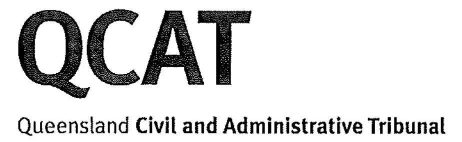

Queensland **Civil and Administrative Tribunal**

DECISION

Case number:	**OCR182-13**
Applicant:	**Legal Services Commissioner**
Respondent:	**Mr Michael James Quinn**
Before:	**Justice Daubney President**
Hearing Date:	**4 July 2018**
Date Delivered:	**4 July 2018**
Proceeding Type:	**Tribunal Hearing**

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. It is recommended that the name of the respondent, Michael James Quinn, be removed from the Roll of Solicitors in Queensland.
2. The respondent shall pay the applicant's costs to be assessed on the standard basis on the Supreme Court Scale under the Uniform Civil Procedure Rules in the manner that the costs would be assessed in the Supreme Court of Queensland.

Signed

Justice Daubney President
Queensland Civil and Administrative Tribunal

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Legal Services Commissioner v Quinn* [2018] QCAT 196
PARTIES:	**LEGAL SERVICES COMMISSIONER** (applicant) **v** **MICHAEL JAMES QUINN** (respondent)
APPLICATION NO/S:	OCR182-13
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	4 July 2018
HEARING DATE:	4 July 2018
HEARD AT:	Brisbane
DECISION OF:	Justice Daubney, President
ORDERS:	**1. It is recommended that the name of the respondent, Michael James Quinn, be removed from the Roll of Solicitors in Queensland;** **2. The respondent shall pay the applicant's costs to be assessed on the standard basis on the Supreme Court Scale under the Uniform Civil Procedure Rules in the manner that the costs would be assessed in the Supreme Court of Queensland.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – TRUST MONEY – where respondent unlawfully drew trust monies without clients consent – where no client suffered loss PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – CRIMINAL OFFENCES – where respondent has been convicted of fraud in District Court of Queensland – whether respondent should be struck from roll *Attorney General v Bax* [2998] QCA 089 *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66

	De Pardo v Legal Practitioners Complaints Committee [2000] 170 ALR 709 *Law Society of New South Wales v Jones* *Legal Services Commissioner v Quinn* [2012] QCAT 618 *Legal Services Commissioner v Twohill* [2005] LPT 001
	Legal Profession Act (Qld) 2007, ss 9, 248, 249, 259, 261, 419, 462 *Legal Profession Regulations (Qld)* 2017, s 58
APPEARANCES & REPRESENTATION:	
Applicant:	M Nicholson instructed by the Legal Services Commission
Respondent:	Self-represented

REASONS FOR DECISION

[1] On 12 October 2017 the respondent, Michael James Quinn, was convicted after trial by jury of one count of fraud with a circumstance of aggravation contrary to section 408C of the *Criminal Code*. His offending occurred in the context of his conduct of a legal practice. He was sentenced for having committed that offence to 12 months imprisonment, with immediate suspension, with an operational period of two years.

[2] As the learned sentencing judge noted, the circumstances of his offending, which involved trust account defalcations, extended over a period of time. In fact, on the material before the tribunal, the period of time was of some 16 months and, as the learned sentencing judge noted, the offending conduct involved the transferring of moneys from the trust account of the respondent's firm without the knowledge or authorisation of any client relevant to the particular transfer. In other words, and as is necessarily inherent in a conviction for fraud, the conduct was characterised by the element of dishonesty.

[3] The respondent now appears before this tribunal in response to a discipline application brought by the Legal Services Commissioner ('Commissioner'). The discipline application as originally filed by the Commissioner in 2013 particularised some 64 individual charges against the respondent. Those charges have however been significantly pared back and a further charge has been brought as a consequence of the respondent's conviction in the District Court.

[4] In short, the professional charges which are now the subject of this disciplinary application comprise the charge arising out of the fact of his conviction for fraud and also the same transactions which were the particulars of the fraud charge on which he was found guilty. The Commissioner has also expressly limited the particulars of the charges with which this tribunal is now concerned to the same particulars which were the subject of the proceeding in the District Court and which were the subject of the conviction.

[5] The respondent was engaged in legal practice as a sole practitioner. Initially his firm traded under the name 'Q5 Law'. From 1 April 2009, he was engaged in legal practice

as the sole legal practitioner director of the incorporated legal practice 'Q5 Law Proprietary Limited'.

[6] Apart from the charge arising out of the fact of his conviction for fraud, the remaining charges, which, as I have noted, are effectively the particulars of the fraud charge, alleged deficiencies in the trust account ledger accounts of the respondent's firm contrary to s 259(1) of the *Legal Profession Act* ('LPA'), unlawful drawing of trust moneys contrary to s 249 of the LPA and s 58 of the *Legal Profession Regulation 2007*, retention of trust moneys in a general account contrary to s 248 of the LPA, and failure to keep trust records which recorded the true position in relation to trust moneys received contrary to s 261 of the LPA.

[7] In the hearing before this tribunal the respondent, who represented himself, expressly admitted all of the charges on which the applicant proceeds. In so doing, the respondent acknowledged that he was thereby admitting the underlying facts in relation to those charges. The amount involved in the various defalcations, which are particularised in the charges, amounts to just over $30,000. As I have already noted, the defalcations occurred over a period of time of some 16 months.

[8] It is clear to the tribunal that the respondent's conduct, as particularised in the charges which he has admitted, amounts to professional misconduct within the meaning of that term in s 419 of the LPA. It does so under both limbs of the definition of professional misconduct contained in section 419(1). The conduct clearly amounted to professional misconduct of an Australian legal practitioner because it involved both a substantial and a consistent failure over a period of 16 months to keep reasonable standards of competence and diligence. So much is self-evident from the continuing nature of the defalcations in question.

[9] Moreover, the conduct in question justifies a finding that the practitioner is not a fit and proper person to engage in legal practice. By s 419(2) the tribunal is required to have regard for that purpose to the suitability matters enumerated in s 9 of the LPA. Section 9(1)(d) specifies as a suitability matter whether a person has been convicted of an offence in Australia and, if so, the nature of the offence and how long ago the offence was committed and the person's age when the offence was committed.

[10] In that regard the offence of which the respondent was convicted was a serious offence of dishonesty which occurred and was committed while he was engaged in legal practice. The offence was committed over a period of 16 months while he was in practice and at the time he committed the conduct in question, he was, as was noted by the learned sentencing judge, 35 to 36 years of age and had at that time been a solicitor for about 12 years.

[11] It is trite to observe that the clients of solicitors must be able to expect absolute probity from solicitors in relation to dealings with moneys held in trust. Various terms have been used to describe the level of that probity. Those terms have elevated the extent of that probity to levels such as it being a sacred trust. Whatever words one uses, the inherent relationship between a solicitor and their client must be founded on trust, and a necessary practical manifestation of that trust must be the absolute probity with which solicitors both theoretically and in practice approach their dealings with moneys that have been entrusted to them by or on behalf of clients.

[12] In this case, again as was noted by the learned sentencing Judge, there is the feature that it is unusual that none of the respondent's former clients actually appear to have ended up being out of pocket. To that extent, the matter bears some similarity to the circumstances which were considered by the tribunal in a previous case concerning another person with the same surname, namely, *Legal Services Commissioner v Quinn.*[1] Be that as it may, as was noted by the tribunal in that case, the start and finish of considerations concerning dealings with a solicitor's trust account must lie in recognition of the fundamental principle that proper maintenance of trust accounts by lawyers is a vitally important aspect of professional legal practice.

[13] Again to echo words which describe the pinnacle of that obligation, the tribunal in Quinn's case quoted the observation of de Jersey CJ in *Twohill's case*,[2] that trust account moneys have a 'sacrosanct character' and the observations of Street CJ in *Law Society of New South Wales v Jones*[3] that reliability and integrity in the handling of trust accounts are fundamental prerequisites in determining whether an individual is a fit and proper person to be entrusted with the responsibilities attaching to a solicitor.

[14] When one has regard to the fact of the respondent's conviction and the nature of the defalcations in handling the trust account which underpinned that conviction and which formed the balance of the charges which are before the tribunal, all of which, as I have already noted, are matters which have been admitted by the respondent, the finding that the respondent engaged in professional misconduct is both obvious and necessary.

[15] Having made that finding, the question then becomes one as to the appropriate sanction. The applicant pressed for an order that the tribunal make a recommendation that the respondent's name be removed from the Roll of Practitioners. It is to the credit of the respondent that he did not seek to minimise the seriousness of the conduct in which he had engaged and, indeed, he expressly recognised in his brief submissions to the tribunal that he did not cavil with the position advanced by the Commissioner and made the statement to the tribunal that there was no place in the profession for a person with a recent conviction for dishonesty.

[16] In approaching the exercise of the discretion conferred on the tribunal as to the appropriate sanction to be involved, it is, of course, to be recalled that a primary purpose for imposing a sanction is protection of the public. As McMurdo JA noted in *Shand*,[4] an order affecting a practising certificate is one which provides immediate protection from risks to which those who would encounter an unfit person would be exposed, but as his Honour went on to observe, removal of the name of an unfit practitioner from the roll serves the interests of the public in more extensive ways.

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1 [2012] QCAT 618.

2 *Legal Services Commissioner v Twohill* [2005] LPT 001.

3 Unreported, Street CJ, NSWCA, CA No 333 of 1977, 27 July 1978, 10.

4 *Attorney-General of the State of Queensland v Legal Services Commissioner & Anor; Legal Services Commissioner v Shand* [2018] QCA 66 at [53].

[17] His Honour referred to observations by Pincus JA in *Attorney General v Bax*,[5] and also quoted observations by French J, as he then was, in *De Pardo v Legal Practitioners Complaints Committee,*[6] namely:

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

[18] In other words, there is a deterrent element to the sanction to be imposed. Moreover, McMurdo JA in *Shand* said this at [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 practice 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.

[19] On the facts of the case then before the Court of Appeal, which I should hasten to add are quite different from the facts which are presented to the tribunal in the present case, McMurdo JA, with whom Morrison JA and Brown J agreed, found that it was necessary in that case to have regard to the wider purposes, namely, the preservation of the good standing of the legal profession and of the roll as the court's endorsement of the fitness of those enrolled.

[20] Given the relative currency of the respondent's conviction, the serious nature of the offending and the fact that that offending occurred in the course of his conduct of a legal practice, all of those being matters which underpin the finding that he engaged in professional misconduct, it is appropriate in the view of the tribunal to conclude that the appropriate sanction is a recommendation that the respondent's name be removed from the Roll of Practitioners.

[21] The Commissioner has also sought an order for costs.

[22] Section 462 subsection (1) of the LPA provides:

> A disciplinary body must make an order requiring a person whom it has found to have engaged in prescribed conduct to pay costs, including the costs of the commissioner and the complainant, unless the disciplinary body is satisfied exceptional circumstances exist.

[23] There is no cause in the present case for a finding of any such exceptional circumstances. Accordingly, the tribunal is constrained by section 462 to make an order for costs.

[24] There will be the following orders:

1. It is recommended that the name of the respondent, Michael James Quinn, be removed from the Roll of Solicitors in Queensland;

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5 [1998] QCA 089.

6 [2000] 170 ALR 709 at [42].

2. The respondent shall pay the applicant's costs to be assessed on the standard basis on the Supreme Court Scale under the Uniform Civil Procedure Rules in the manner that the costs would be assessed in the Supreme Court of Queensland.