

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Cullen (No 3)* [2025] QCAT 396

PARTIES: **LEGAL SERVICES COMMISSIONER**
(applicant)
v
COREY WAYNE CULLEN
(respondent)

APPLICATION NO/S: No OCR 239 of 2022

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 20 October 2025

HEARING DATE: 1 October 2024; supplementary outline of submissions on behalf of the applicant dated 3 October 2024; second supplementary submissions on behalf of the respondent dated 4 November 2024

HEARD AT: Brisbane

DECISION OF: Justice Burns

Assisted by:
Ms Bradfield, Practitioner Panel Member
Dr Dann, Lay Panel Member

ORDER: **The Tribunal orders that:**

- 1. The respondent has leave to file and read a further affidavit under his hand sworn on 22 October 2024;**
- 2. In respect of each of Charge 1 and Charge 2, there is a finding of professional misconduct;**
- 3. The respondent is publicly reprimanded;**
- 4. The respondent pay a pecuniary penalty of \$10,000.00 within six months of the date of this Order;**
- 5. The respondent provide a copy of the Tribunal's reasons in *Legal Services Commissioner v Cullen (No 2)* [2024] QCAT 412 as well as these reasons along with a copy of this Order to the Queensland Law Society and, also, with any application for a practising certificate in any other Australian jurisdiction during the next five years; and**
- 6. The respondent 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 – where the practitioner was previously dealt with by the Tribunal for engaging in conduct that 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* – where, on the practitioner’s undertaking to the Tribunal to do certain things, he was publicly reprimanded – where the practitioner subsequently fell in breach of part of his undertaking to the Tribunal – where the applicant brought a discipline application against the practitioner by which it was alleged he contravened part of his undertaking and otherwise 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* – where it was not in issue that the practitioner failed to comply with part of his written undertaking – where the practitioner failed to disclose his non-compliance with his regulatory authority when applying for renewal of his practising certificate – where, when challenged by his regulatory authority, the practitioner advanced an explanation for breaching part of his undertaking which was deliberately false – where the practitioner subsequently advanced explanations which were disorganised or internally inconsistent but which were not deliberately untruthful – whether the practitioner’s proven conduct amounted to unsatisfactory professional conduct or professional misconduct – whether an order should be made recommending the removal of the practitioner’s name from the local roll – whether the practitioner was permanently unfit to practise – what, if any, orders should be made under s 456 of the *Legal Profession Act 2007* (Qld)

Australian Solicitors’ Conduct Rules 2012 (Qld), r 5.1.2
Legal Profession Act 2007 (Qld), s 419, s 452

A Solicitor v Council of the Law Society of New South Wales (2004) 216 CLR 253, cited

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, cited

Legal Services Commissioner v Cullen [2020] QCAT 439, cited

Legal Services Commissioner v Cullen (No 2) [2024] QCAT 412, considered

Legal Services Commissioner v Li [2024] QCAT 444, cited

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

Legal Services Commissioner v Richards [2024] QCAT 355, cited

New South Wales Bar Association v Evatt (1968) 117 CLR 177, 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

APPEARANCES & REPRESENTATION:

Applicant: R K Micairan of Counsel, instructed by Legal Services Commission

Respondent: G R Rice KC, instructed by McGinness & Associates

REASONS FOR DECISION

- [1] Mr Cullen is an Australian legal practitioner who was admitted to practice in February 2015. He has been the legal practitioner director of a criminal defence firm, *Cullen Lawyers*, since January 2018.
- [2] On 23 September 2019, Mr Cullen was charged with possession of a small quantity of cocaine. He pleaded guilty to this offence in the Magistrates Court of Brisbane on 27 November 2019. Subsequently, on 30 October 2020, the Tribunal found that he had engaged in unsatisfactory professional conduct in respect of two charges brought by the Commissioner relating to this offending. Mr Cullen was publicly reprimanded and ordered to pay the Commissioner's costs.¹ Importantly, the orders of the Tribunal were founded on a written undertaking given by Mr Cullen to the Tribunal which included the provision of urine samples clear of any illicit substances on an at least a quarterly basis. Subsequently, the respondent failed to comply with this part of his written undertaking.
- [3] By this application, two disciplinary charges were alleged against the respondent with respect to his default. By **Charge 1**, it was alleged that the respondent contravened his undertaking on 28 May 2021 and, by **Charge 2**, it was alleged that, between 30 October 2020 and 28 May 2021, he 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*. The Commissioner submitted that the Tribunal ought to characterise both charges as professional misconduct and sought disciplinary orders pursuant to s 452 of the Act.
- [4] It was never disputed that Mr Cullen failed to comply with the part of his written undertaking which required the provision of clear urine samples or that this

¹ *Legal Services Commissioner v Cullen* [2020] QCAT 439.

constituted conduct which was likely to a material degree to bring the profession into disrepute. However, what was in dispute was the Commissioner's allegation that the explanations advanced by Mr Cullen for the breach of his undertaking were deliberately false. The purpose of the reasons delivered by the Tribunal in *Legal Services Commissioner v Cullen (No 2)*² was to make findings on this issue. This was because the determination of the truthfulness or otherwise of Mr Cullen's explanation for his breach of his undertaking was essential before a finding could be made about Mr Cullen's fitness to practise and, in turn, the appropriateness of any disciplinary orders to be made.

- [5] After the making of a concession by Mr Cullen when giving evidence, the Tribunal found that an explanation he initially advanced by email to the Queensland Law Society was deliberately false albeit one which was born out of panic. There were also inconsistencies on important matters in several of the versions Mr Cullen advanced regarding his breach of his undertaking. These were to be found in correspondence with the Queensland Law Society, correspondence with the Commission, in affidavits filed in response to this application and in the evidence which he gave to the Tribunal. However, the Tribunal found that it was more likely this "disorganised retelling" of what occurred were attempts at reconstruction on Mr Cullen's part rather than deliberate untruthfulness. Ultimately, the Tribunal found that:

"Mr Cullen's conduct over the whole of the period in question, as serious as it is, should nonetheless be seen as the unfortunate product of the degree to which his life was in tumult rather than as necessarily revealing of a defect of character of the kind discussed in *Barristers' Board v Darveniza*³ and *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand*.^{4,5}"

- [6] In other words, the Tribunal was not persuaded on the balance of probabilities that Mr Cullen was permanently unfit to practise, that is to say, that his character was so "indelibly marked" by misconduct that he could not be regarded as a fit and proper person to be on the roll.⁶
- [7] Upon delivery of those reasons, the parties were directed to make submissions to facilitate the final disposition of the application.

Professional misconduct?

- [8] The Commissioner submitted that the Tribunal ought to characterise the conduct constituting both charges as professional misconduct.⁷ Mr Cullen accepted in written submissions before the hearing of the application that this characterisation is appropriate, as is almost always the case where a practitioner breaches an

² [2024] QCAT 412.

³ [2000] QCA 253, [33].

⁴ [2018] QCA 66, [57].

⁵ [2024] QCAT 412, [52].

⁶ Ibid.

⁷ *Legal Profession Act 2007* (Qld), s 419.

undertaking.⁸ In respect of each of Charge 1 and Charge 2, there will be a finding of professional misconduct.

What is the appropriate sanction?

- [9] As the Tribunal previously observed,⁹ disciplinary penalties are not imposed as punishment; they are imposed for the protection of the community. Accordingly, in determining what order the Tribunal might make, regard should primarily be had to that purpose¹⁰ as well as the maintenance of proper professional standards.¹¹ Furthermore, Mr Cullen'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 charges¹² but, as already observed, the Tribunal was not persuaded that Mr Cullen was permanently unfit to practise by the time of the hearing. This finding has an important consequence so far as sanction is concerned because 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.¹³
- [10] That made clear, the Commissioner submitted that if the Tribunal does not recommend that the Mr Cullen's name be removed from the local roll, it should order that he:
- (a) be publicly reprimanded;
 - (b) pay a pecuniary penalty of between \$6,000.00 and \$8,000.00 within six months;
 - (c) complete the QLS Remedial Ethics Course within twelve (12) months of the Tribunal's order, at this own expense; and
 - (d) provide a copy of the Tribunal's order and reasons with any application for a practising certificate in any Australian jurisdiction for the period of five years from the date of the Tribunal's order.¹⁴
- [11] In support of that combination of disciplinary orders, the Commissioner submitted such a sanction would meet the objectives of protecting the public, maintaining professional standards and giving proper recognition to the principles of general and specific deterrence. The Commissioner otherwise emphasised the seriousness of Mr Cullen's conduct including that the undertaking was given to the Tribunal and was expressly taken into account in moderating the sanction which was first imposed on him but, despite that, was breached within two months of the making of that order. The Commissioner also highlighted as concerning the period of time during which the disorganisation of Mr Cullen's life persisted despite steps having been taken to "manage stressors" as well as his workload. Indeed, it was submitted that the Tribunal

⁸ See, e.g., *Legal Services Commissioner v Richards* [2024] QCAT 355; *Legal Services Commissioner v Li* [2024] QCAT 444.

⁹ *Legal Services Commissioner v Cullen (No 2)* [2024] QCAT 412, [5].

¹⁰ *New South Wales Bar Association v Evatt* (1968) 117 CLR 177, 183.

¹¹ *Legal Services Commissioner v Madden (No 2)* [2009] 1 Qd R 149, [122].

¹² *A Solicitor v Council of the Law Society of New South Wales* (2004) 216 CLR 253, [21].

¹³ *Prothonotary of the Supreme Court of New South Wales v P* [2003] NSWCA 320; *Watts v Legal Services Commissioner* [2016] QCA 224, [46].

¹⁴ The Commissioner referred to two decisions of the Tribunal supporting this approach – *Legal Services Commissioner v Richards* [2024] QCAT 355 and *Legal Services Commissioner v Li* [2024] QCAT 444.

could “have little confidence that [Mr Cullen] is able to overcome difficult and stressful circumstances despite the passage of time and supposed structures placed around him to assist with his rehabilitation”.

- [12] For Mr Cullen it was submitted that a public reprimand, with or without a fine, would be the appropriate sanction. The submissions made in this regard were supported by an affidavit sworn by Mr Cullen to update the Tribunal regarding the progression of his recovery and rehabilitation.¹⁵ He remains abstinent from drug use, limits his consumption of alcohol and has much-improved stability in his professional life. The strategies and daily practices he instigated following what was a lengthy course of psychological counselling continue to hold him in good stead. His practice has grown in a manageable way and his firm continues to comply in all respects with its statutory and other obligations. He is appropriately remorseful for his conduct and demonstrates a significant degree of insight into the causes of it as well as its objective seriousness, as references from three barristers which were exhibited to his affidavit attested. Each remarked on the positive changes they have observed in Mr Cullen since the disciplinary process began, an experience which to their observation has been a wholly salutary one.
- [13] For the reasons advanced by the Commissioner, there can be no doubt about the seriousness of the misconduct in this case. Not only did Mr Cullen breach part of an undertaking he gave to this Tribunal, he also subsequently gave a deliberately false explanation to the QLS in what was a hasty and ill-thought-out attempt to cover up his default.¹⁶ Regardless of the attendant circumstances, it is fundamental to the preservation of public confidence in the legal profession that practitioners act at all times with honesty and integrity in order to fulfill their duties to the court, their clients and members of the public. Mr Cullen did not live up to that standard. Since then, however, he has made significant progress. In this regard, it should be recorded that the Tribunal does not share the Commissioner’s pessimism about Mr Cullen’s capacity now to effectively overcome personal and/or professional challenges. Simply, he is much better equipped to do so than he was previously.
- [14] The Tribunal is satisfied that the appropriate sanction in this case must include a public reprimand. That will be, and should be seen to be, a permanent blemish on Mr Cullen’s professional record. It should serve as a reminder to him, the profession and the public at large that practitioners who engage in misconduct of this kind will be brought to account. In addition, the Tribunal agrees that the public reprimand should be accompanied by a pecuniary penalty so as to sufficiently respond to the need for the overall sanction to operate as an effective deterrent, although in a sum somewhat higher than the range submitted by the Commissioner. Mr Cullen will be ordered to pay a pecuniary penalty in the amount of \$10,000.
- [15] The Tribunal is not persuaded there is any utility in requiring Mr Cullen to undertake an ethics course given the passage of time since the events in question, the absence of any misstep since and the level of insight into his wrongdoing which he has both developed and demonstrated over that period.
- [16] An order will however be made requiring Mr Cullen to provide a copy of the

¹⁵ It is therefore appropriate to grant leave to file and read that affidavit, and an order will be made accordingly.

¹⁶ See the findings set out in *Legal Services Commissioner v Cullen (No 2)* [2024] QCAT 412, [43]-[52].

Tribunal's reasons in *Legal Services Commissioner v Cullen (No 2)*¹⁷ as well as these reasons along with a copy of the Order which is about to be made to the Queensland Law Society and, also, with any application for a practising certificate in any other Australian jurisdiction during the next five years.

[17] Finally, Mr Cullen will be ordered to pay the Commissioner's costs.

Order

[18] In addition to an order granting Mr Cullen leave to file and read his updating affidavit, the Order of the Tribunal will be as follows:

1. In respect of each of Charge 1 and Charge 2, there is a finding of professional misconduct;
2. Mr Cullen is publicly reprimanded;
3. Mr Cullen pay a pecuniary penalty of \$10,000.00 within six months;
4. Mr Cullen provide a copy of the Tribunal's reasons in *Legal Services Commissioner v Cullen (No 2)* [2024] QCAT 412 as well as these reasons along with a copy of this Order to the Queensland Law Society and, also, with any application for a practising certificate in any other Australian jurisdiction during the next five years.
5. Mr Cullen 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.

¹⁷ [2024] QCAT 412.