for arriving at that conclusion, however, require some closer scrutiny, particularly by reference to the well-known and oft-cited judgment of Kitto J. In his reasons, Kitto J confirmed the fundamental proposition that, where striking off is sought, the "issue is whether the appellant is shown not to be a fit and proper person to be a member of the [legal profession]".[34] The barrister in that case had, however, been disbarred not because of the particular conduct which underlay his conviction, but because of the conviction itself. The Supreme Court had refused to go behind the fact of the conviction, because the barrister had not been called upon to show cause in respect of anything else. As Kitto J noted[35], if the issue had been whether the barrister's conduct on the occasion to which the conviction related had in fact been such as to disqualify him from continuing as a member of the profession, that conduct would have had to be proved by admissible evidence. His Honour said that there was no doubt that conviction of an offence was a serious matter, but the reason for regarding it as serious was not a reason which went to the propriety of the barrister continuing as a member of his profession. Kitto J said[36]:

> "The conviction relates to an isolated offence, and, considered by itself as it must be on this appeal, it does not warrant any conclusion as to the man's general behaviour or inherent qualities. True, it is a conviction of a felony; but the fact that as a matter of technical classification it bears so ugly a name, ugly because the most infamous crimes are comprehended by it, ought to be disregarded, less the judgment be coloured and attention diverted from the true nature of the conviction. It is not a conviction of a premeditated crime. It does not indicate a tendency to vice or violence, or any lack of probity. It has neither connection with nor significance for any professional function. Such a conviction is not inconsistent with the previous possession of a deservedly high reputation, and, if the assumption be made that hitherto

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32 Unreported, Supreme Court of South Australia, No 1616 of 1996, 11 December 1996.
33 (1957) 97 CLR 279.
34 At 297-298.
35 At 299.
36 At 299-300.

> the barrister in question has been acceptable in the profession and of a character and conduct satisfying its requirements, I cannot think that, when he has undergone the punishment imposed upon him for the one deplorable lapse of which he has been found guilty, any real difficulty will be felt, by his fellow barristers or by judges, in meeting with him and co-operating with him in the life and work of the Bar."

Those circumstances are quite different from the present case in which the findings of professional misconduct arise not merely from the fact of the respondent's convictions on the criminal charges, but also by the admitted underlying facts which are taken to have been proved by the respondent's admission of all of the particulars of charge 1 which occurred in the course of the respondent's professional practice.

(c) *Legal Services Commissioner v Madden (No 2)*[37] is of little, if any, comparative value for present purposes. In that case, the Court of Appeal set aside findings of dishonesty which had been made below, and imposed a sanction based on admitted professional misconduct arising principally out of mismanagement of the practitioner's trust account.

(d) *Watts v Legal Services Commissioner*[38] arose out of a practitioner's misuse of trust account funds and the creation of false trust account receipts. Money was removed from the solicitor's trust account without authority in order to keep his business afloat, and would be repaid before parties became aware of its removal. There were six charges involving some $192,000 in payments from the trust account without authority, two instances of false receipts involving payments of about $50,000, and three instances where monies paid for professional costs were refunded, totalling $134,400. The Tribunal ordered the practitioner's name be removed from the Roll, but on appeal it was ordered that he be publicly reprimanded and that the issue of any future practising certificate be accompanied by conditions, including that an application by the practitioner for a practising certificate be accompanied by a contemporaneous psychiatric or psychological report expressing an opinion as to the risk of the solicitor engaging in conduct of the kind for which he had been reprimanded. Relevantly, there was before the Court an unchallenged opinion by the solicitor's treating psychologist to the effect that the solicitor's risk of re-offence was very low. Having regard to that opinion, Gotterson JA, with whom McMurdo P and Morrison JA agreed, said that he was not prepared to conclude that the solicitor was now permanently unfit to practice.[39] It is noted in passing that the present respondent has put no such independent expert opinion evidence before this Tribunal.

(e) *Council of the Queensland Law Society Incorporated v Whitman*[40] involved completely different circumstances from the present. In that case, there was a minor trust account defalcation, but other charges arising out of the solicitor's employment of a person in circumstances where the solicitor knew

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37 [2009] 1 Qd R 149; [2008] QCA 301.
38 [2016] QCA 224.
39 At [48].
40 [2003] QCA 438.

the person did not hold a practising certificate. An appeal against a Tribunal sanction of a nine month suspension was dismissed.

(f) *Legal Practitioners Conduct Board v Boylen*[41] was quite a different case from the present. In that case, the practitioner had engaged in dishonest conduct by making numerous decisions without instructions, failing to issue proceedings, and telling lies to his clients. Amongst other things, however, he had the benefit of numerous references which attested to his professional competence and good standard. The difference between that case and the present, however, can be gleaned from the following observations by Debelle J:

> "66 This is a very difficult case. I have given it anxious consideration. The protracted course of lies and deceit in which Boylen has engaged is extremely serious and, in other circumstances, would have constituted grounds on which to remove his name from the roll of practitioners, particularly in light of his other unprofessional conduct. There is no doubt about the moral blameworthiness of his conduct. However, regard must also be had to his proven competence when acting for all of his other clients. In addition, his misconduct resulted in no financial gain to him. Competence should not be confused with honesty. There are instances where competent legal practitioners have been struck off because of dishonesty. As already mentioned, this is a case of a practitioner who failed to prosecute properly the affairs of two clients who, because of his pride, lied to them and others. Not without some hesitation, I have concluded that, despite the gravity of his offending, he is a fit and proper person to remain in practice. In reaching that conclusion, I am satisfied that sufficient reliance can be placed upon Boylen's assertion that he will not re-offend again. It might be said that his past misconduct wholly belies any reliance on his assertions. However, the problems which led to his past misconduct have been addressed. I am satisfied that he has clearly learned from his past mistakes and misconduct and has addressed the character defects which caused both. There is evidence of a change of character. He is aware of the need to consult with colleagues on matters which are difficult or unusual. He is conscious of the severe consequences upon his clients if he fails to do so. Equally importantly, his firm has established management procedures to prevent future lapses of this kind. His workload has been considerably reduced to almost half that it was in 1996 and 1997. His work, along with the work of all other practitioners in the firm, is subject to review. In his case, it is subject to internal and external supervision and he recognises the need for that supervision and is willing to participate in it. It is clear that he has considerable support both from his family and, significantly, from his peers. He has addressed the psychological issues which, in part, allowed him to lie and deceive for such a long time."

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41 [2003] SASC 241.

[45] The respondent also referred to several cases in which, in various circumstances, orders had been made for the names of practitioners to be removed from the roll.[42]

[46] The respondent placed reliance on the decision of this Tribunal in *Legal Services Commissioner v McDonald*.[43] In that case, the practitioner was publicly reprimanded, fined $20,000 and prohibited from obtaining a principal's practising certificate for five years after obtaining an employees' practicing certificate. The practitioner, over a period of 18 months, fraudulently altered timesheets with the intended effect of overcharging 23 of the firm's clients by more than $515,000. The practitioner referred himself to the Legal Services Commission for disciplinary investigation, and voluntarily surrendered his practising certificate. It was identified by the Tribunal[44] that the most significant mitigating factor for the practitioner was the resolution of the psychiatric disorder induced by sustained stress which explained his uncharacteristic misconduct. There was conflicting evidence by expert psychiatrists on this point, but ultimately the Tribunal accepted an expert psychiatric opinion that the practitioner had displayed signs and symptoms of a prolonged stress related adjustment disorder and compulsive personality traits which explained his vulnerability to acting out his inner conflicts by inappropriate professional conduct. The psychiatrist described the contrary conduct as a complete aberration, which was inconsistent with his personal and professional conduct over many years and not reflective of some inherent defect or default in his character. The Tribunal said[45]:

> "[42] The panel takes the view that whatever extraneous causes and personality traits were at play the misconduct in issue was substantially the product of a latent, possibly dormant, 'weakness of conscience' and a degree of ethical failure (perhaps even hubris). To use his own words 'the switch that should have gone off' telling him that he was behaving improperly did not work.
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> [43] It is unable, however, to rule out psychiatric impairment as a partial explanation. Assuming the correctness of Dr Molnar's findings he was not psychiatrically fit to practice during the period of misconduct but based on Dr Reddan's report, we find that he is now."

[47] The conclusion ultimately reached by the Tribunal in that matter was[46]:

> "It is accepted (but not without some hesitation) that the practitioner's safety switch is back on and he now has the strength of mind and character needed to safely resume restricted and conditional practice unhindered by the cumulative incapacities and deficiencies responsible for the past misconduct."

[48] In that case, the Tribunal's assessment, as at the time of the hearing, of the probability of the practitioner being permanently unfit to practice was assisted by the provision

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42 *Law Society of New South Wales v Foreman (No 2)* (1994) 34 NSWLR 408; *Legal Services Commissioner v Quinn* [2012] QCAT 618; *Legal Services Commissioner v Keddie* [2012] NSWADT 106.

43 [2018] QCAT 82.

44 At [33].

45 At [42] – [43] and omitting footnotes.

46 At [98].

of the expert psychiatric evidence which both provided an explanation for the underlying causes of the miscreant conduct and also gave an assessment of the practitioner's current psychiatric state to the extent that it impacted on the relevant aspects of his character and fitness for practice. No such evidence was put before this Tribunal for the purposes of the present hearing.

[49] In *Prothonotary of the Supreme Court of New South Wales v P*[47], Young CJ in Eq accepted and applied 10 propositions, albeit derived from American authorities, which he considered could point to compelling mitigating circumstances. Those 10 points were:

- Absence of prior disciplinary record or criminal record;
- Absence of motive for personal enrichment;
- Honesty and co-operation with the authorities after detection;
- The offences being unrelated to the practice of the law;
- The ignominy of having suffered a criminal conviction and the deterrent element;
- The absence of premeditation with respect to the commission of the crime;
- Evidence of good character;
- Any voluntary self-imposed suspension or court-imposed temporary suspension from practice;
- Delay in commencing disciplinary proceedings;
- Most importantly, clear and convincing evidence of rehabilitation.

[50] It should not be thought that this list is either closed or determinative. But it does provide a useful catalogue of matters which commonly arise for consideration in cases like this.

[51] In that case, Young CJ in Eq considered that the practitioner scored well on those 10 points.

[52] The same cannot be said in the present case:

- The respondent had no prior disciplinary or criminal record;
- There was a clear motive for personal enrichment in the respondent's participation in the scheme;
- The respondent was honest and did co-operate with authorities, including by volunteering his wrongdoing;
- This was a case of profound and protracted dishonesty engaged in by a solicitor in the course of his professional practice. True it is that his clients suffered no loss. But they were never going to be adversely affected by his conduct. Rather, the dishonest conduct was engaged in to create a benefit for the respondent and

[47] At [17].

to avoid the legal consequences of his bankruptcy, while perpetrating an ongoing fraud on his trustee in bankruptcy, his creditors, and the financial reporting agencies;

- The respondent has suffered the ignominy of a criminal conviction, and the concomitant deterrent element is present;

- The respondent's conduct was patently premeditated and deliberately pursued;

- There is no independent evidence of good character;

- The respondent voluntarily surrendered his practising certificate and has not practised since;

- There was no relevant delay in commencing the disciplinary proceedings;

- There is no evidence of rehabilitation, beyond the respondent's own affidavit. In that regard, the following observations in *Legal Services Commissioner v McDonald*[48] are apposite[49]:

> "[60] Solid and substantial (or strong) evidence of insight and transformation is usually required to rebut the presumption of disqualifying unfitness based on gross client fraud. The greater the fall from grace the more the ground there is to recover.
>
> [61] Specific evidence demonstrating rehabilitation, such as a proven history of dealing with clients honestly where the temptation he succumbed to in the past was habitually resisted, is capable of showing that the character flaw responsible for misconduct has been fully addressed. Employment in the legal industry in some relevant capacity is naturally more probative of a fit and proper character than working elsewhere.[50]
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> [62] Likewise, contrition, repentance, good intentions and the passage of time itself are required but seldom enough.
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> [63] Admitting responsibility and being sincerely sorry for what is probably the worst professional thing he has ever done is not a guarantee against it never happening again if the opportunity arises.
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> [64] As Mahoney JA pointed out in *Law Society of New South Wales v Foreman (No 2)*:[51]
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> > 'A solicitor may affirm and sincerely believe that she will not offend again. But the character of the solicitor – demonstrated by the offence or otherwise – may be such that no sufficient reliance can be placed upon that affirmation.'

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48 [2018] QCAT 82.
49 At [60] – [65].
50 *Re Application by Giles* (Unreported, Supreme Court of the ACT, Miles CJ, Gallop and Sheppard JJ, 17 June 1994) 15.
51 (1994) 34 NSWLR 408, 444.

> [65] Because of the overriding need to maintain public satisfaction with the effectiveness of the regulatory framework, testimonials and character references from colleagues and clients are of limited assistance where the breach involves persistent dishonesty[52] and irrespective of the number, standing and force of the referees[53] their weight is necessarily lessened here by the years the practitioner was able to get away with largescale fraud without detection or even attracting suspicion."

[53] It is the view of this Tribunal that the nature and extent of the respondent's dishonest wrongdoing in the course of his professional practice, and his convictions for the criminal offences arising from that conduct, are such as to provide "instant demonstration of unfitness".[54] They bespeak a character tainted by dishonesty. As Kitto J said[55]:

> "Conduct may show a defect of character incompatible with membership of a self-respecting profession; or short of that, it may show unfitness to be joined with the Bench and the Bar in the daily co-operation which the satisfactory working of the courts demands. A conviction may of its own force carry such a stigma that judges and members of the profession may be expected to find it too much for their self-respect to share with the person convicted the kind and degree of association which membership of the Bar entails."

[54] Those observations, clearly, are equally applicable to members of the solicitors' branch of the profession.

[55] In *New South Wales Bar Association v Sahade*[56], Basten JA, with whom Mason P and Santow JA agreed, quoted with approval an observation which had been made in the disciplinary tribunal in that case that "deceitfulness is a character flaw which is thought by most legal practitioners as well as others not to be confined in separate compartments of one's life".[57] The observations continued[58]:

> "It is commonly thought that people who have indulged in deceit for their own advantage are likely to be deceitful again when it suits them, whatever they are involved in and whether it be in the course of legal practice or otherwise. Trust is one of the cornerstones of legal practice. Honest dealing is fundamental to fitness to practice law."

[56] This Tribunal has concluded that nothing has been put before it, apart from the respondent's own depositions, to which only marginal weight can be given, which would gainsay a present conclusion that the probability is that the respondent is permanently unfit to practice. It is certainly the case that there has been no persuasive evidence placed before this Tribunal to demonstrate that the position of the

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52 *Law Society of New South Wales v Foreman (No 2)* (1994) 34 NSWLR 408, 448-9 (Mahoney JA).
53 *Council of the New South Wales Bar Association v Sahade* [2007] NSWCA 145 [85] (Basten JA).
54 *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279, per Kitto J at 298.
55 At 298.
56 [2007] NSWCA 145.
57 As quoted at [59].
58 As quoted at [59].

respondent, so far as his fitness to practice is concerned, is now any different from the protracted period during which the professional misconduct occurred.

[57] It follows that this Tribunal should recommend that the respondent, at this time, is not a person to whom the Supreme Court ought lend its imprimatur of fitness to practise by retaining his name on the roll of practitioners.

[58] Accordingly, it is the recommendation of the Tribunal that the respondent's name be removed from the roll.

[59] No argument was advanced on behalf of the respondent as to why the prima facie position with respect to costs under s 462 of the *LPA* ought not apply in the present case.

[60] Accordingly, the orders of the Tribunal are as follows:

1. It is recommended that the name of the respondent, Timothy Vincent Charles Meehan, be removed from the roll of legal practitioners in Queensland;

2. The respondent shall pay the applicant's costs of and incidental to this disciplinary application, such costs to be assessed on the standard basis in the manner in which costs would be assessed if the matter were in the Supreme Court of Queensland.