QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION:	*Magill v Queensland Law Society Inc* [2019] QCAT 392
PARTIES:	**ADAM RAYDON MAGILL** (applicant) **v** **QUEENSLAND LAW SOCIETY INCORPORATED** (respondent)
APPLICATION NO/S:	OCR393-19
MATTER TYPE:	Occupational regulation matters
DELIVERED ON:	18 December 2019
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	Justice Daubney, President
ORDERS:	**The application for a stay is refused.**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – PRACTISING CERTIFICATES – REFUSAL TO ISSUE – 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, 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 the applicant failed to notify the Queensland Law Society ("QLS") of the breaches in contravention of s 57 of the *Legal Profession Act* 2007 ("LPA") – where the QLS determined that the applicant was not a fit and proper person to continue to hold a practicing certificate and exercised its power under s 61(2) of the LPA to cancel the applicant's practicing certificate – where the applicant has applied for a review of that decision under s 61(3) of the LPA – where the applicant now seeks a stay of the decision under s 22 of the *Queensland Civil and Administrative Tribunal Act* 2009 – where the applicant contends that the firm, his clients and he and his family would suffer hardship if he were unable to practise – where the applicant submits that he presents little risk of reoffending where the relevant public interest concern is

	whether he will commit further breaches of bail while holding a practising certificate – whether the stay is desirable having regard to the factors under s 22(4) of the QCAT Act and the standard curial tests regarding stays pending appeal
	Legal Profession Act 2007, s 60, s 61 *Queensland Civil and Administrative Tribunal Act* 2009, s 20, s 22
	Cook's Constructions Proprietary Limited v Stork Foods Systems [2008] 2 Qd R 453; [2008] QCA 322 *King v Queensland Law Society* [2012] QCAT 489 *Legal Services Commissioner v Baker (No 1)* [2006] 2 Qd R 107; [2005] QCA 482 *Legal Services Commissioner v Bui* [2018] QCAT 424 *Legal Services Commissioner v Madden* [2008] QCA 52
REPRESENTATION:	
Applicant:	K W Gover instructed by Gilshenan & Luton Legal Practice
Respondent:	L Sheptooha instructed by Queensland Law Society Incorporated
APPEARANCES:	This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld)

REASONS FOR DECISION

[1] The applicant, Adam Raydon Magill, was admitted as a solicitor in September 2007. After initially studying engineering, he pursued a career in the Queensland Police Service. He served as a police officer for some 10 years, rising to the rank of detective sergeant. In 2007, he started working as a solicitor with the firm then known as Bell Miller. That firm has since become an incorporated legal practice known as Lawler Magill. The applicant has practiced as a criminal lawyer with this firm since he joined it. In 2013, he became a partner and later a director in this firm with Neil Lawler. The applicant has no disciplinary history as a solicitor.

[2] On 21 November 2019, the respondent, Queensland Law Society Incorporated ("QLS"), determined that the applicant was not a fit and proper person to continue to hold a practicing certificate and exercised its power under s 61(2) of the *Legal Profession Act* 2007 ("LPA") to cancel the applicant's practicing certificate. The applicant has applied to this Tribunal, pursuant to s 61(3) of the LPA for a review of that decision.

[3] By the present application, the applicant has applied under s 22 of the *Queensland Civil and Administrative Tribunal Act* 2009 ("QCAT Act") for a stay of the QLS

decision. Section 22(4) provides that the Tribunal may order a stay only if it considers such an order is desirable after having regard to:

(a) the interests of any person whose interests may be affected by making or not making the stay order;

(b) any submission made by the decision-maker (in this case, the QLS);

(c) the public interest.

[4] It is also clear on the authorities that the standard curial tests relating to stays pending appeal are apposite to applications such as the present. The relevant principles in that regard were collated and stated by Wilson J in *King v Queensland Law Society* [2012] QCAT 489 particularly at [11] to [15].

[5] The factual background to the QLS finding that the applicant is not a fit and proper person to hold a practicing certificate is largely uncontentious and can 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. Those alleged offences are related to the applicant's conduct as a legal practitioner and include 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 not contact certain persons (most of whom were to be the 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 sentencing remarks, the 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), 29 March 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). It is to be noted that the final two breaches occurred after the 3 June 2019 hearing, in which the applicant had been found guilty of the first breach and in which the Chief Magistrate made the observations which I quoted a few moments ago. In the

sentencing remarks on 1 August 2019, the learned Magistrate described those two breaches as the "most serious charges", because they:

> …follow 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 these things mean.

Convictions were subsequently recorded in respect of those 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 practicing certificate by s 57 of the LPA, the applicant failed to notify the QLS of any of the breaches of bail.

[6] The authorities make it clear that an effective condition precedent on an application such as the present is that the applicant have an arguable case on the review. The reason for that is obvious. Without an arguable case, the grant of a stay would have no utility and serve only to frustrate an otherwise legitimate decision by the regulatory authority. In that regard, too, it must be recalled that the LPA expressly invests the QLS, as the relevant regulatory authority, with the power to cancel or suspend a practicing certificate. That is a serious power, which is exercised seriously.

[7] If a disaffected party were able to obtain a stay of a cancellation or suspension decision by simply filing an application for review, then this would be tantamount to treating the QLS decision as merely provisional pending the hearing and determination of the review. Such a situation would be contrary to the express conferral of the power of cancellation and suspension on the QLS, and the purpose for which that power is to be exercised. A belief by the QLS that one of the grounds stated in s 60 of the LPA is sufficient to found a decision to cancel a practicing certificate under section 61(2). One of the grounds specified in s 60 is that the certificate holder is no longer a fit and proper person to hold the certificate. Section 46 of the LPA enumerates the suitability matters to which the regulatory authority may have regard as to whether a person is or is no longer a fit and proper person to hold a practicing certificate.

[8] The applicant submits he has an arguable case on the review, contending:

(a) The QLS decision was "out of step" with previous action taken by the QLS against practitioners who had breached undertakings.

(b) The applicant's circumstances, particularly his physical and mental health at the time, need to be taken into account and, whilst it is conceded that breaching bail conditions is serious and demonstrated poor judgment by the applicant, there were other relevant considerations:

(i) there is no suggestion the applicant actually discussed his matter with the Crown witnesses or intended to interfere with the administration of justice;

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

(iii) he did not commit a serious offence;

(iv) the undertakings he breached were offered in his personal and not his professional capacity; and

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

(c) On this basis, the applicant has a case to argue that his conduct did not warrant cancellation of his practicing certificate.

[9] The QLS, while accepting that the applicant's case on the review is not unarguable, nevertheless contended that on the material presently to hand the applicant's prospects of success are so poor as to influence the approach adopted in the present application; as to which, see *Cook's Constructions Proprietary Limited v Stork Foods Systems* [2008] 2 Qd R 453 per Keane J at [13] to [15].

[10] The QLS advanced arguments in respect of each of the five matters relied on by the applicant and pointed to the following features:

(a) Whilst not suggested that the applicant interfered with any of the Crown witnesses, the mere fact that an experienced criminal solicitor and former police officer breached his undertaking on six occasions bespoke the seriousness of his actions.

(b) The applicant's distinction between breaching the undertaking in his personal capacity, as opposed to his professional capacity, was a false dichotomy, particularly in light of the observations by this Tribunal in *Legal Services Commissioner v Bui* [2018] QCAT 424 about the nature of undertakings and the fact that the failure to abide by an undertaking given in whatever capacity points to a lack of the essential characteristics of honesty and trustworthiness.

[11] By s 20 of the QCAT Act, the review of the QLS decision will be heard and determined by way of a fresh hearing on the merits. Its purpose is to produce the correct and preferable decision. It is possible that, for that purpose, the parties may put before the Tribunal for consideration material which was not before the QLS when it made its decision. Given that the decision made by the QLS and to be made by this Tribunal fundamentally goes to the character of the applicant, I think there is enough in the applicant's contentions to say he has an arguable case. Beyond that, however, I would not speculate on his prospects of success and in that regard respectfully associate myself with the approach adopted by Fraser JA in *Legal Services Commissioner v Madden* [2008] QCA 52 at page 6.

[12] Holding that there is an arguable case on review is not the end of the matter but only the beginning. The applicant must satisfy the Tribunal on the present application

that there is a cogent reason for the stay. In that regard, Chesterman J in *Legal Services Commissioner v Baker (No 1)* [2006] 2 Qd R 107 said at [28]:

> In particular, it should be accepted that an applicant for a stay of a recommendation that his name be removed from the roll of legal practitioners should show a cogent reason for the stay, and he will not do so merely by showing that he will be unable to practise his profession until his appeal is heard and allowed. Every practitioner who is suspended from practice or whose name is removed from the roll suffers that prejudice, but it is clearly not right that a stay is or should be granted as a matter of course. Something more must be shown than "prejudice" of this kind. The additional factors which would justify a stay must be such as outweigh the public interest in having unfit practitioners debarred from practice. That interest is to be afforded particular significance.

[13] The applicant pointed to a number of factors. First, it was said that the applicant's clients would suffer hardship due to his inability to practice. There was evidence of the applicant's caseload and the fact that Mr Lawler has had to assume carriage of those matters, yielding an unsustainable workload for him. Reference was made to specific matters which are shortly to be before the Courts and in which the applicant had been personally engaged. The evidence also went to the fixed fee arrangements in place with the applicant's clients and the potential financial difficulties they would suffer if they had to find alternative representation.

[14] Secondly, the evidence sought to paint a picture of hardship for the firm if the applicant did not return to practice. Affidavits were filed which referred to the applicant having a key role in bringing in clients and managing their relationships. The firm's office manager deposed to the prospect of the firm's business significantly declining and also said that the firm would struggle to meet its overheads if the applicant was unable to continue working as a solicitor.

[15] Next, the applicant referred in general terms to the hardship which would be suffered by him and his family. He is the sole breadwinner, supporting his wife and two children. Whilst reference was made to the family expenses including private school fees, no evidence was adduced with respect to the applicant's financial position generally. He says he has no readily available alternative occupation. He also referred to the adverse impact on his mental wellbeing. The material before me descends into some detail about the mental stresses from which the applicant has been suffering and his ongoing treatment including by way of medication under ongoing psychiatric monitoring. He deposes to past stressors including excessive consumption of alcohol and speaks to the significant lifestyle changes he has made in order to address these issues. The applicant has offered to comply with any conditions including as to medical monitoring and reporting.

[16] Finally, by way of a catch-all, the applicant submits that the applicant presents little risk of reoffending in a context where the relevant concern of public interest is whether the applicant will commit further breaches of bail while holding a practising certificate. In this regard, the applicant relied on the significant steps he has taken to address his physical and mental health issues.

[17] None of these arguments individually or collectively persuade me that the applicant has demonstrated a cogent reason for the grant of a stay. It is not at all clear why the effect on the firm will be as catastrophic as it was sought to be painted. The material does not explain, for example, why the firm cannot employ another solicitor. If the applicant is not to be remunerated or has his remuneration reduced while his practising certificate is cancelled, there is no explanation as to why those funds cannot be diverted to engagement of another solicitor to do his work and relieve the burden on Mr Lawler.

[18] On the other hand, of course, if the applicant is to continue receiving remuneration while not entitled to practice, that would tend to subvert his argument about the financial hardship to his family. So far as the potential hardship to himself and his family are concerned, those elements have some relevance but are certainly not decisive. They are, it must regrettably be said, one of the practical consequences of the prejudice which would be suffered by every practitioner whose practising certificate is cancelled or suspended, but, as Chesterman J said in *Legal Services Commissioner v Baker (No 1)*, something more must be shown than prejudice of this kind.

[19] The applicant's material also gives the impression that this situation has snuck up on him and his partner and that given more time with him in practice, they would be able to work out some sort of transitional regime. Indeed, Mr Lawler deposes as follows:

> Whilst we have to face the prospect of [the applicant] being unable to practice following the substantive hearing of his review application, we will have time to fully prepare for that possibility. The reality is we have not had time to make those arrangements in the period since the show cause process was initiated.

[20] I frankly find that hard to accept. A show cause notice was served on the applicant in early September, more than three months ago. The applicant and Mr Lawler must have known from that time that imminent cancellation of the applicant's practising certificate was on the cards. The inference in Mr Lawler's statement is that the QLS decision is somehow provisional and that the "real" decision about cancellation will be made by this Tribunal. For the reasons given earlier, that is erroneous. In short, the applicant and Mr Lawler have already had months to put any necessary arrangements in place.

[21] I acknowledge that on the material there is some potential for hardship to some clients. Equally, however, the material does not explain why work which otherwise would have been done by the applicant cannot be attended to by another solicitor or by counsel. The only thing missing would be the personal attendance by the applicant. It may well be that he has a special rapport or relationship of trust with particular clients, but that cannot outweigh the public interest in ensuring that only fit and proper persons are certified to practice. In that regard, I consider the following observations by Wilson J in *King v Queensland Law Society* [2012] QCAT 489 at [29] to be apposite:

> The risks to this practitioner's clients are not so compelling as the tangible and serious consequences found and relied upon by Fraser JA in [Legal Services

> Commissioner v Madden] and may more accurately be categorised as in the nature of the ordinary, expected consequences of the refusal of an annual [practising certificate] to any legal practitioner and to fall short, then, of constituting the kinds of cogent reasons which would outweigh the public interest.

[22] Again, all of these considerations are incidents of the sort of prejudice suffered by every lawyer whose practising certificate is cancelled or refused. That prejudice is not, however, sufficient to outweigh the public interest in precluding unfit practitioners from practising.

[23] In his submissions, the applicant sought to limit the ambit of the relevant public interest to a concern that the applicant might commit further breaches of his bail undertaking. That, in my view, is too narrow a compass. The relevant public interest is that of ensuring the fitness and proprietary of legal practitioners. Whilst the applicant's admitted defaults amounted individually and collectively to instances whereby his fitness and proprietary could be challenged, the underlying concern goes to the character of the applicant.

[24] It is not merely a question of abiding by the technicalities of undertakings given to the Court; it is whether the conduct calls into doubt the solicitor's essential probity. Those considerations are not diminished, as the applicant's submissions would have it, by a lack of so-called seriousness of the breaches. The breach by a solicitor of an undertaking given in whatever capacity is the breach of a promise given solemnly. The fact that a solicitor breaches an undertaking is of itself a serious matter. The fact that he does so repeatedly compounds the seriousness.

[25] In the present case, there can be no doubt that the applicant's repeated flouting of the terms of his undertakings – described by one of the sentencing magistrates as "a flagrant disregard for the Court" – was sufficient to give rise to serious concerns about essential elements of a legal practitioner's character, trustworthiness and respect for the law.

[26] If a solicitor breaks a promise, what confidence can the Court, the rest of the profession and the public at large have in the probity of the person as a legal practitioner? See to similar effect my observations in *Legal Services Commissioner v Bui* [2018] QCAT 424 at [16] and [17].

[27] Also of relevant concern in this regard is the applicant's own evinced attitude to his having given the undertakings. In his affidavit filed in support of the present application, the applicant referred to his conduct in committing the breaches and said:

> 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.
>
> 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.
>
> 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 mistaken was not reasonable.
>
> 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.
>
> 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.
>
> 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.
>
> 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.
>
> 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.

[28] 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. Those are all relevant matters to take into account when considering whether the applicant has demonstrated that the reasons he advances outweigh the general public interest in ensuring the fitness and proprietary of legal practitioners.

[29] There is another relevant public interest, namely, public confidence in the QLS as the relevant regulatory authority. As already noted, the LPA confers serious powers on the QLS to regulate the profession, not simply for the sake of regulation but to meet the important public policy purpose of ensuring probity and public trust in the profession. Whilst its decisions are amenable to review, the QLS as the regulatory body remains the primary decision-maker. The primacy of its legislatively conferred functions and powers should not be undermined by regarding its decisions as merely provisional pending review. In other words, there is a clear public interest

in ensuring the efficacy of the work of the regulatory authority and good reason must be shown which would outweigh that consideration.

[30] For the reasons I have given, I am not satisfied that the applicant has demonstrated a cogent reason to justify a stay. The public interest considerations are not, in my view, outweighed by the matters on which the applicant relied. Those matters are, by and large, incidents of the prejudice suffered by every practitioner whose practising certificate is cancelled or suspended, but, as I have already said several times, that prejudice does not outweigh the public interest.

[31] The application for a stay is refused.