

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**LEGAL PRACTICE LIST**

VCAT REFERENCE NO. J78/2017

**CATCHWORDS**

*Legal Profession Uniform Law*, s 119, disqualification of individual other than an Australian Legal Practitioner, whether fit and proper, whether disqualification justified, need for protection of public.


|                      |   |
|----------------------|---|
| <b>APPLICANT</b>     | Victorian Legal Services Board  |
| <b>RESPONDENT</b>    | Ms Samantha Frith   |
| <b>WHERE HELD</b>    | In chambers   |
| <b>BEFORE</b>        | Gerard Butcher, Senior Member   |
| <b>DATE OF ORDER</b> | 14 March 2018   |
| <b>CITATION</b>      | Victorian Legal Services Board v Frith (Legal Practice) [2018] VCAT 364 |

**FINDINGS**

- 1 The Tribunal is satisfied that a ground for making an order under s 119 of the *Legal Profession Uniform Law* (the Uniform Law) namely that the respondent is not a fit and proper person to be employed or paid in connection with the practice of law or to be involved in the management of a law practice, has been established.
- 2 The Tribunal is satisfied that disqualification of the respondent for the purposes of the Uniform Law for a period of 10 years is justified.

**ORDER**

- 1 The respondent is a disqualified person within the meaning of the Uniform Law for a period of 10 years from the date of this order.
- 2 No order as to costs.

  
Gerard Butcher  
Senior Member  


## REASONS

- 1 By an application dated 27 November 2017, the Victorian Legal Services Board (the Board) commenced proceedings against Ms Samantha Frith (Ms Frith) pursuant to schedule 1, s 119(1) of the *Legal Profession Uniform Law Application Act 2014* (the Uniform Law).
- 2 The Board has commenced this proceeding to obtain orders that Ms Frith is a disqualified person within the meaning of the Uniform Law.
- 3 Ms Frith has consented to the making of the orders proposed by the Board.
- 4 Both parties have agreed that it is appropriate for the Tribunal to deal with this proceeding on the papers without the need for a hearing.

## AGREED FACTS

- 5 Ms Frith has at no time been an Australian Legal Practitioner within the meaning of s 6 of the Uniform Law.
- 6 On or about 2 November 2015 Ms Frith was charged with 27 counts of theft totalling \$14,899.00. Each of the charges related to theft of money paid to Pearce Webster Dugdales (the Law Practice) and 26 of these payments were intended to be held on trust for clients of the Law Practice.
- 7 On 13 October 2016, Ms Frith pleaded guilty to one rolled-up charge of theft. The rolled-up charge incorporated 26 instances of stealing money from the Law Practice, with the remaining charges being withdrawn.
- 8 By way of penalty, Ms Frith was placed on a Community Corrections Order for 12 months and required to complete 100 hours of community service. She was also ordered to make restitution in the amount of \$14,701.00 and no conviction was recorded. Ms Frith has now completed her community service and has been paying restitution in the amount of \$300.00 per month pursuant to the orders of 13 October 2016.

## RELEVANT CONDUCT

- 9 Ms Frith was employed at the Law Practice at 379 Collins Street Melbourne in the State of Victoria from 23 September 2013 until 23 June 2015.
- 10 Ms Frith's duties at the Law Practice included:
  - a receiving payments made to the Law Practice;
  - b creating receipts and processing invoices and credit notes;
  - c depositing funds received by the Law Practice into the trust and office accounts;
  - d drawing cheques, updating disbursements and managing investment accounts;
  - e processing bank reconciliations and rendering accounts; and

- f management of trust ledgers, including processing transfers between matters.
- 11 Each offence on the rolled-up charge related to Ms Frith's receipt of money at the Law Practice and failure to deposit the money into the Law Practice's accounts.
  - 12 The offences occurred between 11 November 2014 and 19 June 2015. Of the stolen payments the subject of the rolled-up charge, 25 were intended to be held on trust for clients of the Law Practice, with the amounts ranging from \$20 to \$3,300.00.
  - 13 Ms Frith concealed the theft by repeatedly removing the relevant payments from the Law Practice's automatically generated bank deposit slip and reversing transactions in the Law Practice's computerised accounting system.
  - 14 Ms Frith gave notice of her resignation from the Law Practice on 2 June 2015 and her employment ended on 23 June 2015. Following her resignation Ms Frith commenced working as a junior legal assistant at Maurice Blackburn Lawyers, where she remained for approximately 12 months. Ms Frith then worked as a legal assistance at Wisewould Mahony Lawyers for about three months.
  - 15 Since approximately September 2016, Ms Frith has been working as a fitness consultant at Fernwood Fitness. She has no further relevant history of offending.

## **FIT AND PROPER**

- 16 Whilst Ms Frith has consented to the making of the orders sought in the application and has agreed to the above facts, it is still necessary for the Tribunal to consider whether a ground for making an order under s 119 of the *Uniform Law* exists namely that the respondent is not a fit and proper person as set out in s 119(2)(b) of the *Uniform Law*, and further whether the disqualification is justified.

## **THE LAW**

### 17 Section 119

Relevantly, section 119 of the *Uniform Law* provides:

#### **119 Disqualification of individuals (other than practitioners)**

- (1) The designated tribunal may, on the application of the designated local regulatory authority, make an order disqualifying a person who is an individual (other than an Australian legal practitioner) for the purposes of this Law, for a specified period or indefinitely, if satisfied that—
  - (a) a ground for making the order under this section has been established (see subsection (2)); and
  - (b) the disqualification is justified.

- (2) Any of the following are grounds for disqualifying a person—
  - (a) ...
  - (b) that the person is not a fit and proper person to be employed or paid in connection with the practice of law or to be involved in the management of a law practice;
  - (c) ...
  - (d) ...
  - (e) ...
- (3) ...
- (4) ...

### **FIT AND PROPER**

- 18 In the case of *Australian Broadcasting Tribunal and Bond* (1990) 170 CLR 321, Chief Justice Mason said:

[64] ... the statutory concept of "fit and proper person to hold the licence", which is undefined, takes account of qualities and characteristics of the licensee apart from the matters mentioned in [the Act]. ... the concept should not be narrowly construed or confined. It must extend to any aspect of fitness and propriety that is relevant to the public interest, because the Tribunal's power to suspend or revoke.

[36] The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

### **FAME AND CHARACTER**

- 19 In *Melbourne v The Queen* [1999] HCA 32 at [33] and [56] McHugh J observed:

In its strict sense, character refers to the inherent moral qualities of a person ... Fame however involves being known, favourably, by a

large section of the public, whilst character is directed to a more objective evaluation which might conflict with what the general public thinks.

- 20 I conclude that under the circumstances Ms Frith is not of good character.

### **GUILTY OF OFFENCE**

- 21 I am satisfied on the basis of the agreed facts that Ms Frith was found guilty of an offence in Australia and that the nature of the offence relates to dishonesty in the handling of her employer's funds and in particular funds which belong to the clients of her employer and which may be categorised as trust funds.

### **CONCLUSION**

- 22 I conclude, on the basis of the law as applied to the facts that Ms Frith is not a fit and proper person.

### **IS DISQUALIFICATION JUSTIFIED?**

- 23 Protection of the public is the primary goal in deciding whether a disqualification is justified. The public is in need of protection from dishonest persons being involved in any aspect of the conduct of legal practices. I am satisfied that I am able to conclude that disqualification is necessary.
- 24 The Board has sought a period of disqualification of 10 years. Ms Frith has consented to this. I consider it to be an appropriate period given the nature of Ms Frith's conduct and the need to protect the public.

