QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Legal Services Commissioner v Munt* [2019] QCAT 160
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **NIGEL FRANCIS MUNT** (respondent)
APPLICATION NO/S:	OCR080-17
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	25 June 2019
HEARING DATE:	11 April 2018 Further written submissions
HEARD AT:	Brisbane
DECISION OF:	Justice Daubney, President Assisted by: Mr Peter Sheehy Dr Margaret Steinberg AM
ORDERS:	**1. The respondent not be granted a local practising certificate before the end of the period of five years commencing 8 April 2015;** **2. The respondent is publicly reprimanded;** **3. The respondent shall pay the applicant's costs of and incidental to this discipline application, such costs to be assessed on the standard basis for matters in the Supreme Court of Queensland.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – CRIMINAL OFFENCES – where the respondent was convicted of three dangerous drug offences – where the Tribunal finds the respondent's offending conduct constitutes professional misconduct – where the misconduct did not occur in connection with legal practice – what orders should be made under s 456 of the *Legal Profession Act* 2007 consequent on the finding of professional misconduct *Legal Profession Act* 2007, s 419, s 456, s 462

Barristers' Board v Darveniza [2000] QCA 253
Council of the Law Society of Queensland v Whitman [2003] QCA 438
Legal Practitioners' Complaints Committee v Bull [2006] WASAT 217
Legal Practitioners' Complaints Committee v Palumbo [2005] WASCA 129
Legal Services Commissioner v Madden (No 2) [2009] 1 Qd R 149
Legal Services Commissioner v Meehan [2019] QCAT 17
Prothonotary of the Supreme Court of New South Wales v P [2003] NSWCA 320
Prothonotary of the Supreme Court of New South Wales v Sukkar [2007] NSWCA 341
Re a Practitioner [2004] WASCA 283
Watts v Legal Services Commissioner [2016] QCA 224
Ziems v Prothonotray of the Supreme Court of New South Wales (1957) 97 CLR 279

APPEARANCES & REPRESENTATION:

Applicant:	M R Lester, Prosecutor of Legal Services Commissioner
Respondent:	M Black instructed by McGinness & Associates

REASONS FOR DECISION

[1] This discipline application under the *Legal Profession Act* 2007 ("*LPA*") brought by the applicant, the Legal Services Commissioner, against the respondent, Nigel Francis Munt, particularises one charge, namely that on 8 April 2015, the respondent was convicted of the offences of:

(a) trafficking in a dangerous drug methylamphetamine between 23 August 2011 and 8 August 2012 (one count);

(b) supplying dangerous drug methylamphetamine between 21 September 2011 and 5 July 2012 (19 counts); and

(c) supplying dangerous drug cannabis on 2 November 2011.

[2] For having committed these offences, the respondent was sentenced to an effective head sentence of three years' imprisonment wholly suspended for an operational period of four years.

[3] It was not in issue that the fact of these convictions, and indeed the circumstances underpinning the convictions, were such as to warrant a finding of professional misconduct[1] against the respondent.

[4] The principal question for this Tribunal is what orders ought be made against the respondent under s 456 of the *LPA*.

---

1 Within the meaning of that term in s 419 of the *LPA*.

The professional misconduct

[5] In 2006, the respondent formed a relationship with Vicki Taylor. Ms Taylor was a user of methylamphetamine and had previously been in a relationship with Craig Cant. At that time, Cant was in jail serving a sentence for federal drug offences. By mid-2011, the respondent and Ms Taylor were living together. Cant was released on parole in May 2011, and initially lived elsewhere.

[6] As at 2011, Ms Taylor was a regular methylamphetamine user, and the respondent drove her to see Mr Cant who supplied her with drugs – initially Subutex and later methylamphetamine. Cant subsequently moved to a vacant house on the property where the respondent and Ms Taylor were living. At that stage, Cant told the respondent of Cant's plans to import pseudoephedrine from Indonesia in order to make methylamphetamine. Cant wanted to raise $50,000 to fund this illegal venture, and intended to do so by procuring and selling methylamphetamine.

[7] From late August 2011 to early 2012, Cant set about trafficking methylamphetamine in order to raise money for that intended drug importation. The respondent assisted Cant by:

(a) providing money to purchase methylamphetamine;

(b) selling methylamphetamine to others;

(c) collecting money on a few occasions;

(d) assisting and arranging transactions.

[8] Cant's business involved buying and selling substantial amounts of methylamphetamine, up to ounces at a time, for thousands of dollars to a variety of customers. The respondent was involved in two sales – one involving an "eight ball" for $1,750 and another involving an unknown quantity of drug and price. On six occasions, the respondent provided funds to Cant or one of Cant's associates in order to facilitate the purchase of methylamphetamine. The total amount of money involved was in the order of $18,000.

[9] The respondent did this in return for a regular supply of methylamphetamine for Ms Taylor and later himself, as he had fallen into the habit of using methylamphetamine. The respondent was, at the time, independently wealthy, and he was not motivated by a desire to make money from the enterprise. The majority of the supply charges related to the respondent's supply of methylamphetamine to Ms Taylor for her own use.

[10] When apprehended, the respondent initially refused to be interviewed by the police, but ultimately he co-operated fully and pleaded guilty to all of the charges.

[11] The respondent came before the Supreme Court for sentence on 8 April 2015. In the course of her sentencing remarks, the learned sentencing judge said:

> In your case, I accept that the business was devised by another but you assisted in that enterprise and, in particular, your involvement extended to a transaction which involved an eight ball as well as numerous other smaller transactions. The nature of this business, which was run by Cant, was above street level in that it involved a discrete group of about half a dozen participants and I accept

> that the amounts of methylamphetamine fell well short of wholesale amounts. Whilst you provided substantial funds to purchase the methylamphetamine, I accept there was no profit to you and that you were motivated by a desire to secure drugs for your partner and later for yourself.
>
> Significantly, you are a mature man and you have had a successful and unblemished career prior to these offences as a solicitor. Given that you were an officer of the court at the time, there is no doubt that you are well aware of the serious wrongdoing you were engaged in. I make it clear the community denounces the conduct you were involved in, however, I accept that you have co-operated since your arrest and that co-operation is deserving of significant recognition.
>
> …
>
> I accept that you have undertaken significant rehabilitation, as evidenced by some 119 clear urine drug screens. Those drug tests were undertaken on your own initiative to give to the Law Society to satisfy them you were in a state where you could continue to practice as a solicitor. Significantly, I note that Dr Matthews considers that you have rehabilitated yourself and that your risk of re-offending is low. I note that opinion is endorsed by the psychologist, Rex Urwin.
>
> However, I note that Dr Matthews considers that you have a vulnerability to over-involvement with the problems of others. Your brother, Andrew, also confirms your predisposition to collecting what he calls "waifs and strays" and the fact that, when you had a substantial income through your law practice, you were always helping others and, in fact, his major concern was you were a "soft touch".
>
> In this regard, I take into account the numerous references which have been read into the record. I have read all of those references. In terms of the personal references of your parents, your brother and your former wife, the theme that clearly emerges is that you are absolutely considered to be a good and devoted father. Your former wife has spoken of how fairly you have always treated her in financial matters. They all speak of your rehabilitation and their ongoing high regard for you.

[12] The learned sentencing judge then further referred in some detail to the numerous personal and professional references which had been provided for the purposes of the sentencing hearing.

[13] Importantly, when having regard to the sentencing factors referred to in s 9 of the *Penalties and Sentences Act* 1992 ("*PSA*"), her Honour noted that she was required to punish the respondent in a way which would provide conditions to help with the respondent's rehabilitation, and expressly found that at the time of sentencing she considered that the respondent was rehabilitated. Additionally, her Honour considered that personal deterrence was not an overriding factor in the case, given the respondent's rehabilitation, his remorse, and his clear view that he would not offend again.

The respondent

[14] The respondent, who was born in 1970, was admitted as a solicitor in January 1994, having graduated with a Bachelor of Laws from the Queensland University of

Technology and completing five years' articles of clerkship with the firm then known as Trilby Misso Lawyers ("TM") at Redcliffe. He married his first wife in 1997, and they had three children.

[15] In 1995, the respondent became a partner in TM with a one-quarter interest in the practice. He practised in personal injuries law, and later obtained specialist accreditation in that area of practice. His admission to the partnership coincided with the relaxation of advertising rules for solicitors. The respondent was instrumental in utilising that change to greatly expand TM's personal injuries practice. The firm grew to the point where it had some 120 employees and an office in Brisbane City.

[16] In 2000, the partners sold a building they owned in Redcliffe. The respondent used his share of the proceeds to purchase a rural property in the Mary Valley. At about that time, he was diagnosed as suffering from an anxiety disorder, and was prescribed an anti-depressant medication. The respondent was able to spend weekends and time during the week at the property as a result of management changes at the law firm. The Mary Valley farm was sold in 2003, and the respondent applied the sale proceeds to purchase two other rural properties – one at Kilkivan and one at Tansey. He borrowed heavily to make those purchases. Whilst he had limited farming experience, he was determined to make them viable.

[17] The respondent separated from his first wife in 2006. He met Vicki Taylor in December 2006, and within a short period was spending most of his time with her and her son either at her property or at the respondent's farm.

[18] Ms Taylor told the respondent of her history with Cant and assured the respondent that, whilst she had previously been addicted to heroin, she was now "clean". She largely attributed her drug problem to Cant.

[19] Ms Taylor gave birth to the couple's son in February 2008 and their daughter in June 2009. By that time she was suffering from a significant drug problem. The respondent says it is now clear to him that Ms Taylor had taken significant steps to hide her drug dependence early in their relationship.

[20] The respondent suffered significant financial losses in 2008 with the Global Financial Crisis, and he had to sell the Kilkivan farm at a loss.

[21] In 2009, after lengthy negotiations, the partners of TM sold the firm to Slater & Gordon. Of the amount received by the respondent from that sale, he paid half to his first wife by way of a property settlement. The net amount ultimately received from the Slater & Gordon sale by the respondent was some $6 million, and he had debts at the time of some $4 million. He says he was left with "a comfortable but not substantial sum of money". The respondent was also subject to a five year restraint of trade covenant under the sale to Slater & Gordon, and he threw himself into work on the Tansey property.

[22] In his principal affidavit filed in this disciplinary proceeding, the respondent describes Ms Taylor's significant struggle with drug addiction and her attempts at rehabilitation.

[23] In 2011, Cant was released from prison and eventually came to live on the same property as the respondent and Ms Taylor. In July 2011, the respondent, due to financial pressures, returned to work carrying out legal cost consulting for a number of firms. He could perform this work without breaching the restraint of trade

covenant. He was later granted a partial exemption from that covenant, and went to work as in-house counsel for a law firm. The respondent was working hard and over long hours.

[24] The respondent says that, within weeks of Cant moving in, the respondent was aware that Cant had access to methylamphetamine, and that Cant had been supplying to Ms Taylor. In late 2011, while the respondent was doing some work on the farm, Cant offered the respondent some methylamphetamine to enable the respondent to stay focused and work all night. This was the start of the respondent himself routinely using methylamphetamine.

[25] In his affidavit, the respondent describes in detail the chaotic mess into which his domestic life then descended. He frankly describes his offending conduct by which he financially assisted Cant and was otherwise involved in other aspects of Cant's business.

[26] The respondent was arrested on 7 August 2012. Within months of his arrest, the respondent began co-operating with the investigating authorities, and the material filed before the Tribunal details the extent of that co-operation.

[27] The respondent and Ms Taylor continued to live together until March 2015, at which time Ms Taylor and the children moved to the Sunshine Coast. The respondent says he has had minimal contact with her since that time, and arrangements are in place for him to have access to the children, to pay their school fees, and to provide financial support. On his psychiatrist's advice, the respondent has had as little to do with Ms Taylor as possible. He does not have any ongoing contact with her, save as may be necessary for child access issues.

[28] After his arrest, the respondent sought treatment in relation to his drug use. He initially relapsed on a number of occasions over the weeks following his arrest, but ultimately became committed to a regime of regular drug testing and regular treatment.

[29] The respondent advised the Queensland Law Society ("QLS") of the charges he was facing, and entered into an agreement concerning drug testing and supervision. He completed a total of 144 drug tests between his arrest and the day of his sentence.

[30] Despite having been charged, the law firm for which he was working continued to employ him until such time as adverse publicity made that situation untenable.

[31] In early August 2014, the respondent commenced employment as a consultant for Logan Law. He remained employed in that capacity until his practising certificate was cancelled on 2 September 2015.

[32] An application by the respondent for a stay of the cancellation of his practising certificate was refused. An application for a review of that decision was subsequently settled between the parties on terms which included that the QLS would approve the respondent being employed as a lay associate with Logan Law subject to the respondent complying with numerous conditions, including the provision of regular urine drug analyses to the QLS.

[33] Even though the respondent was, under the terms of the agreement reached with the QLS, able to apply for a practising certificate from 1 January 2017, he has not applied to be granted a practising certificate. He said:

> My experience has given me a renewed respect and understanding for the privilege that having a practising certificate is, and the associated responsibilities. I have a great respect for the law and the legal profession, and at some time I would like to obtain a practising certificate and return to work as a Solicitor.

[34] The respondent's duties at Logan Law as a lay associate involved promotion and marketing, as well as introducing new clients. He did not perform any legal work. In the promotion and marketing role, the respondent led a number of community-based initiatives, including the provision of a "justice bus", which was made available to provide free transport to sporting and community groups. He also arranged the law firm's sponsorship of a wide variety of community, sporting, and cultural groups.

[35] The respondent also undertook public speaking engagements for business and social groups. These were not paid engagements, but were an attempt by the respondent to help spread awareness of the risks associated with drug use and how quickly one's life can be ruined.

[36] The respondent says that his recovery is largely due to having severed his relationship with Ms Taylor, but says:

> I do accept that I have been the author of my own demise and do not want to be seen as blaming her for my predicament. I know now that we were not good for each other.

[37] The respondent also described in some detail the psychiatric rehabilitation he undertook. A report from the respondent's treating psychiatrist was provided for the benefit of the Tribunal. This confirms that the respondent has remained abstinent from illicit substances, and that he has denied any cravings. The psychiatrist reported that the respondent is able to ensure his abstinence by being cautious with regard to those with whom he associates, and has no dealings with the substance-using individuals with whom he had previously associated. The psychiatrist said that he was pleased with the progress made by the respondent and concluded:

> Provided [the respondent] is able to remain abstinent from substances and not re-engage with previous associates or substance using people, I feel his prognosis is extremely good. I have seen no evidence that the aforementioned risks have been in any way concerning since my last report.

[38] In his principal affidavit, the respondent also made full and frank disclosure of other suitability matters which are not relevant for present purposes, and on which the applicant has indicated he places no reliance.

[39] In a subsequent affidavit, the respondent reported that he had ceased employment at Logan Law in December 2017. He said he was training as a public speaker with a view to engaging in paid public speaking on the topics of overcoming addiction and drug dependence. He also referred to a business with which he had become associated and which, effectively, provided connections for law firms undertaking personal injury work. Consequent upon correspondence from the applicant, the respondent

immediately ceased engagement in that business, and the applicant confirmed that it did not propose to take the matter any further.

[40] Exhibited to the respondent's principal affidavit was the material on which he had relied in the sentencing hearing. That included a raft of references from professional associates and family and friends. The learned sentencing judge referred to these references in detail, and clearly took them into account. Having also reviewed those references, this Tribunal respectfully adopts her Honour's observations to the effect that the references uniformly speak to the respondent's rehabilitation and the ongoing high regard in which the respondent is held by his professional colleagues and family.

[41] In his principal affidavit, the respondent said:

> 92. I remain deeply remorseful about my involvement in drugs. I have caused immeasurable harm and distress to my family and friends. I now spend my time working hard on myself with health and fitness, psychologically and physically, working tirelessly at Logan Law, and doing everything I can do to be a good example for my children and for others with respect to rehabilitation. I am proud to have been able to beat the drug addiction.
>
> 93. I have not and will not return to any form of drug use. I do not smoke or drink. I am proud of my sobriety. I know now that I have a serious flaw and susceptibility that I must manage carefully. I am proud of the good work I have done, particularly for those afflicted with the same addictions as mine. I believe that the degree of my demise, has given me a greater ability to deliver my message about drugs to my clients. I confirm:-
>
> (i) My offending behaviour occurred whilst I was drug dependent. During that time my judgement was clouded. I was unable to properly deal with my domestic circumstances;
>
> (ii) My offending behaviour was not motivated by, nor resulted in, personal financial gain;
>
> (iii) My offending was not in any way related to my legal practice;
>
> (iv) I am no longer suffering from drug dependence;
>
> (v) Working as a lawyer in the period after my arrest, focussing on other peoples' problems, having a purpose and re-engaging with my former peer group, has played a major role in my rehabilitation;
>
> (vi) I have been able to use the terrible experience that I went through to assist others who are suffering similar addictions;
>
> (vii) I have no contact with Vicki save as is necessary to allow child access and maintenance;
>
> (viii) My children and family have suffered shame and embarrassment due to my behaviour. I will not further disappoint them;

(ix) I have suffered complete ruination, however am committed to rebuilding my life for the benefit of my family.

94. I accept that my conviction has been correctly treated as a serious matter deserving of serious punishment in the eyes of the public bearing in mind I was, and remained, a Practising Solicitor until 2 September 2015. Despite that, I rely upon the particular circumstances noted by the Sentencing Judge regarding my offending, my rehabilitation and my co-operation with the authorities.

Discussion

[42] It is appropriate and necessary for this Tribunal to make a finding that the respondent engaged in professional misconduct.[2]

[43] In approaching the question as to the orders which ought be made as a consequence of that finding, the following propositions are well-established:

(a) In this disciplinary jurisdiction, orders are shaped in the interests of the protection of the community from unsuitable practitioners, and in determining what orders should be made "regard should primarily be had to the protection of the public under the maintenance of proper professional standards".[3]

(b) An order removing a practitioner's name from the roll should only be made when the probability is that the practitioner is permanently unfit to practice.[4]

(c) The determination is as to present fitness, not fitness at the time of the offending conduct.[5]

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

[45] Whilst undoubtedly serious, the criminal conduct occurred in the respondent's private life. No legal practitioner should be engaged in any criminal conduct, let alone the seriously culpable business of drug trafficking. But it is relevant to have regard to the fact that this conduct was not committed as part of or in the course of the respondent's practice as a lawyer. The distinction between misconduct which occurs in connection with legal practice and misconduct in one's private life has long been recognised.[6] That being said, in *Prothonotary of the Supreme Court of New South Wales v P*,[7] Young CJ in Eq recounted a number of established propositions, including:

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

---

2 Within the meaning of that term in s 419 of the *LPA*.

3 *Legal Services Commissioner v Madden (No 2)* [2009] 1 Qd R 149 at [122]; and see *Legal Services Commissioner v Meehan* [2019] QCAT 17 at [31].

4 *Watts v Legal Services Commissioner* [2016] QCA 224 at [46].

5 *Prothonotary of the Supreme Court of New South Wales v P* [2003] NSWCA 320 at [17].

6 See, for example, *Ziems v Prothonotray of the Supreme Court of New South Wales* (1957) 97 CLR 279 at 290.

7 [2003] NSWCA 320 at [17].

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

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

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

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

[46] At the request of the Tribunal, both the applicant and the respondent provided further written submissions which were particularly directed to comparable cases. Each case, of course, needs to be considered on its own facts and merits, and the issue of fitness to practice is "not necessarily to be determined by a close comparison of circumstances from case to case."[8]

[47] The cases to which the parties referred in which practitioners had been struck off involved either more serious offending than the present case or conduct in the course of legal practice:

(a) In *Barristers' Board v Darveniza*,[9] the practitioner had been convicted of two offences of supplying dangerous drugs. These were described by the Court of Appeal as "reprehensible conduct" but "not particularly serious examples of the offence". Those drug offences, however, were eclipsed by other misconduct, including making a false declaration to obtain a practising certificate, offering money laundering services, and swearing a false affidavit.

(b) In *Re a Practitioner*,[10] the offending behaviour was much worse than the present case. The practitioner had pleaded guilty to importing a commercial quantity of cocaine valued at between $1.35 million and $2.7 million. Even though he was a user, the importation scheme involved large-scale profit. The scheme also involved the practitioner giving advice of a quasi-legal character. There was no evidence of rehabilitation. McKechnie J observed:[11]

> The convictions are of so serious a nature and were committed in circumstances so intimately related with the practitioner's practice that the protection of the public and the maintenance of proper standards and the reputation of the legal profession requires an order striking the practitioner from the roll.

(c) In *Legal Practitioners' Complaints Committee v Palumbo*,[12] the practitioner had two convictions. One was for possession of a relatively small quantity of cocaine for use by himself and another lawyer. The second conviction, however, was for conspiring to defeat the course of justice by procuring his

---

8 *Council of the Law Society of Queensland v Whitman* [2003] QCA 438 at [38].
9 [2000] QCA 253.
10 [2004] WASCA 283.
11 At [17].
12 [2005] WASCA 129.

nephew to wrongly take responsibility for a traffic offence actually committed by the practitioner and for which he would have lost his driver's licence. The Court in that case noted that drug use will not necessarily result in striking off a practitioner, but the practitioner's engagement in a conspiracy to pervert the course of justice was "especially serious" and "struck at the heart of justice".[13]

(d) In *Prothonotary of the Supreme Court of New South Wales v Sukkar*,[14] the offending was very much worse than the present case – a solicitor was convicted, after trial, of being knowingly concerned in the importation of a large amount of the dangerous drug known as "ecstasy", having a wholesale value of $7.2 million to $12 million, and was sentenced to 14 years' imprisonment.

[48] At the other end of the scale was *Legal Practitioners' Complaints Committee v Bull*,[15] which concerned a practitioner who had pleaded guilty to possessing just over a gram of cocaine. Due to significant mitigating features, including the practitioner's exemplary personal and professional background, a 4-5 month voluntary suspension from practice, and an extended drug testing regime, the practitioner was reprimanded and fined $8,000. However, the Tribunal in that case said[16] that it:

> … considers that the protection of the public and the maintenance of professional standards in the legal profession require that the usual professional disciplinary consequence of possession of a prohibited drug should be, as a minimum, suspension from legal practice. The public have a right to expect that, when they consult a lawyer, the lawyer has not engaged in a drug related crime, including possession of a prohibited drug. Members of the legal profession have the same right when dealing with their colleagues.

[49] Other cases to which the Tribunal was referred did not involve drug offending but turned largely on the nature of the offending and the connection between that offending and an assessment of the respective practitioner's fitness to practice, and do not assist in the present case.

[50] The Tribunal has been assisted, both in terms of the nature of the offending involved and the principles to be applied, by reference to *Prothonotary of the Supreme Court of New South v P*. The solicitor in that case, while practising, had been using cocaine for many years and was a heroin addict. She was convicted of the serious drug offence of importing into Australia not less than a trafficable quantity of cocaine. In fact she imported 52.7 grams of pure cocaine by secreting it in her underwear. It was accepted that the drugs had been handed to her only shortly before she reached Sydney, and the offence was not committed for a commercial purpose. She was sentenced to six months' imprisonment to be released after three months upon entering into a recognisance to be of good behaviour for three months from the date of her release. By the time of the decision of the Court of Appeal on an application for her to be struck off, P had not practised as a solicitor or used illicit drugs or alcohol for some three years. There was evidence in that case of clear and convincing rehabilitation, and this evidence was not challenged. The Court did not order her to be struck off, but accepted an undertaking that the solicitor would not apply for a practising certificate until five years had passed since the commission of the offence. Notably,

---

13 At [26].
14 [2007] NSWCA 341.
15 [2006] WASAT 217.
16 At [25].

that was a case, as the present, in which the practitioner had engaged in conduct characterised as professional misconduct outside the course of legal practice.

[51] In that case, Young CJ in Eq accepted and applied 10 propositions, derived from American authorities, which he considered could point to compelling mitigating circumstances in cases such as the present:[17]

1. Absence of prior disciplinary record or criminal record;

2. Absence of motive for personal enrichment;

3. Honesty and co-operation with the authorities after detection;

4. The offences being unrelated to the practice of law;

5. The ignominy of having suffered a criminal conviction and the deterrent element;

6. The absence of premeditation with respect to the commission of the crime;

7. Evidence of good character;

8. Any voluntary self-imposed suspension or court-imposed temporary suspension from practice;

9. Delay in commencing disciplinary proceedings;

10. Most importantly, clear and convincing evidence of rehabilitation.

[52] In *Legal Services Commissioner v Meehan*,[18] this Tribunal adopted that approach, saying:[19]

> 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.

[53] It is appropriate to consider those factors in the context of the present case:

1. The learned sentencing judge noted that the respondent had a "minor, dated and irrelevant criminal history". There is no suggestion that he has any prior disciplinary history.

2. The offending conduct was marked by an absence of motive for personal enrichment. The learned sentencing judge expressly accepted that, whilst the respondent had provided substantial funds to purchase the methylamphetamine, there was no profit to him and he was motivated by a desire to secure drugs for Ms Taylor and himself.

---

17 At [17].
18 [2019] QCAT 17.
19 At [50].

3. It is clear both from the sentencing remarks and the material before this Tribunal that the respondent co-operated extensively with the authorities. This was found by the sentencing judge to be deserving of "significant recognition".

4. The trafficking and supply offences were unrelated to the respondent's practice of law.

5. The respondent has suffered public shame and humiliation as a result of his conviction and the media attention which attached to him and his family.

6. As appears from the narrative above, the respondent's offending resulted from a multitude of factors, including a chaotic personal life, overwork, and him being introduced to drug taking by Cant.

7. There was before the sentencing judge, and there is before this Tribunal, a significant body of evidence going to the respondent's good character.

8. The respondent has not practised as a solicitor since the QLS cancelled his practising certificate in September 2015, even though he had been entitled to apply for a practising certificate since 1 January 2017.

9. The respondent was convicted on 8 April 2015, and advised the QLS of the conviction on 13 April 2015. The current proceedings were not commenced, however, until 2 May 2017.

10. There is extensive evidence before this Tribunal of the respondent's rehabilitation. The fact of his rehabilitation was expressly accepted by the learned sentencing judge. The Tribunal has outlined above the further evidence adduced by the respondent concerning his ongoing rehabilitation, including his employment and community engagement. The Tribunal has also had regard to the evidence of the respondent's treating psychiatrist.

[54] In short, these factors weigh in favour of the respondent, particularly the evidence of his rehabilitation.

[55] In all the circumstances, the Tribunal is not satisfied that it has been demonstrated either that the respondent is presently not a fit and proper person to practice law or that the evidence establishes any probability that the respondent will be permanently unfit to practice law. It is, therefore, neither necessary nor appropriate for there to be an order recommending removal of the respondent's name from the roll of legal practitioners.

[56] That being said, this is a case of serious professional misconduct, albeit misconduct which did not occur in connection with legal practice. The public is entitled to expect that the legal practitioners who serve it are themselves law abiding citizens and are not, despite whatever unfortunate personal circumstances might prevail, engaged in criminal conduct in their private lives.

[57] In assessing the appropriate orders to be made, it is also necessary to note that, whilst the respondent's rehabilitation in this case militates against the necessity for an order

to reflect personal deterrence, there does remain an element of general deterrence. Practitioners must be aware that engagement by them in criminal conduct will attract serious consequences in their professional lives.

[58] When the matter initially came before the Tribunal, the parties effectively promoted a joint position that the appropriate order would be for the respondent to be suspended from practice until 7 April 2019, i.e. the date on which the operational period under his criminal sentence expired. Upon being requested to provide further submissions, the applicant's position shifted to seeking an order that the respondent be struck off. For the reasons given above, however, the Tribunal would not accede to that submission.

[59] In the view of this Tribunal, the serious nature of the offending conduct which underpins the professional misconduct and the protection of the public warrant the making of an order that the respondent effectively be suspended from practice by prohibiting him from applying for a practising certificate for a specified period. The Tribunal is not, however, inclined to accede to the submission that the period should be linked to the duration of the suspended jail sentence. There is neither legal nor rational connection between the two. The duration of the operational period of the suspended sentence was set by the learned sentencing judge having regard to the variety of factors before her which were relevant to the criminal sentencing process and the application of the provisions of the *PSA*. The rationale for effectively suspending a solicitor from practice is completely different from and unrelated to those criminal sentencing factors.

[60] Having regard to the seriousness of the case, the need for general deterrence, and the need to ensure public confidence in the respondent as an individual and the profession generally, the Tribunal has concluded that the respondent should be prohibited from applying for a practising certificate for a period of five years from the date of his conviction.

[61] In the circumstances of this case, the Tribunal also considers it appropriate to publicly reprimand the respondent. That, of itself, will serve as a permanent marker of the public's and the profession's depth of disapproval of the respondent's misconduct.

[62] Section 462 of the *LPA* effectively requires the Tribunal to make a costs order against the respondent unless it is satisfied that exceptional circumstances exist. The respondent has, by his counsel, indicated that he does not oppose a costs order.

[63] Accordingly, the decision of the Tribunal is as follows:

1. Order that the respondent not be granted a local practising certificate before the end of the period of five years commencing 8 April 2015;

2. The respondent is publicly reprimanded;

3. The respondent shall pay the applicant's costs of and incidental to this discipline application, such costs to be assessed on the standard basis for matters in the Supreme Court of Queensland.