

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2019] NZLCDT 23

LCDT 015/19

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

AMANDA MATICH

Applicant

AND

NEW ZEALAND LAW SOCIETY

Respondent

CHAIR

Judge B J Kendall

MEMBERS OF TRIBUNAL

Mr W Chapman

Mr W Smith

Mr B Stanaway

Ms S Stuart

DATE OF HEARING 7 August 2019

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 28 August 2019

APPEARANCES

Ms Matich in person

Ms C Paterson for the Respondent

**RESERVED REASONS OF THE TRIBUNAL FOR DECISION GRANTING AN
ORDER CONSENTING TO THE EMPLOYMENT OF A PRACTITIONER STRUCK
OFF THE ROLL**

[1] The applicant, Ms Matich, is a sole practitioner in Dargaville which she has described as a small rural community.

[2] She has sought the Tribunal's consent to employ Gregory Bryden Clarke, a former lawyer who was struck off the roll by the Tribunal on 22 August 2013. This application is made pursuant to s 248 of the Lawyers and Conveyancers Act 2006 (the Act).

[3] The application was heard on 7 August 2019. At the conclusion of the hearing, the Tribunal unanimously agreed to grant the application without conditions.

[4] This decision now sets out our reasons for granting the consent to employ.

[5] The application was opposed by the New Zealand Law Society, the reasons for which are set out in the evidence of Paul Woolhouse. The factors taken into account by the respondent closely follow those factors which are set out in subsection (4) of s 248.

[6] Both the applicant and the respondent agree that s 248(3) creates a threshold requirement that there must be "*good reason*" to employ Mr Clarke.

[7] The applicant's evidence in support of the threshold test is that she has encountered significant difficulties in obtaining support staff with any experience in a legal office. Those difficulties have occurred over the past two and a half years. The applicant said that she is thwarted in delivering her services by that lack of suitably qualified and trained support staff and is under intense pressure because of that lack. She submitted that the employment of Mr Clarke would assist her in meeting her obligations as a competent practitioner.

[8] Bearing in mind the difficulties that the applicant has faced in obtaining experienced support staff and the length of time that those difficulties have existed, the Tribunal determined that she had met the threshold test in that Mr Clarke has been the only person to become available to her and that Ms Matich has not chosen to employ him in preference to another.

[9] It is therefore necessary to consider the factors set out in subsection (4).

(a) The need to protect the public and the standing of the profession

[10] The applicant's intention is that Mr Clarke's role would be that of 'back office' administrator with client contact (if any) being limited to occasional answering of telephone calls and the greeting of clients who might arrive unexpectedly. Mr Clarke's evidence was that he is not interested in re-engaging in the practice of the law with its accompanying stresses. He has been struck off the roll for six years and is approaching 60 years of age.

[11] We did not consider that, in this case, direct protection of the public was a strong ground for refusing the application.

(b) The seriousness of the proved offending against the person

[12] Mr Clarke has three disciplinary matters which involved dishonesty. They were in 2001, 2007 and 2013. There are two other matters dealt with at Standards Committee level which did not involve dishonesty. Ms Matich relevantly points out that the matters before the Tribunal did not involve personal gain. One involved trust account monies and the other two involved misleading clients.

(c) Matters relevant to the honesty of the person

[13] Mr Clarke's striking off from the roll of barristers and solicitors occurred six years ago. He is not seeking to re-enter the profession. His role is to provide administrative help to the applicant. We have taken into account the years that have passed since strike off, the work proposed for Mr Clarke and that he does not seek to re-enter the profession. We do not consider that this factor should be a bar to his employment by the applicant.

(d) The work on which the person will be employed and the extent of supervision

[14] Ms Matich has set out the matters in respect of which Mr Clarke will act as her assistant. They fall under the following headings:

- [a] Conveyancing matters, which would include such matters as preparing settlement statements, obtaining rates information, preparing e-dealings, closing files, and general assistance to the applicant.
- [b] Estate Administration matters, which would include assistance with Probate applications for filing, preparation of draft administration statements.
- [c] Administration matters which would include Anti-money laundering record requirements, management of file work load as directed by the applicant.

[15] Ms Matich emphasised that there would be no client contact by Mr Clarke and that all work done by him would be checked and reviewed by her, such that there would be no risk of dishonest conduct at any level.

[16] We are satisfied that the work proposed for Mr Clarke is at a low level; is administrative; and does not carry a risk to the public perception arising out of his striking off.

(e) The previous record, in relation to disciplinary matters, of the person

[17] Mr Clarke's striking off from the roll of barristers and solicitors is a relevant consideration. (*Sidney v Auckland District Law Society*)¹ In this case Mr Clarke is not seeking to re-enter the profession. He has been struck off for six years. His proposed employment is as a clerk who has experience in the work of a legal office. In those circumstances we have found that his record is not a compelling bar to his employment as might have been the case had he been seeking to practise law again.

¹ *Sidney v Auckland District Law Society* [1996] 1 NZLR 431.

[18] Having regard to the “good reason” test and to the factors discussed above, the Tribunal exercised its discretion to grant the application to employ without imposition of conditions.

[19] The Tribunal makes no orders for costs.

DATED at AUCKLAND this 28th day of August 2019

Judge B J Kendall
Chair