

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2023] NZLCDT 41

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

ON THE PAPERS

DATE OF DECISION 21 September 2023

COUNSEL

Mr C Twigley made submissions on his own behalf

Mr P Collins for the Respondent

DECISION OF THE TRIBUNAL ON COSTS

[1] Mr Twigley was unsuccessful in his recent application to be restored to the Roll of Barristers and Solicitors. The New Zealand Law Society, which opposed the application, now seeks an order for costs against the applicant. The matter is currently under appeal.

[2] The proceeding is a civil one and in such proceedings an order for costs frequently aligns with the outcome. The Tribunal is given a wide discretion under s 249(1) to "...make such order as to the payment of costs and expenses as it thinks fit". However, there is no developed body of precedent in this area, because applications for restoration are relatively rare.

[3] The respondent Society submits that it was obliged to oppose the application as part of its regulatory function. It submits that, acting, as it is, in the interests of protection of the public pursuant to the Act,¹ the costs of its opposition ought not to be borne by members of the legal profession.

[4] The costs and expenses are a little under \$18,000.

[5] The applicant, Mr Twigley, who resides in Australia, has filed a memorandum opposing an order for costs. He advances the following grounds:

- (a) Read literally, s 249(1) is limited to proceedings brought by the Law Society.
- (b) An application for restoration is not intended to be adversarial, and the Society was not obliged to incur costs in opposing it.

¹ Lawyers and Conveyancers Act 2006.

- (c) The application was not without merit and was conducted by the applicant “as efficiently and expeditiously as possible”.
- (d) The applicant’s impecuniosity.

[6] To support the final submission, Mr Twigley has provided a statement of means which the Tribunal accepts discloses a modest income exceeded by outgoings and little or no assets.

Discussion

[7] In a recent decision on the issue of costs, following an unsuccessful application for restoration, the Tribunal had this to say:²

[4] An application to have one’s name restored to the roll of barristers and solicitors is a civil proceeding. Generally, the successful party in most civil proceedings will be awarded a contribution to their costs. This will sometimes be pursuant to a scale but, unsurprisingly, there is no scale for this relatively infrequent type of proceeding before the Tribunal. Sometimes a costs contribution will amount to something like two-thirds of the actual costs incurred by the successful party. However, costs are always in the discretion of the Court (or Tribunal). A costs award needs to fit the circumstances of the case, it needs to be just.

[8] In that case, the Tribunal found the case to fall:³

...well short of success. The NZLS advised her, early and accurately, of the things she needed to establish. Against the relevant background of her conviction, these included: remorse, rehabilitation, and the fundamentals of establishing her present good character as a fit and proper person to be enrolled. Despite clear warning, she failed to address, or to successfully address, those things. To this extent, her application was ill-advised, causing unnecessary costs to the NZLS.

[9] Commenting that Ms Reid had “...genuinely thought she was entitled to be re-enrolled” and referring to her “modest circumstances”,⁴ the Tribunal made an award of \$6,000 of a total of \$27,500.

² *DV Reid v New Zealand Law Society* [2023] NZLCDT 38.

³ See above n 2 at [6].

⁴ See above n 2 at [7].

[10] In the present case, the application might be seen as more finely balanced. However, we were concerned about the lack of evidence which would indicate the sort of planning and safeguards to ensure that "...Mr Twigley could withstand ethical and financial pressures in future...".

[11] Dealing with Mr Twigley's points in opposition in turn:

- (a) We consider his interpretation of s 249(1) to be erroneous. The Tribunal clearly has jurisdiction to award costs in these circumstances. What it does not have jurisdiction to award is the costs of the **Tribunal** under s 257, which is currently restricted to covering Tribunal costs and expenses in relation to charges. Section 249 has broader application, and gives, as submitted by Mr Collins, the Tribunal a wide discretion.
- (b) We accept that the process is not entirely adversarial and incorporates some inquisitorial features. That does not mean that costs incurred by the successful party ought not to be considered on the same basis as civil proceedings. Furthermore, we reject the proposition put by Mr Twigley that the Law Society was not bound to participate and thereby incur costs in the proceedings. The regulatory role of the Law Society, set out in s 65 of the Act,⁵ is a very important one, having regard to the protective purposes of the Act.
- (c) We accept the submission that the application was not completely without merit and that Mr Twigley conducted it on a cooperative and efficient basis. He reaps the benefit of this in the relatively modest costs incurred by the Society.

⁵ **65 Regulatory functions**

The regulatory functions of the New Zealand Law Society are—

- (a) to control and regulate the practice in New Zealand by barristers and by barristers and solicitors of the profession of the law:
- (b) to uphold the fundamental obligations imposed on lawyers who provide regulated services in New Zealand:
- (c) to monitor and enforce the provisions of this Act, and of any regulations and rules made under it, that relate to the regulation of lawyers:

...

- (d) We do accept Mr Twigley's impecuniosity and take that into account in assessing the award we make, which is a very modest one of \$3,000.

[12] We reach that figure, bearing in mind that the full burden of the proceedings ought not to fall on the profession, in an application of this sort where the burden of proving his suitability for restoration rests on the applicant.

[13] We also are mindful that we ought not put in place a costs order which would place an insurmountable barrier for future applicants.

Order

[12] Pursuant to s 249(1), the applicant is to pay costs to the New Zealand Law Society in the sum of \$3,000.

DATED at AUCKLAND this 21st day of September 2023

D F Clarkson
Chair