

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 28

LCDT 002/23

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

**CHRISTOPHER MANSON
TWIGLEY**
Applicant

AND

NEW ZEALAND LAW SOCIETY
Respondent

CHAIR

Ms D Clarkson

MEMBERS OF TRIBUNAL

Hon P Heath KC

Ms N McMahon

Ms M Noble

Prof D Scott

HEARING 29 June 2023

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 18 July 2023

COUNSEL

Mr S Jefferson KC for the Applicant

Mr P Collins for the Respondent

RESERVED DECISION OF THE TRIBUNAL ON APPLICATION FOR RESTORATION TO THE ROLL OF BARRISTERS AND SOLICITORS

Introduction

[1] It has been said that:¹

...For cultural and historical reasons, redemption and forgiveness are important attributes of the shared morality of our society ... in part it derives from the self-interest which any community has to encourage the rehabilitation of those who lapse and to hold out to them the hope that, by diligent and honourable efforts over a period, their past may be forgiven and they may be restored to the good opinion of their family, friends, colleagues and society. The public's interest also includes the economic interest which is involved in utilising, to the full, the skills of talented people who have undergone years of rigorous training but who, having misconducted themselves, have had to be removed for a time from positions of responsibility and trust.

[2] This case involves the assessment of whether Mr Twigley has "...demonstrated, including by [his] work, activities and life, a fitness to be restored"² to the roll of barristers and solicitors of New Zealand.

Factors to be considered

1. While the assessment is forward looking,³ in order to assess the risk to the public and to ensure the maintenance of public confidence in the profession, the conduct which led to the striking off must be considered.
2. Do we consider the following characterisations⁴ to have been made out on the evidence?
 - (a) lack of insight and awareness of the significance of his past professional wrongdoing, characterised by silence about the harm

¹ *Law Society of New South Wales v Foreman* [1994] 34 NSWLR 408, 419, per Kirby P.

² See above n 1.

³ *Leary v New Zealand Law Practitioners Disciplinary Tribunal* [2008] NZAR 57 and *New Zealand Law Society v Stanley* [2020] 1 NZLR 50.

⁴ Set out in the New Zealand Law Society's submissions.

caused to individual client/victims and any remorse towards those persons;

- (b) his continuing tendency to self-pity and blame or criticism of others;
- (c) reliance on the passage of time as evidence of reform;
- (d) on the matter of his undisclosed bankruptcy in 1990, the justified concern that this was deliberately withheld, contrary to his obligation of full disclosure in this forum. That has obvious implications in the assessment of his integrity and reliability, now.

3. We must consider whether the applicant has established himself to have changed sufficiently to be endorsed as: "...honest, trustworthy and a person of integrity"⁵ so as now to be seen as a "fit and proper person to practise as a barrister or as a solicitor or both".⁶
4. While the standard of "fit and proper" is necessarily a high one, in which he must be able to be "trusted to the ends of the earth",⁷ the bar must not be impossibly high and thereby deny Mr Twigley the opportunity of practising the profession for which he is qualified. The exercise of looking forward, while having regard to the applicant's past conduct is well expressed in the leading case of *Lundon*,⁸ in which the Court of Appeal observed that if a restoration applicant:

...relies on a subsequent career of honesty he must show long-continued honesty in circumstances of temptation and opportunity comparable with those which surround the practice of the law.⁹

And further in *Leary*:¹⁰

[43] Resolving that question necessarily, as the authorities show, requires the Tribunal to look forward in time and make a value judgement on that issue, drawing on evidence of an applicant's past actions.

[44] That exercise, too, necessarily requires an inquiry into the actions which led to the striking off, which, in its turn, involves acceptance by an applicant that those actions occurred and that

⁵ See above n 3.

⁶ Section 246, Lawyers and Conveyancers Act 2006 (LCA).

⁷ *Bolton v Law Society* [1994] 2 All ER 486 (CA).

⁸ *Re Lundon* [1926] NZLR 656 (CA).

⁹ See above n 8, p 244.

¹⁰ See above n 3.

they transgressed the legal and ethical standards of the profession. Without recognition that the actions breached applicable standards and the consequences of the breach – particularly to the public, the courts and to all other practitioners – it would be difficult for the Tribunal to conclude the same actions would not be repeated should similar circumstances arise in the future.

[3] As the Tribunal stated in *Reid*¹¹, the evaluation must be a proportionate one, “...avoiding prejudice and irrelevancies...”.

[4] This approach was most recently endorsed by the Supreme Court in *Stanley*.¹²

[54] ...

- (e) when assessing past convictions, the Court must consider whether that past conduct remains relevant. The inquiry is a fact-specific one and the Court must look at all of the evidence in the round and make a judgement as to the present ability of the applicant to meet his or her duties and obligations as a lawyer.

[5] The Supreme Court noted that the onus of establishing this high standard rested with the applicant.

Conduct which led to strike-off

[6] The past conduct of the applicant is more fully described in the striking off decision,¹³ but for the purposes of this application we summarise the conduct as follows: Mr Twigley was found guilty of six charges of misconduct, five of which directly involved failures to his clients and the sixth was what has been described as the “irresponsible closure” of his practice.

[7] Four of the five client matters involved theft of trust money and the fifth related to Mr Twigley having obtained a substantial loan from a client, \$150,000, in circumstances where no independent advice was provided to the client or recommended by the practitioner.

¹¹ *Reid v New Zealand Law Society* [2023] NZLCDT 7.

¹² See above n 3, at [54].

¹³ *Wellington Standards Committee 2 v Twigley* [2016] NZLCDT 37.

[8] The consequences for Mr Twigley's clients were significant, the conduct was described by the Tribunal in the decision as "...the use of client funds to continue a practice which was in desperate financial straits occurred on at least three occasions".¹⁴

[9] As set out in the respondent's submissions:

The applicant's dishonesty was accompanied by other serious professional failings:

- (a) improperly borrowing funds personally from clients without ensuring those clients were given the opportunity to receive independent legal advice;
- (b) the mismanagement of the trust account including overdrawing and paying the expenses of his practice from trust funds; and
- (c) the irresponsible way he closed his legal practice, imperilling clients' interests.

[10] The findings as to his conduct and the description above is not disputed by the applicant. We accept the submission of Mr Collins, for the respondent, that "the applicant's transgressions which resulted in his striking off were in the most serious category for a lawyer, including repeated instances of theft of client trust money".

[11] Counsel for the applicant did not seek to minimise the seriousness of his client's past misconduct.

Other past conduct

[12] In addition to this most serious misconduct are the further instances of disciplinary findings against Mr Twigley involving conduct from 2009 to 2014. Over this period, there were six findings of unsatisfactory conduct against the applicant. One noteworthy feature of these findings is that they reveal a repetition of behaviour. The 2018 finding (which related to conduct in 2013) appeared in almost identical circumstances as that for which a finding had been made against the applicant over conduct occurring in late 2009. The inference is that Mr Twigley did not learn from the earlier disciplinary finding against him.

¹⁴ See above n 13, at [86].

[13] As stated in *Lundon*,¹⁵ "...the greater the fall from grace, the more the ground to recover before reinstatement".

[14] It is the submission of the New Zealand Law Society that Mr Twigley has not discharged the burden upon him of:

...showing that the force of his past professional wrongs is now spent and that he has achieved the status of a fit and proper person to again be entrusted with the responsibilities and privileges of a lawyer and as an officer of the court.

We examine whether this is correct in the next section.

Applicant's evidence

[15] Mr Twigley provided two affidavits in which he described, in considerable chronological detail, the course of his life, both personal and professional, and the events which he considered had led him into misconduct.

[16] Character references and affidavits in support were also provided. Of most weight were those (3) from former employees, who described Mr Twigley as a man of integrity and high professional standards in the earlier years of his practice, (approximately 13 years), before his marriage ended and he sold his thriving Auckland practice and moved to Gisborne.

[17] As to more recent times, there were letters of endorsement from family members and from a self-represented litigant whom Mr Twigley had assisted as a McKenzie Friend in several pieces of litigation in Australia, where Mr Twigley has resided since he wound up his practice in New Zealand in 2015. It is clear that Mr Twigley, who professes himself to genuinely enjoy the practice of law, has been of considerable assistance to this man.

[18] We also accept Mr Twigley's evidence that as part of his rethinking of his life, and attempting to make a fresh start, he has adopted a community-minded and unselfish approach to helping others in need.

¹⁵ See above n 8.

[19] For obvious reasons, we cannot place weight on the positive references from his family members. In fact, in a protective jurisdiction such as this, personal references can rarely be accorded much weight unless they specifically address, for example, the work a practitioner has put into addressing underlying causes of the misconduct. That sort of endorsement would normally be from a health or therapeutic professional.

[20] Despite the very detailed nature of Mr Twigley's chronology and lengthy affidavit concerning his history, there is a notable omission which is highlighted by Mr Collins. – Mr Twigley's first bankruptcy. This is relevant because the tone of Mr Twigley's first lengthy affidavit was that, until the factors which began to operate on him following his marriage breakdown, he had had a productive and blemish-free working life. It is of concern to the Tribunal that Mr Twigley had, at an earlier time of his life, encountered significant financial difficulties leading to his declaration of bankruptcy. This is because he says that his financial pressures led to his lapse in ethics and professional standards in 2014 and 2015, leading to his strike-off. We consider that there is more of a pattern in his behaviour than Mr Twigley recognises.

[21] We express concern at the failure of Mr Twigley to disclose his earlier bankruptcy to the Tribunal. In a subsequent affidavit, Mr Twigley explains this omission as a mere oversight, but that is somewhat difficult to accept, given the degree of detail provided by him of every aspect of his life including sporting endeavours and personal relationships, not only in the affidavit, but in the detailed chronology provided to the Tribunal.

[22] Mr Jefferson, for Mr Twigley, submits that his client's affidavit sets out "...a clear and definite plan that he will carry out if he is readmitted".

[23] With respect to counsel, we do not consider that the evidence substantiated this claim. Mr Twigley told us that he planned to return to New Zealand if able to practise but had not determined whether he would set up (on his own account as sought by the application) in Hamilton or Tauranga. He told us that his partner of some years was studying law and wished to attend Waikato University. He said it was for that reason that he would not take up the offer of employment given by one of the deponents, a former employee of Mr Twigley, because that position would be in Auckland. That

position would have provided him with structure and support – two elements of his future planning which appear absent.

[24] Since his move to Australia, Mr Twigley has been employed in low paying jobs for which little qualification is required. Because of that, he has not been able to accumulate any savings of the sort required to set up a practice in New Zealand, were he permitted. That sort of enterprise requires the ability to undertake continuing professional education, access legal library services, pay for premises (probably), pay for practising fees and for insurance (if he is able to obtain this). Unfortunately, Mr Twigley was unable to provide the Tribunal with any clear evidence of when or how he would meet such commitments.

Respondent's evidence and opposition

[25] Mr Bohinc, on behalf of the New Zealand Law Society, has filed a lengthy affidavit describing the process adopted by the Practice Approval Committee and the reasons for opposition to Mr Twigley's application. We have summarised the main points of this opposition in paragraph [2] of this decision.

[26] Affidavits are also provided from two practitioners who have objected to the application. Both are Gisborne lawyers, one of whom was involved in the tidying up which followed the abrupt cessation of Mr Twigley's practice. Each is concerned with the effect on the reputation of the profession of restoring to the roll a practitioner who has engaged in the sort of conduct for which Mr Twigley was struck off.

[27] It is the New Zealand Law Society's position that the mere passage of time, and engaging in self-reflection, is insufficient to provide reassurance that the practitioner has fully reformed.

[28] Counsel highlights the very detailed account given by Mr Twigley of the circumstances leading up to his misconduct, as well as the effect on him of being struck off. While we understand the significant emotional effect on Mr Twigley of the ending of his legal career, it is startling that he dwells on this aspect of the consequences of his misconduct, with little apparent regard for the effect it has had on his clients.

[29] The consequences for these former clients is addressed in an affidavit by Mr Strang, an auditor for the New Zealand Law Society, who had contact with Mr Twigley towards the end of the operation of his practice and was also involved in the subsequent clean up. Mr Strang describes a number of Mr Twigley's clients as "vulnerable".

[30] The client from whom Mr Twigley borrowed \$150,000 has never been repaid. Mr Twigley did not appear to have much sympathy for this client because that person had undertaken a degree of self-help by taking possession of office equipment and furniture which belonged to Mr Twigley and was held in storage pursuant to a court order.

[31] It is noteworthy that in our decision striking Mr Twigley from the Roll, we specifically referred to that client, Mr Y, and urged the practitioner to further reflect:

The lack of insight to the huge dangers to the client by such conduct, without the provision of independent legal advice is of serious concern and requires careful reflection by the practitioner.¹⁶

Evaluation

[32] While we note that his counsel in submissions refers to Mr Twigley as being "extremely remorseful about what occurred and particularly about the unjustified harm that he caused to his clients", this alone is not enough for Mr Twigley to persuade us that he should be restored to the Roll.

[33] Mr Twigley has not had any professional assistance in the self-reflection and self-awareness that he now claims to have.

[34] Mr Twigley's evidence does not give us confidence that he fully understands or accepts just how wrong it was to have borrowed from Mr Y in the first place. He has done nothing to ascertain the outstanding balance that the client considers is owing to him, being content to simply treat the bankruptcy which followed his strike-off as writing off all debts (as it legally does), and his responsibility as going no further than that. Nor has he been moved to attempt to provide an apology to the client. His debts at the

¹⁶ See above n 13, at [87].

time of his bankruptcy also included fines and costs from a number of disciplinary proceedings, so his profession has had to bear the costs of his failings. That did not appear to feature in Mr Twigley's thinking, or assessment of his own readiness to be readmitted to that profession.

[35] While we accept that Mr Twigley honestly believes that he has learned his lessons from what occurred in the past and is now safe to be endorsed to the public, we do not consider that the evidence provides the "valid and substantial grounds" that the *Lundon* decision states are required, in order to hold out to the public that the applicant is a fit and proper person to be a lawyer.

[36] Mr Twigley's assertion that he is "rehabilitated from the state [he] was in when [he] misconducted himself" is, of itself, insufficient to demonstrate that, under conditions of pressure (financial or otherwise), he would not react in the same way as previously.

[37] We also have some difficulty with the submission of Mr Twigley's counsel that he had "practiced law to a relatively high standard with few issues for approximately 18 years. In comparison to that period of good conduct, his most egregious misconduct occurred in a period of approximately three to four months". We consider that that submission significantly understates Mr Twigley's disciplinary record. Although counsel made reference to the five previous findings of unsatisfactory conduct between March 2011 and March 2016, we do not consider that sufficient weight has been given by Mr Twigley or his counsel to the fact that, although only rising to the level of unsatisfactory conduct, there were numerous findings of professional failings over a period of more than five years.

[38] We are concerned with this tendency to minimise his past behaviour and therefore the failure to fully recognise what he has to establish to be accepted as a fit and proper person again.

[39] Given that Mr Twigley attributes financial pressures to the errors leading to his past misconduct, there is a serious risk that he will be facing the same financial pressures were he permitted to practise on his own account in the near future.

[40] We consider that the level of evidence to support the view that Mr Twigley could withstand ethical and financial pressures in future, based on his conduct since his strike-off, is significantly lacking.

[41] We have undertaken the proportionate but protective evaluation, having regard to the high standards which must be reflected in the consideration of what is required to be a fit and proper person. Even with a forward looking approach, we do not consider that Mr Twigley has discharged the onus upon him to demonstrate on “valid and substantial grounds” that he can be endorsed to the public by this Tribunal.

[42] The application for reinstatement is declined.

[43] We invite the parties to make brief submissions on costs (no more than 2 pages), noting that in applications of this kind there is no jurisdiction to order costs under s 257 of the LCA. Submissions are to be filed not later than 10 days following the release of this decision.

DATED at AUCKLAND this 18th day of July 2023

D F Clarkson
Chair