NEW ZEALAND LAWYERS AND CONVEYANCERS DISCIPLINARY TRIBUNAL

[2023] NZLCDT 7
LCDT 011/22

IN THE MATTER of the Lawyers and Conveyancers Act 2006

BETWEEN **DAVINA VALERIE REID**
Applicant

AND **NEW ZEALAND LAW SOCIETY**
Respondent

CHAIR
Dr J Adams

MEMBERS OF TRIBUNAL
Hon P Heath KC
Mr H Matthews
Ms G Phipps
Ms P Walker MNZM

HEARING 17 February 2023

HELD AT Specialist Courts and Tribunals Centre, Auckland

DATE OF DECISION 24 March 2023

COUNSEL
Mr C Hirschfeld for the applicant Ms Reid
Mr P Collins for the New Zealand Law Society

ORDERS OF THE TRIBUNAL
RE APPLICATION FOR RESTORATION TO THE ROLL

[1] Ms Reid applies for her name to be restored to the roll of barristers and solicitors. New Zealand Law Society opposes her application. This Tribunal is independent of both parties.

[2] Ms Reid was struck off[1] almost eight years ago. Redemption is possible: the statutory provision permits restoration. In applications[2] for restoration after strike-off, the Tribunal must make a predictive (forward-looking) evaluation whether the applicant is now a "fit and proper person" to be admitted. A similar criterion pertains for any person seeking admission to the roll but, inevitably, where the candidate has been struck off, the evaluation must include attention to the reasons why. Has the shadow passed?

[3] This decision addresses the following issues:

- How should we approach the evaluation?
- What is Ms Reid's case?
- Has the force of past wrongs been spent?
- What of positive contributions Ms Reid might make?

[1] By order of this Tribunal, albeit different members: *Auckland Standards Committee No. 1 v Murray* [2014] NZLCDT 88 and *Auckland Standards Committee No. 1 v Murray* [2015] NZLCDT 6. Ms Reid was formerly Ms Murray. In this decision we refer to her as Ms Reid throughout.
[2] Section 246 Lawyers and Conveyancers Act 2006, especially s 246(5).

How should we approach the evaluation?

[4] This application is made under s 246 Lawyers and Conveyancers Act 2006 (the Act). Section 246(1) permits a person who has been struck off to apply for restoration of their name to the roll. Section 246(3) provides this Tribunal with jurisdiction and prescribes the test in these terms:

> **246 Restoration of name to roll or register**
>
> …
>
> (3) On hearing an application under subsection (1) or subsection (2), the Disciplinary Tribunal, if satisfied that the applicant is a fit and proper person to practise as a barrister or as a solicitor or as both, or as a conveyancing practitioner, may order that the applicant's name be restored to the roll or register, as the case may require.
>
> …

[5] The approach to determining whether a person is "fit and proper" for these purposes is set out in s 55 of the Act. The section is added to this decision as an appendix. In the recent case of *Stanley,*[3] the Supreme Court took the opportunity to modernise[4] the statutory language. The following paragraphs set out that statement of the position.

[6] In *Stanley*[5]*,* the Supreme Court considered the purposes of the statutory scheme and the consequent obligations of lawyers in these terms:

> [6] A wide range of professions have good character and competence requirements for entry.[6] The content of those requirements may vary according to the profession.[7] In terms of lawyers in New Zealand, the content of the fit and proper person and good character requirements needs to be considered in light

[3] *New Zealand Law Society v Stanley* [2020] 1 NZLR 50.
[4] *New Zealand Law Society v Stanley* [2020] 1 NZLR 50 at [34], [54].
[5] *New Zealand Law Society v Stanley* [2020] 1 NZLR 50.
[6] *Layne v Attorney General of Grenada* [2019] UKPC 11, [2019] 3 LRC 459 at [36]. In New Zealand see, for example, Health Practitioners Competence Assurance Act 2003, s 15(1) (registered health practitioners); Education Act 1989, s 353 (registered teachers); Real Estate Agents Act 2008, s 36 (licensed real estate agents, branch managers and salespersons); Social Workers Registration Act 2003, s 6(1) (registered social workers); and Plumbers, Gasfitters, and Drainlayers Act 2006, s 36 (registered plumbers, gasfitters and drainlayers).
[7] *Layne*, above, at [37] per Lady Arden. The history of the requirement of good character is discussed by Lord Sumption in the same judgment at [56]–[57]. Deborah L Rhode discusses the "extended historical lineage" of "moral character" as a professional requirement in "Moral Character as a Professional Credential" (1985) 94 Yale LJ 491 at 493–502. See also Carol M Langford "Barbarians at the Bar: Regulation of the Legal Profession through the Admissions Process" (2008) 36 Hofstra L Rev 1193 at 1196–1198.

of the statutory scheme. The purposes of the Act provide the starting point. The relevant purposes are set out in s 3(1) as follows:[8]

> (a) to maintain public confidence in the provision of legal services … :
>
> (b) to protect the consumers of legal services … :
>
> (c) to recognise the status of the legal profession … .

[7] Section 3(2) provides that in order to attain those purposes, the Act, amongst other things, reformed the law relating to lawyers and provided for a "more responsive regulatory regime" for lawyers.[9] To achieve the purposes, the Act also prescribes the "fundamental obligations with which, in the public interest, all lawyers … must comply in providing regulated services".[10] These fundamental obligations are set out in s 4 and include the following:

> (a) the obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand:
>
> …
>
> (c) the obligation to act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients:
>
> (d) the obligation to protect, subject to his or her overriding duties as an officer of the High Court and to his or her duties under any enactment, the interests of his or her clients.

[7] Building on those observations, the Supreme Court summarised the relevant principles[11] as follows:

> [54] From this discussion, the relevant principles can be summarised in this way:
>
> (a) The purpose of the fit and proper person standard is to ensure that those admitted to the profession are persons who can be entrusted to meet the duties and obligations imposed on those who practise as lawyers.

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[8] These purposes also apply to registered conveyancers for whom the Lawyers and Conveyancers Act 2006 makes provision.
[9] Section 3(2)(a) and (b).
[10] Section 3(2)(d).
[11] *New Zealand Law Society v Stanley* [2020] 1 NZLR 50. This comes from the majority decision delivered by Ellen France J but the minority explicitly agreed with this formulation: see [105] and [106] of the *Stanley* decision.

(b) Reflecting the statutory scheme, the assessment focusses on the need to protect the public and to maintain public confidence in the profession.

(c) The evaluation of whether an applicant meets the standard is a forward looking exercise. The Court must assess at the time of the application the risk of future misconduct or of harm to the profession. The evaluation is accordingly a protective one. Punishment for past conduct has no place.

(d) The concept of a fit and proper person in s 55 involves consideration of whether the applicant is honest, trustworthy and a person of integrity.

(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.

(f) The fit and proper person standard is necessarily a high one, although the Court should not lightly deprive someone who is otherwise qualified from the opportunity to practise law.

(g) Finally, the onus of showing that the standard is met is on the applicant. Applications are unlikely to turn on fine questions of onus.

[8] We must direct our evaluation (whether Ms Reid is *now* a "fit and proper person" to be re-enrolled) towards matters relevant to the practise of law. We must disregard irrelevant matters. A lawyer need not be popular, nor need a lawyer hold conventional views on social or political matters. In the present case, Ms Reid's marriage to a notorious prisoner convicted of rape and murder has attracted adverse comment in the press. Her marriage, and that comment, are irrelevant to our evaluation.

[9] Has she satisfied us that she can be entrusted as a "fit and proper" person to meet the duties and obligations imposed on lawyers? The onus falls on Ms Reid.[12] We approach the question of Ms Reid's fitness, avoiding prejudice and irrelevancies. In determining whether she has satisfied us, we must make a proportionate evaluation.

[12] *Re Lundon* [1926] NZLR 656 (CA); *New Zealand Law Society v Stanley* [2020] NZSC 83, at [54](g).

What is Ms Reid's case?

[10] Ms Reid advanced several arguments in support of her application. We gather them into five clusters:

(a) The precipitating event – her conviction for delivering an iPhone, cigarettes and a Bic lighter to Mr Reid, a sentenced prisoner in a prison – was minor. It has been expunged from her record by the Criminal Records (Clean Slate) Act 2004.

(b) Responses to her offence by criminal courts, the New Zealand Law Society, and the Tribunal were disproportionate and discriminatory. She should be treated similarly to others who have been re-enrolled.

(c) The force of the precipitating event has now been spent. She has not offended since. She is older and more mature. She has recovered from her whakamā and her mana is restored.

(d) Her re-enrolment will serve sound social purposes. There is a need for more wahine Māori lawyers. She has ability, experience, and the desire to advocate for the underprivileged who seek justice.

(e) She has the rehabilitative support of Te Whānau o Waipareira and Waipareira Trust who currently employ her. She (and they) would like to expand her role and thereby utilise her skills more fully in their work. To do so would require restoration of her name to the roll.

[11] The first three clusters can conveniently be dealt with in one section of our decision. The last two clusters can likewise be addressed in a composite manner.

[12] New Zealand Law Society takes issue with many, but not all, of these points. It submits that she has not demonstrated appropriate insight, that she has not truly admitted, nor yet dealt with, her past actions in a way that could lead to our finding she is now a fit and proper person for re-enrolment.

Has the force of past wrongs been spent?

[13] Ms Reid began studying law at age 28. She was first enrolled as a lawyer in September 2008. She had been practising law for about five years when she was declined a practising certificate in August 2013. When struck off, she was 39 years old. We do not accept that her wrong-doing can be explained by lacks of comprehension, experience or maturity. She is now 48.

[14] Her 2013 criminal conviction was for an offence that attracts a maximum penalty of three months imprisonment. In our hearing, Ms Reid said what she did was wrong because "it breached the law" and "it breached my duties and obligations in terms of the legal profession. And, you know, I know it's not the worst crime in the book, Sir, but it has been treated like one."[13]

[15] Compared to crimes like murder, robbery or theft, it is a lesser offence, but it is not trivial, especially in the context of conduct expected from a lawyer. Judge Collins, in sentencing her, described her offending as "if not the most serious of its type, very close to that."[14] On appeal, Venning J said: "I conclude that the Judge was right to find that Ms [Reid's] offending was serious offending of its type so that, even taking into account the mitigating factors referred to, the gravity of the offending in this case was high."[15]

[16] In its decision[16] to strike her off, the Tribunal described the offence as one that "goes directly to the heart of the standing of the profession in the community."[17] The Tribunal found: "The breach of trust and abuse of professional privilege most certainly reflect on fitness to practice."[18]

[17] Although the conviction falls under the Criminal Records (Clean Slate) Act 2004 so that Ms Reid can now, in most situations, legally state she has no criminal record[19],

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[13] NoE p 21, lines 12-15.
[14] Respondent's Bundle 042, Sentencing decision at [40].
[15] Respondent's Bundle 054, Venning J decision at [43].
[16] *Auckland Standards Committee No. 1 v Murray* [2014] NZLCDT 88.
[17] *Auckland Standards Committee No. 1 v Murray* [2014] NZLCDT 88 at [41].
[18] *Auckland Standards Committee No. 1 v Murray* [2014] NZLCDT 88 at [42].
[19] Section 14(2) Criminal Records (Clean Slate) Act 2004.

that privilege is subject to an exception[20] where, as here, her record is "relevant to any …civil proceedings before a …tribunal…" For Ms Reid, Mr Hirschfeld accepted that, in the present context, the value of the Clean Slate provision goes no further than saying the requisite time has elapsed for that provision to take effect with regard to her record in general circumstances. For present purposes, the conviction represents, not only that past conduct but, as the foundation for her present predicament, it points our attention to consequent areas of concern.

[18] Therefore, because it is relevant to our evaluation, we do not disregard the conduct that gave rise to the conviction. Although, in general, most convictions expunged by the Criminal Records (Clean Slate) Act 2004 may be treated as if they were trivial, that is not so for Ms Reid in this present context.

[19] Before we consider the present effect of that conduct on our forward-looking evaluation, we need to assess its gravity. In doing so, we note that Ms Reid is unhappy about the manner in which her conduct has been perceived by others, such as the news media. She feels a strong sense of grievance that it has been blown out of proportion. This had been signalled as a generality, but it took on specific significance during our hearing, when she objected to Tribunal member Heath's use of the term "smuggled" as a description of her conduct. The term "smuggled" appeared in both Tribunal decisions leading to her strike-off, the latter of which Ms Reid had exhibited[21], without comment, to her first affidavit in these proceedings. Because of her sensitivity to the way her conduct is described, we take care to clearly state the basis upon which we assess the gravity of that conduct.

[20] Her criminal conviction is based on the simple finding that Ms Reid delivered the items to a prisoner in a prison. Beyond finding that she had introduced the items into the prison, Judge Collins made no finding that she had concealed the items, nor that she did so in a premeditated way. It was not necessary for him to find in what manner she had done so. Towards the end of his decision, Judge Collins referred to opposing views advanced about how she might have done so but then stated firmly[22]:

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[20] Section 19(3)(b) Criminal Records (Clean Slate) Act 2004.
[21] Exhibit A to Ms Reid's affidavit 19 April 2022, namely *Auckland Standards Committee No. 1 v Murray* [2015] NZLCDT 6. The word "smuggling" appears at [4] of that decision.
[22] Respondent's Bundle 032 at [77].

"I need make no finding just how she did achieve what she did." In the context of outlining opposing views, his comment that it had been contended she could have concealed items in her bra did not represent a finding of fact.

[21] In Judge Collins' sentencing decision, and in Venning J's appellate decision, there is no reference to anything more than the simple finding that Ms Reid introduced the items into prison and gave them to the prisoner. We accept that her conviction, in itself, yields no inference of concealment or pre-planning. Some of the facts found by Judge Collins can suggest pre-planning, for example, Ms Reid's purchase of the particular iPhone only days before it was found in the toe of Mr Reid's shoe immediately after her visit, and certain earlier communications between Ms Reid and Mr Reid. Nonetheless, there is no explicit finding of premeditation in the criminal decisions.

[22] In answer to Tribunal member Heath's questions, she said the cellphone was in her bag and it went through a screening machine. She did not accept that her actions were premeditated. Opportunistic, unpremeditated conduct would be less grave than covert, premeditated conduct but the criminal courts did not apply those intensifiers to the conviction. At sentencing, the major aggravating grounds were not premeditation or covert conduct, they were, firstly, that she had done what she did as a lawyer; and secondly, her actions after that conduct – she tacitly accused two Corrections officers of planting the items on Mr Reid, when she knew they were innocent. We too, regard these as significant aggravating features.

[23] The earlier (differently constituted) panel of the Disciplinary Tribunal, in both its liability and penalty decisions[23], explicitly used the term "smuggled." We do not know if there was evidence to support that gloss. In the absence of such knowledge, we refrain from adopting that term. In this decision, we rely explicitly on the terms of the criminal decisions. Accordingly, we read the previous decisions of the Disciplinary Tribunal as if the term "smuggled" had not been used.

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[23] *Auckland Standards Committee No. 1 v Murray* [2014] NZLCDT 88 and *Auckland Standards Committee No. 1 v Murray* [2015] NZLCDT 6.

[24] Thus, in weighing the gravity of her conduct, we ignore any question about how she brought the items into the prison and whether her actions were premeditated. When weighing its gravity as a significant past point, before we consider its present effect on our forward-looking evaluation of whether she is a fit and proper person to be re-enrolled, we come to the same views about her conduct, independently, that Judge Collins and Venning J, came to, for the same reasons they enunciated.

[25] When we substitute the bland term "introduced" for "concealed and smuggled"[24] or "smuggling"[25] in the earlier Tribunal decisions, we find that the residual gravity of Ms Reid's conduct still fully supports the Tribunal's conclusions and actions, ultimately to strike her off. In other words, if we ignore the gloss of "concealed/smuggled," we find that the change of term is immaterial to their reasoning and findings. Those Tribunal decisions amply illustrate how far she fell short of proper standards for an enrolled lawyer. Although not required of us, we concur with the Tribunal findings on fitness and propriety outcome was right, for the same reasons set out by the Tribunal in those decisions.

[26] Ms Reid did not appeal the earlier Tribunal decisions. Her written case for this hearing, and the submissions of Mr Hirschfeld, gave no signal that she disagreed with the earlier Tribunal's description of her actions as "smuggling". Ms Reid gave no evidence in her criminal case. After Judge Collins gave a reasoned decision that the charge had been proved, she filed a letter accepting responsibility, but offering no detail. That letter supported her application to be discharged without conviction. Her evidence in our hearing is her first detailed version of events.

[27] Thus, the earlier Tribunal reference to "concealed and smuggled,"[26] was explicitly unchallenged for years until Ms Reid objected to the term "smuggled" in answer to open questions from Tribunal member Heath, after cross-examination had concluded. In this decision, that passage of evidence caused our intense focus to clarify the precise basis upon which we assess the gravity of her conduct that is represented in her conviction. Despite the consequent procedural awkwardness, (for

[24] *Auckland Standards Committee No. 1 v Murray* [2014] NZLCDT 88 at [1].
[25] *Auckland Standards Committee No. 1 v Murray* [2015] NZLCDT 6 at [4].
[26] *Auckland Standards Committee No. 1 v Murray* [2014] NZLCDT 88 at [1].

example, Mr Collins had no opportunity to provide a basis for challenge) we find that dealing with her conduct on the premise it was unplanned and that she did not conceal the items makes no material difference to the ultimate question we must decide. Nevertheless, if this factual issue were to arise on any future occasion, Ms Reid should make her position explicit in advance so that the matter can be addressed through an informed process.

[28] On the basis we approach it, we do not regard her behaviour in delivering the items to Mr Reid in prison as a minor infringement. We find it was a gross breach of trust and an abuse of her privileged position as a lawyer. Ironically, because Ms Reid professes a desire to advocate for the underprivileged, her breach has led directly to ongoing impediments for prisoners in accessing their lawyers. Lawyers are delayed in entering prisons because of search requirements. Clients and counsel are now generally separated by physical barriers in prison interviews. This is a significant negative consequence to the profession of lawyers and the clients whom they serve.

[29] As noted by Judge Collins in her criminal case, Ms Reid had professed[27] her love for Mr Reid well before she delivered the items to him. She arranged to visit him with "extraordinary" frequency.[28] Judge Collins said[29]: "I seriously doubt that Ms [Reid's] visits to Mr Reid in the 12 months before 7 October 2011 was in any way necessary [for his legal needs.]" Venning J said[30]: "Her actions were a culmination of an apparently obsessive involvement in Mr Reid's case over a long period of time." We find that the facts fit with that view.

[30] The conduct represented by the former conviction is only part of the relevant history faced by Ms Reid in this application. As noted by the Tribunal when she was struck off, she already had three other adverse disciplinary findings. This marks her early disciplinary history as remarkable in such a short career. Her conduct (of her criminal case, in reliance on Mr Reid's evidence) in falsely accusing two Corrections

[27] Respondent's Bundle 016. Judge Collins decision 1 August 2013 at [16].
[28] Respondent's Bundle 016. Judge Collins judgment 1 August 2013 at [16].
[29] Respondent's Bundle 016, Judge Collins judgment 1 August 2013 at [17] (and see [16]).
[30] Respondent's Bundle 049, Venning J decision at [24].

officers of conspiring to plant the items on Mr Reid, something she knew was false, was reprehensible, especially for a lawyer.

[31] Two of her previous disciplinary issues arose around her intimate relationship with a different man. She acted for that man in relationship property proceedings but, when their intimate relationship ended, she communicated confidential information directly to his former wife (who was separately represented). That gave rise to the first charge from that relationship. As the Tribunal noted,[31] when striking her off: "We consider that Ms [Reid] was extremely lucky for that matter not to have been referred to the Tribunal by way of charges, involving as it did a serious breach of confidence in aggravating circumstances." The second relevant charge arose after that former partner committed suicide. She sent his estate a fees account for $67,500 whereas numerous texts and emails proved she had agreed to undertake the work without fee.

[32] We are troubled by her pattern of failure to observe professional boundaries. In her case before us, she did not address this disturbing pattern at all. We have no information on what insight she may have into this pattern, what steps she has taken to recognise triggers and how to avoid repetition.

[33] Ms Reid's criminal hearing in 2013 lasted seven days. Ms Reid represented herself but was assisted by Mr Barry Hart as McKenzie friend. In addition, Mr Hirschfeld (who had been representing Mr Reid in his legal affairs) appeared as amicus curiae. Ms Reid did not give evidence. On behalf of Ms Reid, Mr Hirschfeld led the evidence in chief of Mr Reid which was the only evidence that accused the Corrections officers of conspiracy. Like Judge Collins[32] and Venning J[33], we do not accept that Ms Reid can distance herself from that false evidence. It was the only purpose in calling Mr Reid, and was the only possible chance for her to avoid conviction in what Judge Collins called "overwhelming proof"[34] that she provided the phone to Mr Reid. In his appeal decision, Venning J echoed that by saying[35]: "My

[31] *Auckland Standards Committee No. 1 v Murray* [2015] NZLCDT 6 at [21] to [23].
[32] Respondent's Bundle 039, Judge Collins sentencing judgment 1 October 2013 at [26] to [30].
[33] Respondent's Bundle 053 at [38].
[34] Respondent's Bundle 022, Judgment of Judge Collins 1 August 2013 at [39].
[35] Respondent's Bundle 045, at [6].

review of the evidence and the judgment confirms the case against Ms [Reid] was overwhelming."

[34] As noted earlier, following the judgment finding her guilty of the offence, Ms Reid wrote to Judge Collins accepting responsibility for the offending. Venning J noted[36] Judge Collins' observation, "when it was argued for Ms [Reid] that the affidavits filed in her support deposed to her good character, those arguments must be balanced (or tempered) by the fact that in an attempt to protect her position she had deliberately and falsely accused others."

[35] When, in our hearing, Mr Collins put to her that falsely accusing others reflected on her good character, Ms Reid answered: "I think that's a blurry line you're riding, with respect, Mr Collins."[37] She then referred to the fact that Mr Reid's conviction, in a prison setting, for receiving the items, was overturned on appeal to the High Court. She concluded[38]: "And therefore that there was actually no receiver of the item." In the face of her own criminal conviction and subsequent letter to the District Court Judge accepting responsibility, her argument is illogical, but it appears that she continues to look for arguments, however unfruitful, to distance herself from her admitted behaviour.

[36] This leads to another theme that troubles us in our evaluation of Ms Reid's moral compass, namely her lack of candour. The avoidant features apparent in her attempts to minimise responsibility and punishment in the criminal case are echoed in her dealings with an Australian employer. Between July and December 2017, she had employment as a Youth Worker with DCR, Queensland, working with high-risk youth to ensure rehabilitation and integration into society.[39] She had informed DCR that she had no convictions, and subsequently lost the job when her employer discovered her conviction. We are unimpressed with Ms Reid's explanation, that she had assumed she only had to disclose any Australian convictions. In our view, it is obvious that the purpose behind the requirement to disclose would not be limited territorially. Ms Reid is an intelligent woman with the capacity to understand what was required. This 2017

[36] Respondent's Bundle 53 at [38].
[37] NoE p 9, lines 20-25.
[38] NoE p 10, lines 5-6.
[39] Ms Reid's CV, Exhibit "E" to her affidavit 19 April 2021.

lapse falls below the standard of integrity and candour that we would expect in a person who is fit and proper to be enrolled as a lawyer.

[37] Mr Collins raised with Ms Reid, the plight of the two Corrections officers who had been falsely accused. The following passage is recorded[40]:

> Q. Do you accept, therefore, that you did great harm to the two prison officers concerned personally?
>
> A. Yes I do.
>
> Q. And they had an allegation hanging over them for a long time, which was very serious both in their employment and possibly criminal implications, do you accept that?
>
> A. If you say so.

[38] We find the concession in that last remark to be grudging and devoid of compassion for those whom she had hurt by the way her case was presented. We accept that it is probably too late for her to make meaningful amends to them. She was prevented from contacting the prison for a year after her conviction. If she had achieved insight into the wrongness of her actions, we would have expected signs of compassion and signs of genuine remorse for her actions, not merely the adverse consequences that flowed in her direction.

[39] Mr Collins invited Ms Reid's response to findings in the Tribunal's strike-off decision in these terms[41]:

> Q. The Tribunal then, having heard from you at the hearing of the disciplinary charge and then hearing submissions and so on, said that the entire picture presented by your offending, your subsequent conduct and your previous disciplinary history is of a practitioner with little or no understanding of "her ethical obligations to clients, her profession, or the institutions of justice." Do you accept that that was a fair and accurate statement about you at the time it was made?
>
> A. No I don't.
>
> Q. Do you think that misrepresents you?
>
> A. I think it's manifestly excessive in description.

[40] NoE p 12, lines 12-18.
[41] NoE p 9, lines 7-16.

[40] Ms Reid told us that she experienced racial discrimination from as early as primary school where she believed she was not invited to some birthday parties because she is Māori. She feels that her case has been blown out of proportion by the media and this has exacerbated public scrutiny and contempt for her. She also feels a strong sense of grievance that she has been discriminated against by the courts and the Tribunal. She described her treatment, for example, the refusal to discharge her without conviction, as "manifestly excessive." She says she has suffered nine years of "being tortured and brutalised."[42]

[41] We are a culturally and ethnically diverse panel with wide-ranging lived experience, conscious of varied social attitudes. We are conscious of our country's history of colonisation and the profound impact that continues to have on Māori today. There remains institutional racism as demonstrated, for example, in the racial disproportion in the prison population. We are aware of racism, and we are aware of the hurtful nature and effects of negative stereotypes and slights of the kinds Ms Reid has experienced.

[42] Nonetheless, we do not share Ms Reid's view that, in the matters generally relevant to her striking-off, and the preceding criminal matters, she has received differential treatment from what another person would have received had they conducted themselves as she did. We accept that her sense of grievance is genuine but find it is mistaken in relation to these discrete matters. Before her criminal trial she held a position of privilege as a lawyer. Had others done as she did, we would expect similar outcomes. We would not have expected another lawyer to have obtained diversion, or be discharged without conviction, or retain their position as a lawyer, in similar circumstances to hers. We differ from her view of the gravity of her conduct and we find neither balanced nor evidential basis for her belief that she has been treated unfairly by the District Court, the High Court, or by the Tribunal when she was struck off. As indicated earlier, if the Tribunal over-reached itself in stating that her conduct involved concealment and smuggling, the additional gloss was immaterial

[42] NoE p 31, lines 6-7.

because her conduct, even on the most benign interpretation, fully warranted strike-off.

[43] Mr Tamihere, the Chief Executive of the Waipareira Trust, described the attitude of Waipareira in supporting Ms Reid's application in these words: [W]e at Waipareira do not see the ugly past, we just see a brighter future."[43] In our task, by contrast, we are obliged to evaluate her fitness and propriety on an objective basis.

[44] We have already noted that the statute permits re-enrolment where the candidate can satisfy the Tribunal that, on a forward-looking evaluation, they are fit and proper to be enrolled. Ms Reid should be treated the same as others in like circumstances. There is no other case precisely like hers, but other cases illustrate how the principles are applied. Two useful comparators, because they involve re-enrolments of applicants who suffered significant falls from grace, are *Hesketh*[44] and *Leary*[45]*.*

[45] Mr Hesketh pleaded guilty to eight charges of making false claims for disbursements as a District Court Judge. His application to be restored to the roll was made less than two years after conviction. As with Ms Reid, there was no question about his technical competence to practise. The question was whether he could be entrusted with the responsibilities of a lawyer as a fit and proper person. One law firm wrote in opposition but many references from judges and practitioners supported his application. Several referees had direct, recent business dealings with him and were able to speak of his character in those matters. Unusually, his application was supported by the Auckland District Law Society. This was because the Society believed he was unlikely to re-offend, that he had expressed his contrition and never sought to excuse or deny his wrongdoing.

[46] Mr Leary was struck off because he collaborated in a client's cannabis offending, and concealed money to benefit that client. His associated cluster of offending included deliberate falsehoods. At the time, he had been practising for 15

[43] NoE p 16.
[44] *New Zealand Law Practitioners Disciplinary Tribunal Re Hesketh,* 25 May 1999.
[45] *Leary v New Zealand Law Practitioners Disciplinary Tribunal* [2008] NZAR 57 (HC).

years. Almost twenty years later, he applied to be re-enrolled. On appeal against the Tribunal's refusal, a Full Court of the High Court restored him to the roll on the basis that, on a forward-looking assessment, he had rehabilitated himself and could be trusted to perform properly. His application was supported by 81 testimonials, many from eminent persons who spoke of his reform, his character, and his performance in the twenty years post-strike-off. One reference described him as a "person who truly regrets his earlier conduct and…is fully rehabilitated and…now able to conduct himself in the manner expected."[46]

[47] Ms Reid's conduct in relation to the criminal charge was the opposite of frank acceptance. After seven days of defended hearing and an adverse reasoned judgment, she wrote to the Judge that she accepted responsibility. At her sentencing hearing, through her counsel (Mr Peter Williams QC) she attempted (unsuccessfully) to distance herself from that part of her case where two Corrections officers were accused of doing what she had done. We regard her behaviour in relation to those officers as egregious. She was entitled to put the prosecution to proof and to defend vigorously but to shelter behind accusations she knew to be false demonstrates a defect of character incongruent with the integrity required in a person admitted to the considerable privileges of being a lawyer.

[48] We acknowledge the support of Te Whānau o Waipareira at the hearing, and mihi to the whānau and their kaumātua, Mr Tepania. Ngā mihi nunui ki a koutou i ō koutou whakaaro aroha.

[49] Ms Reid's sole referee in writing, Mr Tamihere, has formerly practised as a lawyer. He has a distinguished record in many influential and worthy public positions. As noted earlier, he is the Chief Executive of the Waipareira Trust. While he has been a constant supporter of Ms Reid's case since her application for discharge without conviction, he graciously recognised[47] that Mr Collins had a duty to cross-examine as he did. This contrasts with Ms Reid's apparent resentment about the news media, her treatment by criminal courts, the statements of the former Tribunal decisions, her

[46] Applicant's Bundle 166. High Court decision at [20].
[47] NoE p 32, lines 15-19.

bridling at some of Mr Collins' questions, and her lack of appreciation about the impact of her conduct.[48]

[50] Although staunch in support, and urging us to look to the future, Mr Tamihere understood the nuances inherent in our task. He implicitly acknowledged that if Ms Reid were reinstated, it could not be safely done without conditions; that there would need to be "a wraparound set of conditions … which I would expect[49]". He referred to supervision and oversight[50] as potential conditions.

[51] Ultimately, it is not numbers of referees that count most in this matter, it is evidence to satisfy us that Ms Reid has gained a moral compass that she evidently lacked formerly; that she has understood and accepted her wrongdoing and is soundly based so we can have confidence she will not err again.

[52] In 2018, in response to Ms Reid's query about what would be required for her to be re-enrolled, the appropriate New Zealand Law Society representative sent her some guiding material. Among that information was the following[51]:

> "An application may be viewed more favourably if the following is demonstrated in support of the proposition that the applicant is a "fit and proper person" to be restored to the Roll and to practise as a barrister and solicitor:
>
> - References in support from individuals of high standing e.g. senior members of the profession.
> - A reliable professional work history and/or volunteer history since strike off. An explanation should be provided in relation to any significant gaps.
> - An acknowledgment of what led to the strike off and steps taken to address any associated issues.
> - Demonstration of a respect and belief in the administration of justice and those involved in the justice system.
> - A candid account of past events and evidence of remorse.
> - The applicant's intended mode of practice if successful.
> - Any mentoring or supervision arrangements.

[48] For example, her attitude reflected in evidence referenced in paras [35] and [39] of this decision; and her inability to acknowledge wrongdoing in relation to allowing Mr Reid's evidence to imply that the Corrections officers planted the items, something she knew was false: see NoE p 9 and 10, culminating in p 10, lines 23-24.
[49] NoE p 30, lines 1-2.
[50] NoE p 29, line 1.
[51] Respondent's Bundle 057 and 061. This information was sent to Ms Reid on 6 August 2018 and again on 12 October 2018.

- Whether outstanding costs emanating from the disciplinary hearings or complaints processes have been paid in full or an arrangement made to clear the debt.
- Any other issues identified at the time of the application that may be relevant.

[53] Despite that helpful advice (which was echoed in Mr Collins' submissions), her written case appeared shallow in important respects, namely:

- A dearth of references.
- Minimal acknowledgement of what led to the strike-off and steps taken to address relevant issues.
- No candid account of past events and evidence of remorse.
- Limited demonstration of respect and belief in the administration of justice and those involved as officers in the justice system.

[54] Although it is not our role to help either party, we would not wish to prevent an applicant, who might find it difficult to demonstrate sufficient qualities, from succeeding. Tribunal members asked questions to understand if she could offer more evidence that would build her case. Broadly speaking, little was revealed that assisted her.

[55] In our view, Ms Reid is yet unable to fulsomely acknowledge her wrongdoing. This may be because she regards it as of small moment. That may be exacerbated because she feels she has been treated disproportionately and discriminatively. These are barriers to genuine remorse without which change is impossible.

[56] Ms Reid cannot speak of the relevant past with candour. She attempts to minimise her wrongdoing. Her 2017 failure to inform her Australian employers of her plainly relevant conviction is another significant indicator of her lack of candour.

[57] Although she said she admitted what she did was wrong, when asked why it was wrong, her answer focussed mostly on the unfortunate consequences it had for

her and her whānau. It took several questions before she answered that it was wrong to breach the law. She did not volunteer that unlawful acts were a poor example for a lawyer to set. She did not address the danger of introducing a lighter or an iPhone into a prison. We are left with the view that she is mostly sorry about having been found out and called to account.

[58] Tribunal member Matthews affirmed the progress she had made in overcoming her whakamā and recovering her own sense of mana, but went on to challenge her, and later explore with Mr Tamihere, in tikanga terms, about the partial nature of the process she described. For example, she has not made any gesture of remorse, apology or reparation to the Corrections officers who, for the period pending trial, and during trial, knew they would be cast by her case as the wrong doers, something Ms Reid knew was false. As noted earlier, it may be too late for such a move to bring healing to those two officers and their whanau.

[59] As Ms Reid describes it, her emotional recovery seems to be limited to her own internal process without any sign of compassion to those she has wronged or hurt. When she says: "I simply wouldn't be here today if I wasn't in a position to acknowledge that there was a brokenness and it has been healed,"[52] we look for consonant signs of insight and substantial remorse but we fail to find it. Her situation in this regard seems quite different from the level of rehabilitation that emerged in *Leary.*[53] Her sensitised reaction to media portrayals; her inability to comprehend how others view her conduct as reprehensible; and her attraction to flimsy technicalities that might seem to excuse her: contribute to showing she has not truly made peace with her problematic past, despite her avowals to the contrary.

[60] Ms Reid is fortunate to have the support of Mr Tamihere and Te Whānau o Waipareira. We note that she has been well-received and well-regarded in her role there. The redemptive opportunities offered there are commendable. Supportive and persuasive though he is, Mr Tamihere recognised that even if Ms Reid were enrolled, she would need to be subject to conditions including supervision and oversight.

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[52] NoE p 14, lines 1-2.
[53] *Leary v New Zealand Law Practitioners Disciplinary Tribunal* [2008] NZAR 57 (HC).

Tautoko from Te Whānau o Waipareira cannot compensate for her lack of insight and consequent failure to demonstrate that she will not err in similar ways again.

What of positive contributions Ms Reid might make?

[61] We agree that Māori, including wahine Māori, are proportionally under-represented in the profession. We warmly endorse the remarks of Professor Rawinia Higgins in her affidavit that the abundant representation of tangata whenua is central to Te Tiriti. Her proposition, that inclusion of a tikanga Māori process as part of the restorative process may be well overdue, is a valuable idea that the New Zealand Law Society might well take up. Nonetheless, in Ms Reid's case, it is premature to consider such a process because, as elicited by Tribunal Member Matthews, her journey of redemption is, at best, in early stages and currently falls far short of what tikanga would require. The principle of muru (reciprocity) to those wronged, has not been understood nor undertaken by Ms Reid. Tikanga may provide a different process but it does not alter the threshold to enable Ms Reid to re-join the profession if she is unqualified by reason of character.

[62] Ms Reid has a passion to advocate for those she regards as underprivileged. Her passion is genuine. If she were a lawyer, she would be at liberty to espouse any cause she chose so long as she conducted herself in a manner befitting the requisite fitness and propriety. But she cannot advocate *as a lawyer* unless she can satisfy the "fit and proper" criterion.

[63] Waipareira Trust has entered into an agreement with Oranga Tamariki to enable it to take some pivotal role regarding at risk children. Mr Tamihere believes Ms Reid would be a suitable in-house lawyer to spearhead that work. He believes she would be an "anchor [for] … younger lawyers."[54] Her tasks would presumably involve holding government agencies to account while working constructively with those agencies. Whether Ms Reid would be suited to that work having regard to her propensity to breaching professional boundaries and her suspicion of authority is not

[54] The precise quotation at NoE p 29, lines 9-10 records: "…using her as a main anchor in regard to bringing on a number of younger lawyers."

something we need be concerned about. If we trust her to act with the propriety expected of a lawyer, she should be entrusted to do such work.

Decision

[64] The standards of conduct and propriety expected of a lawyer are high. Although expressed in sexist language, the position identified in the Australian case of *Ziems*[55] (and cited by the Tribunal in its liability decision)[56] is apposite:

> "[T]he Bar is no ordinary profession or occupation. These are not empty words, nor is it their purpose to express or encourage professional pretensions. They should be understood as a reminder that a barrister is more than his client's confidant, adviser and advocate, and must therefore possess more than honesty, learning and forensic ability. He is, by virtue of a long tradition, in a relationship of intimate collaboration with the judges, as well as with his fellow-members of the Bar, in the high task of endeavouring to make successful the service of the law to the community. That is a delicate relationship, and it carries exceptional privileges and exceptional obligations. If a barrister is found to be, for any reason, an unsuitable person to share in the enjoyment of those privileges and in the effective discharge of those responsibilities, he is not a fit and proper person to remain at the Bar."

[65] That a lawyer, as an officer of the court, is held to a higher standard than others is also seen, for example, where[57] the Official Assignee was prevented from enforcing an unjust, though legally enforceable claim, because the Official Assignee is an officer of the court and can therefore be required to act in an honourable and high-minded way.

[66] In assessing whether Ms Reid, on a forward-looking basis, has overcome the hurdles posed by her past conduct, we evaluate her against those honourable and high-minded standards.

[67] We do not draw an inference that lawyers generally support her re-enrolment because only a handful filed opposition. In her own assessment of her hurdles, we find Ms Reid is a chasm away from the views of her conduct held by fully-informed members of the public, and by lawyers generally. Her actions were seen by the public

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[55] *Ziems v Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279, 298 *Ziems v Prothonotary of the Supreme Court of NSW* (1957) 97 CLR 279, 298.
[56] *Auckland Standards Committee No. 1 v Murray* [2014] NZLCDT 88.
[57] Re Byers, Ex parte Davies [1965] NZLR 774 (Perry J).

as reprehensible conduct undertaken by a lawyer, namely a person expected to observe higher standards than the general public. The harm she did to the reputation of the profession was grave.

[68] Although several years have elapsed since she was struck off, our evaluation, looking to the future, is that Ms Reid continues to lack genuine insight into those features that led to her plight. Her record of blurring professional boundaries, becoming over-involved with clients, blatantly disregarding the law, advancing untruth or obscuring the truth: blight her ability to satisfy us that she is now a fit and proper person to be re-enrolled. She has no real insight into her wrong-doing, continues to downplay it, and lacks compassion for those she has harmed through her shortcomings of character. We do not find that she has genuine remorse for what she did. Instead she demonstrates self-interest and regret for the damage she has caused herself and those near her.

[69] Although she has no new convictions, her 2017 failure to alert her Australian employer to her conviction is a subsequent act that casts doubt on her probity and candour.

[70] Her relevant character defects are still profound, in our view. We do not regard Ms Reid as being safe to practise. These deficits cannot be managed by conditions related to supervision or oversight.

[71] Unanimously, we are far from satisfied that Ms Reid is a fit and proper person to be re-enrolled as a lawyer. We wish her well in her future endeavours but her application is unsuccessful and we dismiss it.

[72] Ms Reid is legally aided and therefore we make no order for costs.

DATED at AUCKLAND this 24th day of March 2023

Dr JG Adams
Deputy Chairperson

Appendix 1

55 Fit and proper person

(1) For the purpose of determining whether or not a person is a fit and proper person to be admitted as a barrister and solicitor of the High Court, the High Court or the New Zealand Law Society may take into account any matters it considers relevant and, in particular, may take into account any of the following matters:

(a) whether the person is of good character:

(b) whether the person has, at any time, been declared bankrupt or been a director of a company that has been put into receivership or liquidation:

(c) whether the person has been convicted of an offence in New Zealand or a foreign country; and, if so,—

(i) the nature of the offence; and

(ii) the time that has elapsed since the offence was committed; and

(iii) the person's age when the offence was committed:

(a) whether the person has engaged in legal practice in New Zealand when not admitted under this Act or a corresponding law, or not holding an appropriate New Zealand practising certificate, as required by law:

(b) whether the person has practised law in a foreign country—

(i) when not permitted by or under the law of that country to do so; or

(ii) if permitted to do so, in contravention of a condition of the permission:

(f) whether the person is subject to—

(i) an unresolved complaint under a corresponding foreign law; or

(ii) a current investigation, charge, or order by a regulatory or disciplinary body for persons engaging in legal practice under a corresponding foreign law:

(g) whether the person—

(i) is a subject of current disciplinary action in another profession or occupation in New Zealand or a foreign country; or

(ii) has been the subject of disciplinary action of that kind that has involved a finding of guilty, however expressed:

(h) whether the person's name has been removed from a foreign roll, and that person's name has not been restored:

(i) whether the person's right of practice as a lawyer has been cancelled or suspended in a foreign country:

(j) whether the person has contravened, in New Zealand or a foreign country, a law about trust money or a trust account:

(k) whether the person is subject to an order under this Act or a corresponding law disqualifying the person from being employed by, or a partner of, a lawyer or an incorporated law firm:

(l) whether, because of a mental or physical condition, the person is unable to perform the functions required for the practice of the law.

(2) The High Court or the New Zealand Law Society may determine that a person is a fit and proper person to be admitted as a barrister and solicitor even though the person—

(a) is within any of the categories mentioned in any of the paragraphs of subsection (1); or

(b) does not satisfy all of the criteria prescribed by rules made under section 54.

(3) Subsection (1) does not limit—

(a) the grounds on which it may be determined that a candidate is not a fit and proper person for admission as a barrister and solicitor; or

(b) the criteria that may be prescribed by rules made under section 54.