

[MG Adamson v Queensland Law Society Incorporated \[2017\] QCAT 355](#)

### Catchwords

PROFESSIONS AND TRADES – LAWYERS – PRACTISING CERTIFICATES – REFUSAL TO ISSUE

### Executive Summary

The Applicant's application for review of the Respondent's ('QLS') decision to refuse to renew the Applicant's unrestricted employee practising certificate for the 2016/2017 period was refused by the Queensland Civil and Administrative Tribunal ('the Tribunal') because the Applicant is not currently "fit and proper" to practise unsupervised.

### Background Facts

The Applicant is an undischarged bankrupt but has no criminal or disciplinary history.<sup>1</sup>

The Applicant had "close professional association" with companies that "defrauded vulnerable members of the public".<sup>2</sup>

In 2013, consent declarations were made to the effect that the Applicant was "knowingly concerned in contraventions of the Corporations Act and in the misleading and deceptive conduct". In 2015, the Federal Court ordered injunctions restraining the Applicant from providing financial services or superannuation products for 10 years.<sup>3</sup>

A law firm currently employs and supervises the Applicant.<sup>4</sup>

QLS decided to refuse to renew the Applicant's unrestricted employee practising certificate for the 2016/2017 period for unfitness.<sup>5</sup> The Applicant sought a review of QLS's decision.

### Issue

The ultimate question to be determined was whether the Tribunal could be reasonably satisfied that the Applicant is currently a fit and proper person to be issued an unrestricted employee practising certificate for the next 12 months.<sup>6</sup>

### Issue Considered

Considerations relevant to the question of whether the Applicant is fit and proper to hold a practising certificate include suitability matters in Section 9(1) of the LPA and matters mentioned in Section 46(2) of the LPA.<sup>7</sup>

The Applicant contended that the correct and preferable decision for the Tribunal to make would be to order QLS to renew the Applicant's unrestricted practising certificate on existing conditions with any further appropriate conditions.<sup>8</sup>

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<sup>1</sup> *Adamson v Queensland Law Society Incorporated* [2017] QCAT 355, [38].

<sup>2</sup> *Ibid*, [39].

<sup>3</sup> *Ibid*, [40].

<sup>4</sup> *Ibid*, [34].

<sup>5</sup> *Ibid*, [1].

<sup>6</sup> *Ibid*, [141].

<sup>7</sup> *Ibid*, [12].

<sup>8</sup> *Ibid*, [8].

The Tribunal stated that the “fit and proper” requirement includes whether a candidate is currently of good fame and character<sup>9</sup> but that a person’s character does not necessarily correspond with his or her reputation.<sup>10</sup>

In relation to good fame, the Tribunal held that “if a solicitor has been guilty of such conduct that the solicitors he deals with have significant reservations as to the fulfilment of his obligations and lack of respect for him, that is a matter which is to be taken into account in assessing his fitness”.<sup>11</sup>

The Applicant put forward a number of references, including barristers and solicitors who knew the solicitor in a personal and professional capacity. The Tribunal stated that these references demonstrated:

- the Applicant’s acceptance of the legal outcomes as a result of the ASIC proceedings, and recognition of his shortcomings and wrongdoings;
- a change in the Applicant’s attitude; and<sup>12</sup>
- the Applicant’s remorse and contrition.<sup>13</sup>

However, the Tribunal stated: “good fame is not as weighty a consideration as character, and the referee evidence has to be assessed against contradictory indications”.<sup>14</sup> The Tribunal gave these references “substantial, but not decisive weight”.<sup>15</sup> The Tribunal considered that a finding of unfitness is not dependent upon proof of dishonesty and that “major errors of judgment can sometimes be of such a magnitude as to demonstrate permanent or tenacious character flaws”.<sup>16</sup>

The Tribunal noted that:

- the Applicant “deliberately chose to enrich himself at the expense of others”;<sup>17</sup>
- the Applicant’s defaults were “objectively dishonest, intentional and callous”;
- the Applicant “allowed a client to control his decision making” and had an “overly close identification with unscrupulous corporate clients”;<sup>18</sup>
- the Applicant “currently lacks the capacity to always make sound and principled judgments under the pressure of stronger personalities or financial opportunities”; and
- “insufficient time has passed to be confident that the practitioner is now worthy of public trust”.<sup>19</sup>

The Tribunal thus decided that the Applicant is not currently fit and proper to hold an unrestricted practising certificate but this “does not mean that the practitioner ceases to be a member of the legal profession. It simply prevents him temporarily from practising it on an unsupervised basis”.<sup>20</sup>

## **Harrison Lee**

Ethics Clerk

*As approved by Grace van Baarle, Manager, Ethics Solicitor, QLS Ethics Centre*

22 November 2017

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<sup>9</sup> Ibid, [16].

<sup>10</sup> Ibid, [19].

<sup>11</sup> Ibid, [24].

<sup>12</sup> Ibid, [161].

<sup>13</sup> Ibid, [162].

<sup>14</sup> Ibid, [170].

<sup>15</sup> Ibid, [171].

<sup>16</sup> Ibid, [143].

<sup>17</sup> Ibid, [152].

<sup>18</sup> Ibid, [175].

<sup>19</sup> Ibid, [178].

<sup>20</sup> Ibid, [180].