QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Magill v Queensland Law Society Inc (No 2)* [2020] QCAT 226
PARTIES:	**ADAM RAYDON MAGILL** (applicant) **v** **QUEENSLAND LAW SOCIETY INCORPORATED** (respondent)
APPLICATION NO/S:	OCR393-19
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	8 July 2020
HEARING DATE:	11 May 2020
HEARD AT:	Brisbane
DECISION OF:	Justice Daubney, President
ORDERS:	**1. The application for review is dismissed.** **2. The Tribunal will hear the parties as to costs.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – PRACTISING CERTIFICATES – CANCELLATION AND SUSPENSION – where the applicant was charged with five indictable offences relating to his conduct as a legal practitioner including money laundering, two counts of fraud on Legal Aid Queensland, a fraud on the incorporated legal practice Lawler Magill and falsifying a memorandum of fees – where the applicant was granted bail upon his own undertaking, as subsequently amended, not to contact certain persons, most of whom were to be Crown witnesses in the criminal proceedings – where the applicant breached the bail undertaking on six occasions – where two of those breaches occurred after the applicant was found guilty of having breached his bail undertaking on the first occasion – where the applicant failed to notify the Queensland Law Society Inc ("QLS") of the breaches of bail, in contravention of s 57 of the *Legal Profession Act* 2007 (Qld) ("*LPA*") – where the QLS determined that the applicant was not a fit and proper person to continue holding a practising certificate and cancelled the applicant's practising certificate pursuant to the power conferred by s 61(2) of the *LPA* – where the applicant has applied for a review of that decision under s 61(3) of the *LPA* – where the applicant contends that there was a

	demonstrable connection between his conduct and his alcohol abuse – where the applicant contends that his decompensated mental health impacted upon his judgment and ability to deal with personal legal matters – where the applicant submits that his breaches of bail undertakings did not reflect his actual nature or character, but were examples of extremely poor judgment – where the Tribunal must hear and determine the application for review by way of a fresh hearing on the merits and produce the correct and preferable decision in accordance with s 20 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) – whether on the evidence before the Tribunal the applicant is presently a fit and proper person to hold a practising certificate
	Legal Profession Act 2007 (Qld) s 3, s 21, s 28, s 31, s 46, s 57, s 61 *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) s 20
	Adamson v Queensland Law Society Inc [2017] QCAT 355 *Council of the Law Society of NSW v Powell* [2019] NSWCATOD 24 *Legal Services Commissioner v Bui* [2018] QCAT 424 *Legal Services Commissioner v O'Reilly* [2019] QCA 251 *Legal Services Commissioner v O'Reilly* [2019] QCAT 28 *Magill v Queensland Law Society Inc* [2019] QCAT 392 *Magill v The Commissioner of Police* [2020] QDC 8 *R v Yarwood* [2011] QCA 367
APPEARANCES & REPRESENTATION:	
Applicant:	A Glynn QC, with K W Gover, instructed by Gilshenan & Luton Legal Practice
Respondent:	L Sheptooha instructed by Queensland Law Society Incorporated

REASONS FOR DECISION

[1] The applicant was admitted as a solicitor in Queensland in September 2007. He commenced practice with the firm then known as Bell Miller. That firm subsequently became an incorporated legal practice known as Lawler Magill. In 2013, the applicant became a partner and then a director of the firm, together with Neil Lawler. Since joining the firm in 2007, the applicant practised in criminal law. He has no disciplinary history as a solicitor.

[2] On 2 September 2019, the respondent Queensland Law Society Inc ("QLS") gave the applicant a show cause notice under s 61(1) of the *Legal Profession Act* 2007 (Qld) ("*LPA*"). The show cause notice informed the applicant that the QLS believed there was a ground for cancelling his practising certificate, namely that he was no

longer a fit and proper person to hold such a certificate. The show cause notice advised the applicant of the action which the QLS proposed to take, set out the grounds and the underlying facts relied on by the QLS, and invited him to make written submissions as to why the proposed action ought not be taken.

[3] The applicant made written submissions to the QLS on 13 September 2019, and his legal representatives also provided written submissions to the QLS on 18 November 2019.

[4] By a letter dated 29 November 2019, the QLS informed the applicant that it had decided to cancel his practising certificate from that date.[1]

[5] The stated basis for the QLS decision was its determination that the applicant was not a fit and proper person to hold a practising certificate.

[6] The factual background to the QLS finding that the applicant was not a fit and proper person to hold a practising certificate may be summarised as follows:

(a) On 21 October 2018, the applicant was charged with five indictable offences after an 18 month investigation by the Crime and Corruption Commission ("CCC"). Those alleged offences are related to the applicant's conduct as a legal practitioner and include allegations of money laundering, two counts of fraud on Legal Aid Queensland, a fraud on Lawler Magill and falsifying a Memorandum of Fees;

(b) On 22 October 2018, the applicant was granted bail upon his own undertaking that he would not contact certain persons (most of whom are identified as Crown witnesses in the criminal proceedings). That undertaking was subsequently amended on 26 November 2018 so that the applicant could have "incidental contact as may arise by virtue of appearing in the same court" as those persons;

(c) On 26 November 2018, the applicant first breached his bail undertakings by contacting a Crown witness, a barrister. The applicant pleaded not guilty to that breach, but on 3 June 2019 was found guilty of having breached his bail undertakings. In his sentencing remarks on that occasion, the then learned Chief Magistrate stated that:

> It is impossible to accept the defendant, an experienced solicitor, notwithstanding the evidence of the doctor as to his mental state, could not be aware that he was precluded from contact to barristers, except in the limited circumstances referred to in the varied bail.

(d) On 1 August 2019, the applicant pleaded guilty to five further breaches of bail. Those breaches occurred on 18 February 2019 (communicating in person with his co-director of Lawler Magill, Neil Lawler), between 29 March and 1 April 2019 (twice communicating in person with a Crown witness), 28 June 2019 (communicating in person with a Crown witness) and 6 July 2019 (communicating in person with a Crown witness). The final two breaches occurred after 3 June 2019, when the applicant had been found guilty of the first breach and in which the Chief Magistrate made the observations quoted above. In her sentencing remarks on 1 August 2019, the learned Magistrate described these last two breaches as the "most serious charges" because they:

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[1] Pursuant to the power conferred by *LPA* s 61(2).

> … followed the decision that was made on the 3rd of June, which clearly indicated it was not reasonable that [the applicant] be mistaken about the bail conditions, given that [the applicant] is a solicitor of many years standing with an exclusive criminal law practice who knows what things mean.

The learned Magistrate recorded convictions in respect of those last offences because of the applicant's "… continued offending and the demonstration by that of a flagrant disregard for the authority of the Court and the law".

(e) Further, in contravention of the statutory conditions placed on his practising certificate by s 57 of the *LPA*, the applicant failed to notify the QLS of any of the breaches of bail.

This application

[7] The applicant has now applied to this Tribunal for a review of the QLS decision, pursuant to s 61(3)(b) of the *LPA*.

[8] By his application for review, the applicant identified three bases for reviewing the decision:

> 1. The applicant is a fit and proper person to hold a practising certificate (with or without conditions).
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> 2. The [QLS] decision fails to have adequate regard to the role of the applicant's mental health in contributing to the matters relied on by the [QLS].
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> 3. The [QLS] decision fails to give adequate regard to the mitigating circumstances of the matters relied on by the [QLS].

[9] Much of the applicant's case on this review, particularly in the oral hearing, focused on the second ground, i.e. mental health considerations.

[10] The applicant relied on two affidavits by him and a report dated 4 November 2019 from the applicant's treating psychiatrist, Dr Mark Taylor, together with an updated version of that report dated 8 May 2020. The QLS put before the Tribunal the material on which it had relied in reaching its decision.

[11] By s 20 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) ("*QCAT Act*"), this application for review must be heard and determined by way of a fresh hearing on the merits. Its purpose is to produce the correct and preferable decision.

[12] Just as it is well established that the object of disciplinary proceedings under the *LPA* is not to punish a practitioner but to protect the public and the standing of the profession, so too the "correct and preferable decision" to be reached under a review such as the present is that which accords with the relevant stated purpose of the *LPA*, namely to regulate legal practice in Queensland "in the interests of the administration of justice and for the protection of consumers of the services of the legal profession and the public generally".[2] In the present context, this purpose is

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2 *LPA* s 3(a).

achieved by, relevantly, restricting practice of legal practitioners to "fit and proper" persons.[3]

[13] The principles concerning the "fit and proper" criterion were canvassed at some length in the decision of this Tribunal in *Adamson v Queensland Law Society Inc* ("*Adamson*").[4] That case was a review of a decision by the QLS to refuse to renew a solicitor's unrestricted employee practising certificate. The applicant had been in practice for nearly 20 years, and during that time had been engaged both in private practice as a solicitor and also spent a period of time employed as an in-house solicitor. Relevantly, the applicant had a past close professional association with companies that had deceived and defrauded vulnerable members of the public. He was involved with fraudulent schemes which had been conceived and controlled by one Craig Gore. The upshot of these schemes was that some 187 Australian investors lost most of their self-managed superannuation funds by reason of their investment in these fraudulent schemes. Proceedings were subsequently brought in the Federal Court by the Australian Securities and Investments Commission ("ASIC") against, *inter alia*, the applicant. In October 2013, the applicant consented to the Court making declarations to the effect that between 13 March and 12 June 2012, he was knowingly concerned in contraventions of the *Corporations Act* 2001 (Cth) and in the misleading and deceptive conduct. To his credit, the applicant later gave evidence to, and co-operated with, ASIC in subsequent investigations. ASIC concluded its investigations, and no criminal action was proposed against him. The applicant informed the QLS of the Federal Court judgment against him when he applied for a renewal of his unrestricted employee practising certificate for the 2016/2017 period. Ultimately, the Executive Committee of the QLS resolved that it was satisfied that the applicant was not a fit and proper person to continue holding an unrestricted employee practising certificate, and refused to renew his certificate.

[14] In the course of essaying the relevant principles, this Tribunal said:

> [16] The *fit and proper* requirement has been described as an 'amalgam of virtuous moral values and attributes or traits, which include integrity, candour and honesty'. It includes whether a candidate is currently of good fame and character.
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> [17] The notion of 'character' in the law was explained by Gummow J in *Melbourne v The Queen* as having 'varying significance and shades of meaning from particular fields of discourse and the particular fact in issue'.
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> [18] Good character denotes enduring moral and ethical strength even under extreme pressure and when no one is watching. It includes honesty as well as knowledge and ability. Its use with respect to the profession has to be contrasted with its use in the criminal law and the law of defamation:
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> > 'Good character' is not a summation of acts alone, but relates rather to the quality of a person. The quality is to be judged by acts and motives, that is to say, behaviour and the mental and emotional situations accompanying that behaviour. However, character cannot always be estimated by one act or one class of act. As much about a person as is known will

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3 See *LPA* ss 21(b), 28, 31, 46 and 61.

4 [2017] QCAT 355, Carmody J presiding ("*Adamson*").

> form the evidence from which the inference of good character or not of good character is drawn.
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> [19] Although the law does not always distinguish between the two, a person's character does not necessarily correspond with his or her reputation.
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> [20] Unlike character the assessment of a person's fame involves an evaluation of whether the person is known favourably to a large section of the public.
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> [21] As Brooking J pointed out in *Re B (a Solicitor)*, the focus of the question is on '*the position in which the practitioner finds himself*', and whether, in light of that situation, the practitioner is now and in the predictable future, a suitable person to practice law. This involves more than an assessment of a person's character or reputation and includes whether the person is able to satisfactorily carry out all the inherent requirements of practice: meeting exacting (if not exemplary) standards of conduct in professional services in personal affairs, and most of all, having due regard and respect for the authority of the law, the judiciary and allied social institutions.
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> (citations omitted)

[15] Later in the same decision, the Tribunal said:

> [144] The practitioner should not be endorsed as a fit and proper person to be a lawyer by the tribunal or regulatory body lightly. Endorsement should occur only if and when there is reason to believe he genuinely and demonstrably deserves it.
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> [145] Shortly stated the test is: does the practitioner have the intrinsic personal character and professional capacity needed to command the confidence, respect and trust of the judiciary, legal profession and clients, and can he be relied on in the predictable future to obey and uphold the law, and to be completely honest and candid in all his professional dealings?
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> [146] To be a fit and proper person to hold a certificate requires demonstrated honesty and competence in dealing with clients, other practitioners and the court. It also extends to the assessment of a practitioner's '*character*'. Assessments of character help maintain continuing public confidence in the performance of the duties of legal practitioners, which is essential given the central role the profession plays in the administration of justice.
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> (citations omitted)

The QLS reasons

[16] The QLS reasons recorded the facts of the relevant breaches of bail undertakings, including the observations made by the sentencing Magistrates.

[17] The reasons also noted the applicant's submissions about mitigating circumstances:

> [13] The following mitigating circumstances were considered:
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> (a) Your mental health issues and the role they played in the offending.

(b) The offending was not connected to your practice as a solicitor and did not negatively impact upon your clients.

(c) The offences did not involve dishonesty or financial gain.

(d) Co-operation with the administration of justice and expression of remorse by entering pleas of guilty on 1 August 2019.

(e) You have already been punished by the imposition of fines and by spending three days in the watch house.

(f) You have experienced significant extra curial punishment – your professional reputation built up over many years has been tarnished and you have been publicly humiliated by prominent media coverage.

(g) You have not committed any further breaches of bail for almost six months, despite being subject to onerous conditions since 18 July 2019. You submit that this demonstrates that you are managing your mental health issues and binge drinking, and do not present a risk of further re-offending of this nature.

(h) You are the sole income earner for your family.

(i) You have no previous complaints or disciplinary matters over a lengthy career.

[18] The reasons noted a letter by Dr Taylor dated 1 July 2019 which had been provided in support of the applicant's practising certificate renewal application, in which the doctor expressed the view that the applicant was medically fit to work in his demanding role as a partner in a criminal law firm. The reasons then detailed at some length the then-current version of Dr Taylor's full report, dated 14 October 2019.

[19] In the conclusion to its reasons, the QLS said it had considered the events set out in the show cause notice in the context of Dr Taylor's observations, and provided a comprehensive chronology.

[20] The QLS reasons then stated:

> [46] The Society considered the events set out in the show cause notice in the context of the observations of Dr Taylor and formed the view that the medical evidence was not sufficient to support a view that your mental state and intoxication were the sole or primary causes of your offending because:
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> (a) On 3 June 2019, the Court considered in mitigation medical evidence regarding your mental state, but found that even though there was clearly a deterioration in your mental health, the evidence of Dr Taylor was not such that would exclude you from understanding what had gone on at the time of the variation of bail.
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> (b) The medical report of 14 October 2019 describes:
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> - By late October 2018, your mental health deteriorated dramatically after you were charged with fraud and locked up on the watch house overnight [9.7].

- In May and June 2019 you presented to Dr Taylor as very good and not clinically depressed.

- On 17 June 2019 you presented as 'very good' and on 26 June 2019, Dr Taylor consulted you and declared you fit to practice, yet a few days later, you contacted a Crown witness.

- On 22 July 2019, Dr Taylor reports that there had been a suicide plan and two days incarceration, which had led to an acute stress reaction and decompensation of your mental state. That was so despite you being wholly compliant with your medication regime and abstinence from alcohol.

- After the Society served a show cause notice on you, you presented at the emergency department of St Andrew's Hospital, with symptoms of having suffered a panic attack [9.15].

- During the period from October 2018 to July 2019, there was a significant deterioration in your mental state that exacerbated your pre-existing depressive illness and generalised anxiety disorder. The exacerbation was brought about by the various external stresses and consequent media attention [11.3.1].

- On 22 July 2019 and 23 September 2019, Dr Taylor noted acute stress reaction and decompensation of your mental state, despite you being wholly compliant with your medication regime and abstinent from alcohol.

(c) When those events and observations were viewed chronologically, the Society formed the view that the incidence of mental decompensation observed by Dr Taylor seemed to follow the events, not cause them.

[21] The QLS also noted the applicant's apparent lack of insight or remorse, saying:

> [47] … Instead, you submit that your conduct does not demonstrate a flagrant disregard for the law and the administration of justice and was caused solely or primarily by your issues with mental health and alcohol abuse which can be managed.
>
> [48] Whilst this many [sic] indicate that you have gained some insight into your issues with mental health and alcohol abuse, it does not demonstrate any level of insight or remorse for the offending conduct.

[22] The QLS reasons continued:

> [51] The breaches of undertaking which occurred after the decision of 3 June 2019 are much more serious because they demonstrate a willingness to disobey the law and the authority of the Courts. By that time, you had the benefit of the reasons for the decision of 3 June 2019 so you knew, without any doubt, that you were not entitled to contact any of the persons listed in the bail undertakings. The Court pointed out that the terms of the undertakings were carefully crafted and very clear. Yet you breached the conditions of those bail undertakings by making contact with those named persons anyway.

> These actions, when considered together, are indicative of your general approach to these serious matters and show a blatant disregard for your obligations as an officer of the Court and a willingness to disobey the bail undertakings you gave to the Court, not just once, but on six occasions. By this conduct, you have demonstrated that the Court cannot depend implicitly upon your word or behaviour and neither clients, fellow practitioners nor the judiciary could have confidence in you to fulfil his [sic] obligations as a legal practitioner. This type of conduct also erodes public confidence in the legal profession.

[23] The QLS reasons also referred to a submission that public interest considerations could be met by placing conditions on a practising certificate, including a requirement for the applicant to engage in ongoing psychiatric treatment. The QLS was, however, not persuaded that ongoing psychiatric treatment would be sufficient to address public interest considerations because it had not been sufficient to prevent offending over the previous year. The fact that the applicant had been undergoing psychiatric treatment and risk management strategies had not been sufficient to prevent him from repeatedly breaching his bail undertakings.

[24] The report concluded with the QLS affirming its belief that a ground existed to cancel the applicant's practising certificate, namely that he was no longer a fit and proper person to hold that certificate.

The applicant's evidence

[25] In an affidavit sworn on 12 December 2019, the applicant described his personal antecedents, his recent medical history, and the circumstances of his breaches of the bail undertakings. He also addressed issues of hardship relating to his family, his firm and his clients, those being matters which were considered on his unsuccessful application for a stay of the QLS decision.[5]

[26] After completing Year 12, the applicant undertook a cadetship with the Queensland Police Service ("QPS") in 1989. He then worked as a police constable for about 12 months before leaving the police force to study engineering. He completed that course and was offered work in the engineering field in Central Queensland, but instead started work as a security supervisor at a casino.

[27] In 1996, he rejoined the QPS, which required completion of a three-month bridging course. After about a year in uniform, he was transferred to plainclothes duty in the Goodna Criminal Investigation Branch. He was appointed a detective in 2001. The applicant rose to the rank of Detective Sergeant, with his final posting being in the Dedicated Source Unit. He left the QPS in November 2006.

[28] Between 2001 and 2006, the applicant completed a Bachelor of Laws at the Queensland University of Technology, and subsequently undertook the requisite practical legal training course. He was admitted as a solicitor in Queensland on 10 September 2007.

[29] He immediately started work as a solicitor at the firm then known as Bell Miller Solicitors. That firm later became the incorporated legal practice presently known as Bell Miller Pty Ltd trading as Lawler Magill Lawyers. In 2013, the applicant joined Neil Lawler as a partner, and later a director, of the firm. The applicant

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5 See *Magill v Queensland Law Society Inc* [2019] QCAT 392 ("*Magill* [2019]").

practised continuously with that firm in the field of criminal law until the QLS cancelled his practising certificate.

[30] The applicant said that his mental health declined in 2017 due to external stressors, namely an investigation by the CCC. He was ultimately diagnosed with a generalised anxiety disorder coupled with an intermittent major depressive disorder. The applicant described his treatment and medication regime under the care of Dr Taylor. He said:

> [21] I have gradually changed my lifestyle over the course of my treatment in ways that positively affect my mental health. I have drastically reduced my consumption of alcohol, I am attentive to my sleep hygiene, I attend regular medical check-ups with my GP and monthly checkups with my psychiatrist, I am more attentive to a healthy diet having become a vegetarian, and I exercise regularly in the form of rowing. This was a slow process for me because of the extent of the changes required, in particular removing myself from social situations where alcohol would be involved. However, I have made significant progress with this in the last six months.

[31] The applicant referred to having suffered panic attacks but said that, whilst stressed, he did not lose perspective or a sense of control as he had in the past. He expressed optimism about his mental health, and said he was confident that he was not at risk of significant relapse "while I maintain my current treatment regime and lifestyle, including taking regular annual leave as I have done in response to the cancellation of my practising certificate".

[32] The applicant then referred to his breaches of bail undertakings, and his subsequent failure to notify the QLS of the conviction for breach of bail, as required by s 57 of the *LPA*. He said:

> [31] I have no criminal history other than these breaches of bail undertakings.
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> [32] I appreciate the seriousness of my breaches of bail undertakings given to the Magistrates Court. I regret my actions and have reflected upon them to try to understand why I breached my bail undertakings and compromised my professional standards.
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> [33] While my decision making in relation to the breaches of bail was not entirely rational, there was an element of burying my head in the sand as to the position I was in. I never thought that I would find myself on bail conditions and I was to an extent in denial about the changes that needed to be made to my life to comply with those conditions.
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> [34] With respect to the first breach of bail, by contacting Alistair McDougall, I can only say that I came to believe what I wanted to believe rather than what was the case about the effect of the variation made to my bail that day. I appreciate such a mistake was not reasonable.
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> [35] I have always been a very outgoing, gregarious person and it is my nature to be sociable with friends and acquaintances. My network of contacts has been a big part of my professional branding and business development from the outset of my career.
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> [36] It was this approach, combined with denial about the seriousness of my position, that caused me to have contact with persons I was

> prohibited from being in contact with. I am embarrassed to acknowledge that it took some time for the gravity of my position to sink in.
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> [37] Whilst of course I knew the legal meaning and scope of my non-contact conditions, I can only say that it is a very different reality being the defendant/client as opposed to the legal representative. I now fully appreciate the importance of meticulous compliance with all of my bail conditions.
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> [38] Whereas once I would cross the street to greet a professional colleague, I now understand I need to cross the street to avoid those colleagues and former long term clients with whom I am not allowed to come into contact.
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> [39] I also now have the foresight to avoid situations where I might be drawn into social interactions that could place me in breach of my bail conditions.
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> [40] I also limit my intake of alcohol both to improve my mental health and to avoid errors of judgment such as occurred in breaching my bail undertakings.

[33] Later in that affidavit, the applicant sought to provide assurance to this Tribunal that he does not present a risk to the public in returning to legal practice by saying that he would accept any conditions on his practising certificate as the Tribunal thinks fit, including requiring regular medical check-ups with a GP, psychiatrist and psychologist, or formalised reviews or check-ins with those he attends for guidance. He also said he would have no objection to reports being provided by his treating health practitioners or others, on a quarterly or other regular basis.

[34] For the present hearing, the applicant provided a further affidavit sworn on 11 May 2020. He said that his mental health had continued to improve steadily since his affidavit of 12 December 2019, and attributed that improvement to several factors:

(a) His continued treatment under Dr Taylor, and compliance with the psychiatrist's recommendations; and

(b) The fact that the criminal charges brought against the applicant have been particularised. Whilst the proceedings are still in the pre-committal stage, the applicant says that knowing what is alleged against him has relieved much of the anxiety that he previously experienced. He also says that, whilst he is aware that there will be stress associated with important court dates, he has confidence in the process and the supports that he has in place, including his legal representatives, Dr Taylor, and his family.

[35] The applicant said that, if permitted to return to practice, he would take leave during crucial periods in the court proceedings to minimise his stress and anxiety.

[36] Further in his affidavit, the applicant noted that his bail conditions were varied in April 2020 to remove the requirement that he wear an ankle monitor. He said that he has continued to spend more time with his family, and that has increased during the COVID-19 restriction period. He follows an exercise regime, and said that he drinks only a minimal amount of alcohol and maintains a healthy diet. He has found that exercise, his healthy diet and reduced alcohol consumption keep him in a consistent good mood and allow him to manage stress in a much better way than his

lifestyle before August 2019, when he would have consumed alcohol heavily in response to stressful events.

Medical evidence

[37] The applicant placed significant reliance on the updated report by his treating psychiatrist, Dr Taylor.

[38] The report recorded the applicant telling Dr Taylor that he had past problems with alcohol intake, describing a pattern of heavy drinking while working as a police officer. In particular, due to unconnected work-related legal pressures at the end of 2018, the applicant required medication and psychological therapy to help him deal with an escalating pattern of binge drinking. The applicant had reported to Dr Taylor that he had substantially reduced his alcohol intake during 2019 and 2020. The doctor referred to the "drink culture" of the professional world which the applicant inhabits, noting, for example, from appointments between 13 May and 17 June 2019 the applicant was prescribed an alcohol deterrent medication. Dr Taylor noted on 17 June 2019 that the applicant reported to him that he had consumed no alcohol since 13 May 2019, apart from while on a fishing trip the previous day. Dr Taylor said that during further reviews in 2020, there had been no subjective or objective evidence that the applicant had been misusing alcohol.

[39] Dr Taylor's report outlined the applicant's previous psychiatric history, commencing with a consultation with mental health services in March 2017 for counselling in relation to work-related stresses. At that time, there was an initial diagnosis of a generalised anxiety disorder consequent on external stresses coupled with an intermittent major depressive disorder. The applicant actively participated in assessment and treatment, and was managed during 2017 as an outpatient. The focus of the treatment was psychological therapy and psychotropic medication aimed at ameliorating his depression and anxiety. Dr Taylor says that it was clear that "the major trigger to his intermittent decompensated mental state were external stresses, namely an investigation by the [CCC], which apparently was conducting a wide ranging investigation into many legal firms including Mr Magill's firm".

[40] Dr Taylor's report described the ongoing treatment through 2018, and said that by late October 2018 the applicant's mental health "deteriorated dramatically after he was charged with fraud and locked up in a watch house overnight". This was exacerbated by media reporting.

[41] Dr Taylor said that the applicant's mental state deteriorated to the point that, at an outpatient review on 16 November 2018, the doctor assessed that the applicant had suffered a relapse of his major depressive disorder which had accompanied a return to binge drinking behaviour. Due to the risks of self-harm, and partly to help him desist from further drinking, an elective admission to a private hospital was arranged. The applicant remained as an inpatient in that hospital for about two weeks to monitor his welfare and safety, and optimise his medical treatment.

[42] Dr Taylor observed that during regular monthly outpatient reviews in 2019, the applicant's mental health had "generally not given rise to concern", although he continued to need therapy. Dr Taylor said:

> 9.11 On review at 17th June 2019, Mr Magill objectively presented as 'very good' in terms of his mental state but by the next review on 22nd July 2019 I noted that there had been a suicide plan and two days incarceration which had led to an acute stress reaction … and

> decompensation in Mr Magill's mental state. This was despite Mr Magill remaining abstinent from alcohol and being wholly compliant with his two prescription antidepressants.

[43] Dr Taylor said it was notable during 2019 that the applicant's mental state was sensitive to external legal pressures, but he remained compliant or adherent with treatment, including daily medication.

[44] The report described an incident in September 2019 when the applicant presented to hospital suffering what was subsequently diagnosed as an unusual but significant anxiety or panic attack.

[45] The report continued:

> 9.16 In 2020, during our monthly in-depth reviews, psychological testing … has not revealed signs or symptoms of depressive relapse or re-emergent anxiety. This despite the privations of a 'tracking anklet' he had to wear till recently (despite an allergic reaction), and potential damage to his professional reputation through ongoing media interest. Physical examination has not revealed any stigmata of alcohol excess.
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> 9.17 Mr Magill has been well supported by his family and friends and had taken on advice regarding behaviour activation to promote his mental health as well as other healthy lifestyle recommendations such as not overworking, spending family time, and generally be abstinent from alcohol.

[46] Dr Taylor expressed the opinion that the applicant suffers from a significant medical condition, namely intermittent major depressive disorder as well as a generalised anxiety disorder. He said that the applicant generally has responded well to treatment and is now in remission (i.e. clinically recovered). At the time of his updated report, Dr Taylor's only concerns about the applicant's mental health "centre[d] on the external legal pressures that he is facing". He noted that the applicant is compliant or adherent with treatment, and has attended his monthly psychiatric reviews during 2020. He also said that the applicant has taken on board advice about promoting his mental health with a healthy lifestyle. In relation to the applicant's symptoms, Dr Taylor said:

> Intermittently the symptoms include demotivation, anhedonia, low mood, negative cognitions, critical self-appraisal, and intermittent impairments in judgment and concentration. Other anxiety related symptoms include intermittently being fidgety and restless, intermittent being nervous and anxious and fearing the worst is going to happen to him, as well as having trouble relaxing and not being able to manage these anxieties. It is worth noting that in view of the good response to treatment, Mr Magill seems to be managing himself better and have a healthier work/life balance.

[47] In response to a question as to whether there was a nexus between the applicant's diagnosed condition and his bail offending, Dr Taylor said:

> 11.3.1 The pertinent period here is in October 2018 through to July 2019, as far as I can surmise. My own contemporaneous medical records from that time indicate a significant deterioration in Mr Magill's mental state, namely an exacerbation of his pre-existing depressive illness and generalised anxiety disorder. The exacerbation was brought about via the various external stresses and consequent media attention.

> 11.3.2 On the balance of probabilities given by contemporaneous records from that period it is my professional opinion that Mr Magill's judgment was impaired, including an impairment in his concentration and attention. You may be aware that impairments in concentration as well as short term memory are commonly described in both anxiety disorders and recurrent depressant illness.
>
> 11.3.3 These temporary cognitive impairments are clearly not the same as a dementing or amnestic process, in that they are temporary and reversible phenomena. Nevertheless, I have seen in many other unrelated cases (over a 30-year career), even subtle impairments in concentration, attention, and short term memory can have significant results, particularly in a demanding environment.

[48] When asked whether the applicant is currently fit to practice as a solicitor, taking into account the stresses and responsibilities of legal practice, Dr Taylor said:

> 11.5.1 I now have no concerns about Mr Magill's fitness to practice as a solicitor from a medical or clinical perspective. He is clearly an articulate intelligent man who has extensive experience as a lawyer and formerly as a police officer.
>
> 11.5.2 Mr Magill is very work orientated and prefers not to take time away from work if possible, but has responded to counselling about his work/life balance.

Consideration

[49] As noted above, this review proceeds by way of a fresh hearing on the merits, with the purpose of the hearing being to produce the correct and preferable decision.

[50] That requires this Tribunal to review the material and, in this case, determine whether or not the applicant is, at this point in time, a fit and proper person to hold a practising certificate.

[51] In this regard, it was noted in *Adamson*[6] that there is a difference between suitability to be admitted as a legal practitioner and suitability to hold a practising certificate. But even acknowledging those differences, the circumstances of this case – in which the applicant repeatedly breached undertakings he had given to the Court – go to a fundamental aspect of fitness and propriety to commence or continue in legal practice.

[52] The expectation that a legal practitioner will observe an undertaking which he or she has given is not merely a consequence of his or her duty to act honestly in the administration of justice, although that is an essential rationale in itself. The Courts, other practitioners, and the public depend in many ways on the honesty and integrity of legal practitioners, and on their adherence to undertakings they have given. In *Council of the Law Society of NSW v Powell*,[7] the New South Wales Civil and Administrative Tribunal said:[8]

> … We observe firstly, as is well known, that the legal profession is an honourable one and legal practitioners are expected by the community, by fellow practitioners, and by the relevant regulatory authorities to behave

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6 *Adamson*, [12]–[15].
7 [2019] NSWCATOD 24 ("*Powell*").
8 *Powell*, [20].

> honourably always. It is an everyday occurrence in all areas where lawyers practice that legal practitioners provide undertakings to fellow practitioners and to a wide range of commercial and statutory entities both on their own behalf and on behalf of clients. Other legal practitioners and commercial and statutory entities rely upon compliance with those undertakings in their everyday activities. Such reliance is integral to the efficient and effective functioning of a whole range of activities within our community. It is essential that undertakings given by legal practitioners be genuinely provided and that they be honoured. It is for these reasons that prima facie, a breach by a legal practitioner of an undertaking, whether given during legal practice or not, will arguably constitute a most serious matter, and may, in relevant circumstances, adversely impact upon the integrity of the profession in the eyes of the public.

[53] In that regard, I respectfully repeat my observations in *Legal Services Commissioner v Bui* ("*Bui*"):[9]

> [16] … a failure to abide by an undertaking strikes at the heart of a solicitor's call to practice. A solicitor's word is his or her bond and a person in legal practice who fails to live up to their word commits a grave infraction of the minimum standards of probity which the community can expect of members of the legal profession. That is a long winded way of saying that the privilege of being a member of the legal profession carries with it the responsibility of being a trustworthy person. If a solicitor breaks their promise … one can legitimately ask what confidence the rest of the profession and the public at large can have in the probity of that person as a legal practitioner.

[54] See also, to similar effect, the reasons for refusing this applicant's stay application in *Magill v Queensland Law Society Inc* at [24] and [26].

[55] On the present application, the applicant accepted that his bail offending was of a serious nature and demonstrated extremely poor judgment on his behalf. He also accepted that his non-compliance with s 57 of the *LPA* was a significant failure to comply with the statutory conditions imposed upon his practising certificate. By way of overview, his submission on the present application was:[10]

> However, without derogating from the seriousness of the applicant's conduct, the following features are relevant:
>
> (a) The applicant was suffering from intermittent major depressive disorder and generalised anxiety disorder during the relevant period;
>
> (b) Dr Taylor is of the opinion that the applicant's mental health issues impaired his judgment at that time;
>
> (c) The 2019 breaches of bail each occurred when the applicant was intoxicated by alcohol, and Dr Taylor has identified alcohol abuse for the applicant;
>
> (d) The failure to notify occurred as a result of the applicant's erroneous interpretation of the Act, rather than an attempt to avoid the Society becoming aware of his offending;

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9 [2018] QCAT 424, and omitting citations.

10 Written submissions on behalf of the Applicant filed 19 February 2020, para 9 ("Applicant's submissions").

(e) There is no suggestion that the applicant discussed his ongoing criminal matters with the Crown witnesses or intended to interfere [with] the administration of justice in any way, though it is accepted that his mere presence may have had an effect on those witnesses;

(f) The applicant has not committed a 'serious offence' as defined under the [*LPA*];

(g) His conduct did not occur in the course of his practice as a solicitor;

(h) The Society has not raised any concerns about conduct in his role as a solicitor;

(i) The applicant has not previously been subject to any disciplinary finding during his long career as a legal practitioner and, previously, an officer of the Queensland Police Service;

(j) The applicant is compliant with ongoing treatment including medication and regular consultations with Dr Taylor, and describes having made significant progress in addressing his mental health issues during the past six months; and

(k) Dr Taylor considers him an 'extremely low risk' of reoffending.

[56] The applicant's primary case was advanced in respect of the second ground, that the QLS had failed to have adequate regard to the role of the applicant's mental health in contributing to his conduct.

[57] The applicant relied on *R v Yarwood*[11] to advance submissions that there was a demonstrable connection between the applicant's conduct and his alcohol abuse, that his decompensated mental health also impacted upon his judgment and ability to deal with his personal legal matters, and the state of his mental health could be reflected in the ultimate decision of this Tribunal by the imposition of appropriate conditions.

[58] The applicant also relied on *Legal Services Commissioner v O'Reilly*,[12] from which an appeal was dismissed in *Legal Services Commissioner v O'Reilly*,[13] for a submission that the impact of the applicant's mental health on substance abuse issues at the time of his breaches were relevant considerations in respect of his current fitness and propriety to practice. Reliance was placed on the following observations by the Hon Peter Lyons QC in the Tribunal decision:

> [42] It appeared from Ms Holliday's oral argument that she submitted that the reference to character in the judgment in *Shand* was a reference to reputation, which had been indelibly marked by the respondent's conduct. The point is neatly identified by some definitions of the word 'character' from the *Australian Concise Oxford Dictionary*. They are as follows:-
>
> > **1** The collective qualities or characteristics, esp. mental and moral, that distinguish a person or think. **2 a** moral strength (*has a weak character*). **b** reputation, esp. good reputation.

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11 [2011] QCA 367.
12 [2019] QCAT 28.
13 [2019] QCA 251.

> [43] Definitions 1 and 2a deal with a person's characteristics, while definition 2b refers to public or community perception or opinion. The two are obviously often related, reputation being a consequence of conduct reflecting personal characteristics. The distinction is important in the present case, because wrongful conduct committed at a time when a person is significantly affected by a mental condition may not reflect the person's characteristics and moral strength, when not so affected; although the conduct may have severely damaged the person's reputation. The former sense appears to have been what Kitto J was referring to in *Ziems v Prothonotary of the Supreme Court of New South Wales*, when he said, 'Conduct may show a defect of character incompatible with membership of a self-respecting profession'. The distinction is also apparent in the eighth proposition stated by Young CJ in Eq in *Prothonoray of the Supreme Court of New South Wales v P*, that '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' (*citations omitted*). As McMurdo JA observed in *Shand*, the summary of which this statement forms part has been extensively followed in other cases, including at appellate level in this State.
>
> (citations omitted)

[59] It was submitted for the applicant that his conduct did not reflect his actual nature or character, but the breaches were examples of extremely poor judgment brought about by decompensated mental health and alcohol abuse.

[60] At the oral hearing of this application, Mr Glynn QC, who appeared for the applicant with Ms Gover, argued that the substantial issue in the application revolved around the evidence of Dr Taylor in relation to the applicant's mental health and alcohol abuse. He contended that the law recognises that mental ill health, with or without related substance abuse, may reduce a person's moral culpability and that, in a case such as the present, it affects the assessment of a person's character and, thus, the person's present fitness and propriety to hold a practising certificate.

[61] However, a closer analysis of the evidence makes it difficult to accept, as was submitted on behalf of the applicant, that his conduct did not reflect his actual nature or character, and that the breaches were simply "examples of extremely poor judgment brought about by decompensated mental health and alcohol abuse".[14]

[62] The first breach of bail undertaking occurred on 26 November 2018, when the applicant contacted the barrister by telephone and text message. In the weeks prior to that breaching conduct there had, on Dr Taylor's evidence, been a deterioration in the applicant's mental state. According to Dr Taylor, by late October 2018 the applicant's mental health had deteriorated dramatically after he was charged with the criminal offences, spent a night in custody, and was the subject of media scrutiny. It was at this point, i.e. prior to the first breach of bail undertaking, that the applicant was voluntarily admitted to a private hospital for about two weeks "to monitor his welfare and safety and optimise his medical treatment". The hospital admission was said by Dr Taylor to be "due to the risks of self-harm and partly to help him desist from further drinking".

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[14] Applicant's submissions, para 34.

[63] Given the proximity of the first breach to the deterioration in mental health and hospital admission described by Dr Taylor, one can accept, as the Chief Magistrate did when sentencing the applicant for this breach, that at the time of the first breach the applicant was suffering from a deterioration in his mental health. But it is notable that the Chief Magistrate also considered that he was not satisfied, on the evidence of Dr Taylor, that the mental health deterioration was such as to preclude the applicant from understanding the effect of the bail variation which he breached by contacting the barrister. The Chief Magistrate held that, whilst the applicant may have been honestly mistaken in his belief that he was allowed to contact the barrister, that belief "could not possibly be reasonable".

[64] The next breaches of bail undertaking occurred in February and March 2019.

[65] On 18 February 2019, the applicant breached his bail undertaking by communicating with Neil Lawler for a purpose other than the provision and administration of their law firm. He attended at a car dealership with Mr Lawler to purchase a vehicle for one of the firm's employees, then went to lunch with Mr Lawler for just over three hours. The applicant says that during the lunch he discussed firm-related matters with Mr Lawler. The applicant, Mr Lawler and some other friends then repaired to a bar for a couple of hours.

[66] On 29 March 2019, the applicant twice breached his bail undertakings when he attended a particular bar which was part-owned by the Crown witness whom the applicant was prohibited from contacting. Also present in the bar was one of the applicant's co-accused. The applicant had contact with both persons. Notably, both of them told the applicant he should leave because he was breaching his bail undertaking, but it appears he did not take their advice.

[67] These events occurred at a time when Dr Taylor was conducting regular monthly outpatient reviews of the applicant, and the applicant's mental health had "generally not given rise to concern, although he [continued] to need therapy". There is nothing in Dr Taylor's report from which it may be inferred that in February and March 2019 the applicant was inappropriately abusing alcohol.

[68] On 3 June 2019, the applicant was found guilty by the Chief Magistrate of having breached his bail undertaking in November 2018. The applicant sought to invoke the "honest and reasonable but mistaken belief" defence under s 24 of the *Criminal Code* 1899 (Qld) but, for the reasons referred to above, the Chief Magistrate rejected this defence.

[69] Then, on 28 June 2019 and again on 6 July 2019, the applicant breached his bail undertakings by communicating with the same Crown witness at that witness' bar.

[70] The applicant says that on each occasion he breached bail he had been drinking heavily before the breaches occurred. This assertion sits ill with Dr Taylor's report, in which it is said that in June and July 2019 the applicant was remaining abstinent from alcohol.

[71] The last two breaches are notable for several reasons.

[72] First, they occurred only weeks after the applicant had been dealt with by the Chief Magistrate for his first breach of bail undertaking.

[73] Secondly, they occurred at a time when, according to Dr Taylor's reference of 1 July 2019, the applicant was "medically fit to work in his demanding role as a partner in a criminal law firm". Dr Taylor said at that time:

> There was a time in November 2018 when he wasn't fit to work, and Mr Magill needed time off work but thankfully this year that has not been the case, and he is fit to practice [sic] as a lawyer in my opinion.

[74] There is no evidence from Dr Taylor, or otherwise, which suggests that at the time of the breaching conduct in late June/early July 2019 the applicant's mental state was so affected as to cause him to lack understanding of his actions and that he was acting unlawfully by breaching his bail undertakings. On the contrary, Dr Taylor said that when he reviewed the applicant on 17 June 2019, he objectively presented as "very good" in terms of his mental state.

[75] Nor is there evidence that his mental and judgment-forming capacity at that time was deleteriously affected by alcohol abuse. Indeed, the report from Dr Taylor notes the applicant reporting on 17 June 2019 that he had consumed no alcohol since 13 May apart from on a fishing trip the previous day, and reporting that the applicant was taking alcohol deterrent medication and was abstinent from alcohol around this time.

[76] After the breaching incident on 6 July 2019, the applicant was apprehended and taken into custody for three days. He then suffered an acute stress reaction and decompensation in his mental state. It is clear from Dr Taylor's report, however, that this was a reaction to the applicant being arrested and incarcerated.

[77] On 1 August 2019 the applicant pleaded guilty to, and was dealt with for, the five further breaches of bail undertaking. I have referred above to the learned Magistrate's sentencing remarks on that occasion. The applicant subsequently appealed against convictions being recorded for the final two breaches. In dismissing that appeal, Rosengren DCJ made the following observations with which I respectfully agree:[15]

> While Mr Magill's employment as an experienced solicitor in criminal law is not an overwhelming aggravating factor, it cannot be ignored in the sentencing process. As a solicitor, he is professionally obliged to uphold the laws, not break them. The community had the right to expect he would do so. There is no evidence to suggest that Mr Magill did not understand the importance of his duty to uphold the law, or of the unlawfulness of not complying with his bail conditions. To the contrary, he knew very well that he was breaking the law. Therefore, the significance of Mr Magill's profession as a solicitor lies in his demonstrated disregard for the authority of the Court.

[78] Against this background, this Tribunal does not accept the applicant's submission that the breaches were examples of extremely poor judgment brought about by decompensated mental health and alcohol abuse. The Tribunal accepts, as explained in Dr Taylor's report, that the applicant has been suffering from ongoing mental stresses, and that there have been incidents of significant mental decompensation. Whilst it may be accepted that the applicant was suffering some mental deterioration at the time of the first breach, it was found by the Chief Magistrate not to be such as to affect his capacity to understand the relevant terms of his bail undertakings. There is scant evidence to suggest that his judgment was lacking at the time of the

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15 *Magill v The Commissioner of Police* [2020] QDC 8, [31].

subsequent breaches due to his mental state. If anything, it is apparent that it is the stress caused by the consequences of his breaching conduct which has precipitated acute episodes of mental decompensation.

[79] There is even less evidence to support the argument that, at the time of his later breaching conduct, his judgment was impaired by the effects of alcohol abuse.

[80] There is another aspect to consider, namely the applicant's own evidence as to the nature and degree of his own insight into his breaching conduct. The relevant paragraphs of his affidavit are set out above at [32]. In the decision refusing the applicant's application for a stay of the QLS decision, I referred to those paragraphs, and then made the following observations which I repeat and adopt for present purposes:[16]

> It is objectively a matter of concern that a person who was a criminal law practitioner well versed in the nuances of bail undertakings and who had previously served as a police officer could have adopted that approach to the bail undertakings they gave. It is equally of concern that the seriousness of having given an undertaking and the consequences of breaching an undertaking hit home with the applicant not when he was dealt with by the Courts for his breaches but when the QLS moved to cancel his practising certificate.

[81] The third ground of the application to review argued that the QLS reasons failed to give adequate regard to other mitigating circumstances relied on by the respondent. The "mitigating circumstances" identified in the applicant's submissions were that:[17]

(a) the applicant's conduct did not involve dishonesty or financial gain;

(b) his conduct did not negatively impact upon his clients;

(c) he expressed remorse and co-operation with the administration of justice by entering pleas of guilty on 1 August 2019;

(d) he complied with his s 57 notification obligations promptly after receiving a request for information from the QLS;

(e) the applicant has experienced significant extra-curial punishment – a professional reputation built up over many years has been tarnished and he has been publicly humiliated by prominent media coverage;

(f) he has not committed further breaches of bail for a period of seven months, despite being subject to onerous conditions; and

(g) the circumstances of the relevant conduct[.]

[82] In respect of that last item, the applicant reprised the arguments advanced under the second ground. He also contended:

(a) the failure to notify the QLS occurred as a result of the applicant's erroneous interpretation of the *LPA*, rather than a deliberate flouting of his notification obligations;

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16 *Magill* [2019], [28].

17 Applicant's submissions, para 39.

(b) there is no suggestion that the applicant discussed his ongoing criminal matters with the Crown witnesses or intended to interfere in the administration of justice in any way, although it was accepted that his mere presence may have had an effect on those witnesses;

(c) the applicant has not committed a serious offence;

(d) his conduct did not occur in the course of his practice as a solicitor; and

(e) he is not subject to any disciplinary proceedings.

[83] These matters are all somewhat peripheral, but nevertheless relevant, to the central issue for present purposes, which is encapsulated under the first ground of the application for review, namely whether the applicant is, at this point in time, a fit and proper person to hold a practising certificate. In respect of these matters raised by the applicant, it is sufficient to make the following brief observations:

(a) Whilst it is not suggested that the applicant's conduct involved dishonesty or financial gain, or that he attempted to interfere with Crown witnesses, it remains the case that an experienced solicitor breached his bail undertakings on six occasions, including on two separate occasions after he had been found guilty of first breaching his bail undertaking. The applicant himself acknowledges the seriousness of breaching an undertaking. The fact that he did so repeatedly is, regardless of the matters identified by the applicant, a very serious matter of concern which is highly relevant to a consideration of the applicant's fitness to hold a practising certificate.

(b) The same applies to the submission that this conduct did not occur in the course of the applicant's practice as a solicitor. That misses the point that the present inquiry is as to the essential qualities of honesty and probity which must be present in every legal practitioner, regardless of whether the breaching conduct occurs in the course of legal practice or not.

(c) For the reasons given above, the evidence does not support the applicant's submissions concerning the impact of alcohol on his conduct.

(d) The applicant's conduct in not reporting under s 57 of the *LPA* in a timely way is not, of itself, such an egregiously serious matter as to compel a conclusion of lack of fitness to practise. Even though it is not specifically addressed in the applicant's evidence, the Tribunal is inclined to accept the explanation he previously offered the QLS, that his failure to report within the time prescribed by s 57 resulted from his incorrect interpretation of the relevant section. The QLS argues that he should have sought guidance from the QLS about this matter, and the fact that he failed to do so reflects poorly on essential elements of his character. It seems to this Tribunal, however, that this submission reaches too far. The Tribunal is not inclined to rely on his misinterpretation of s 57 as impugning his character. That circumstance does not, however, detract from the grave seriousness of the breaches of bail undertaking, and the conclusions to be drawn from those circumstances.

(e) The "significant extra-curial punishment" has no bearing on an assessment of the applicant's character.

(f) Reliance on the applicant's pleas of guilty on 1 August 2019 as constituting expressions of remorse and co-operation with the administration of justice is

> significantly ameliorated when it is understood that, whilst the Magistrate accepted those pleas of guilty and imposed fines for having breached the bail undertakings, the Magistrate also recorded convictions for the breaches of bail which were committed on 28 June and 6 July 2019. The applicant appealed against that decision, arguing that the recording of the convictions was manifestly excessive. His principal argument on the appeal, which was dismissed by Rosengren DCJ, was the potential impact which the recording of convictions would have on his ability to practise law. This aspect is further diminished by the applicant's own evidence, referred to above, concerning the nature and degree of his insight into his breaching conduct.

[84] It is, therefore, necessary to return to the central question, encapsulated under the first ground, which is whether the applicant is a fit and proper person to hold a practising certificate (with or without conditions).

[85] As noted above, the applicant has given evidence that his mental health has continued to improve steadily, and has identified the factors which he considers relevant to that improvement. He has also offered, through his counsel, to agree to the issuing of a practising certificate subject to conditions, including:

(a) that he be required to attend regular appointments with his treating medical professionals, including Dr Taylor;

(b) that he be required to participate with formalised reviews to monitor his mental health issues;

(c) that regular reports be provided by Dr Taylor to update the QLS about the applicant's ongoing treatment and presentation;

(d) that the applicant abstain from alcohol until his legal proceedings are finalised; and

(e) that he will accept guidance and direction from a senior practitioner as a mentor.

[86] In his updated report, Dr Taylor notes that the applicant has been compliant with treatment and during 2020 has promptly attended his scheduled monthly reviews. He says that the applicant has responded well to treatment and is now in recovery, with Dr Taylor's only concerns regarding the applicant's mental health being the external pressures the applicant is facing. He concludes that he has "no concerns about Mr Magill's fitness to practise as a solicitor from a medical or clinical perspective". The Tribunal observes parenthetically that this is not far removed from the opinion expressed by Dr Taylor on 1 July 2019, i.e. at the same time the applicant committed the last two breaches of bail undertaking. It is also notable that Dr Taylor's opinion is carefully hedged to be limited as an expression of opinion "from a medical or clinical perspective".

[87] Despite these submissions, and for the reasons given above, the situation remains that the repeated breaches of bail undertaking are illuminative of shortfalls in the applicant's character of attributes which are absolutely fundamental for practising legal practitioners. The fact that the applicant appears capable of functioning appropriately as a legal practitioner when not under stress is not determinative of whether he is a fit and proper person to hold a practising certificate. Indeed, as appears from the course of events over the last few years, the pattern of the applicant's episodes of mental decompensation which have been triggered by

undoubtedly stressful events (being charged by the police and spending time in custody) were not causative of the repeated instances of breaching conduct.

[88] Rather, the applicant's conduct in repeatedly breaching his bail undertakings, and particularly his conduct in doing so shortly after having been dealt with by the Chief Magistrate, is indicative of a cavalier attitude to one of the most basic and essential attributes of a practising legal practitioner. A person who repeatedly breaches promises which have been solemnly given is not a person in whom the judiciary, the profession, and the public can have confidence as a legal practitioner.

[89] The Tribunal accepts that the applicant has been genuine in his offer to be subject to the conditions described above. Those conditions, however, do not address the central question concerning the applicant's character in the context of whether he is a fit and proper person to hold a practising certificate. The regime under proposed conditions (a), (b) and (d) was, on Dr Taylor's evidence, effectively in place in 2019, but did not prevent the applicant's subsequent breaching conduct. Proposed conditions (c) and (e) would allow for some external monitoring of the applicant's conduct, but do not address the central assessment of his character.

[90] In *Bui*, a legal practitioner's practising certificate was cancelled by this Tribunal after he committed continuing breaches of an undertaking he had given to the Queensland Law Society. Whilst each case is, of course, to be determined on its own merits, *Bui* is instructive not only as to the serious consequences which flow from repeated breaches of undertakings but, primarily, to emphasise the proposition that breach of an undertaking demonstrates a lack of one of the essential characteristics for every legal practitioner. That situation is compounded where, as in the present case, there are repeated breaches of undertakings.

[91] For these reasons, this Tribunal has concluded on all the evidence now before it that it is not satisfied that the applicant has the intrinsic personal character and professional capacity needed to command the confidence, respect and trust of the judiciary, the profession, clients, and the public at large, nor is it satisfied that the applicant can be relied on in the predictable future to obey and uphold the law.

Conclusion

[92] It follows from all that has been said above that this Tribunal's conclusion is that the applicant is not presently a fit and proper person to hold a practising certificate. Therefore, for the purposes of s 20 of the *QCAT Act*, this Tribunal finds that the correct and preferable decision is that the applicant's practising certificate be cancelled.

[93] Accordingly, the application for review will be dismissed.

[94] The Tribunal will hear the parties as to costs.