

**NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

[2012] NZLCDT 25

LCDT 016/12

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006

BETWEEN

ERNEST WILLIAM GARTRELL

Appellant

AND

NEW ZEALAND LAW SOCIETY

Respondent

CHAIR

Judge D F Clarkson

MEMBERS OF TRIBUNAL

Ms A de Ridder

Ms S Gill

Ms J Gray

Mr S Maling

HEARING at WELLINGTON on 31 August 2012

REPRESENTATION

Mr E Gartrell

Mr P Collins for the New Zealand Law Society

**DECISION OF THE LAWYERS AND CONVEYANCERS DISCIPLINARY
TRIBUNAL**

Introduction

[1] This is an appeal under s 42 of the Lawyers and Conveyancers Act 2006 (“Act”). As indicated to the Appellant the Tribunal proposes to allow the appeal for the following reasons.

[2] As submitted by Mr Collins for the New Zealand Law Society (“Society”) such an appeal has to be by way of rehearing in which the Tribunal’s obligation is to reach its own independent view on the evidence giving appropriate weight to the Society’s view but not being bound by it.

[3] The task is to assess whether the Appellant is a fit and proper person to hold a practising certificate and in making that assessment we have regard to the factors set out in s 41 of the Act which itself imports s 55 factors and includes any other matters thought appropriate.

[4] Those factors must be considered in the light of the purposes of the Act which is concerned with the protection of consumers of legal services and the maintenance of public confidence in the provision of legal services.

[5] The history of this matter will explain the cautious approach taken by the Society and I am going to use the chronology which has been provided by Mr Collins to set out the history and then explain some of it.

[6] The Appellant, Mr Gartrell, was admitted in 1972; in practice from that time until November 2008; as a partner or a principal from 1988 until 2008; as an employed lawyer February to November 2008 under orders.

[7] On 29 January 2008, this Tribunal’s predecessor, the New Zealand Law Practitioners Disciplinary Tribunal, made findings of misconduct and conduct unbecoming on the basis of guilty pleas entered by Mr Gartrell and ordered Mr

Gartrell not to practise on his own account. A fully reasoned decision was provided in March 2008.

[8] However in December of 2008 Mr Gartrell was further disciplined by the Tribunal for noncompliance with the earlier order and was then suspended for three years.

[9] A few days later Mr Gartrell was adjudicated bankrupt.

[10] In September of last year there was an application for a practising certificate as an employed lawyer but there was no proposed employment at that stage.

[11] On 16 December 2011 the period of suspension imposed ended.

[12] On 25 March 2012 Mr Gartrell was discharged from bankruptcy and from that time until about May when he made a further application there was communication between himself and the Society to attempt to clarify the concerns and to tailor a proper application for a practising certificate.

[13] On 17 May Mr Gartrell made that further application which is the application currently before us, seeking an in-house lawyer practising certificate to work with a group of companies which we will call CSPL. I should record for the purposes of completeness that at the outset of this hearing, without opposition, the Tribunal agreed to suppression of the details of the trading activities and any confidential information which has been provided in the course of the evidence about that group of companies and that order will continue.

[14] The application was considered by the Board of the Society and on 8 June was refused because of the dissatisfaction about supervision arrangements in the proposed employment.

[15] With his application Mr Gartrell has filed a number of supporting references attesting to his good services as a lawyer in the past and to his integrity. Other than the serious faults which led to the first disciplinary action when Mr Gartrell acknowledges he let clients, who were family members also, down badly, no great

issue has been taken with his level of competence. Indeed Mr Gartrell had held senior positions in the Society itself prior to the disciplinary proceedings.

[16] The concerns have really arisen because as set out in the chronology, after what could be described as a compassionate penalty imposed in January 2008, Mr Gartrell failed to abide the supervision requirements and was again disciplined and then suspended for three years which was the maximum suspension available and indeed still is.

[17] It is apparent that his business affairs were by that time in disarray and a few days later Mr Gartrell, as indicated, was declared bankrupt.

[18] Those creditors left unpaid included the Society, in respect of its costs in relation to the disciplinary proceedings.

[19] Mr Gartrell describes how for some time leading up to those events he had been very unwell and uncharacteristically unable to cope with stress. Further symptoms were inability to concentrate, exhaustion and aggression, and according to his wife and others who knew him well, personality changes.

[20] In September 2010 Mr Gartrell collapsed, and it was discovered he had been suffering the effects of a brain tumour, which affected the functioning of his pituitary gland. His current Endocrinologist gave evidence before us and confirmed the symptoms, including personality change and impaired judgments are likely to have existed for some 5-10 years prior to the tumour's discovery.

[21] I should add that, despite Mr Gartrell having medical examinations by the Army for example with which he was associated, and Civil Aviation medical assessments, the tumour had not been discovered.

[22] This is important evidence because the Society had clearly been influenced, as had been the Disciplinary Tribunal in December 2008, by Mr Gartrell's failure to cooperate with his professional body. This Tribunal's predecessor had this to say in the course of its judgment and these comments have been more recently raised in relation to this application. Quoting from the judgment of 19 March 2008, the decision given by chairman Mr Vanderkolk, at paragraph [24] where he says this:

“A hardening refusal or omission to deal with requests reasonably and to be reasonable in his dealings with beneficiaries (clients), the profession and the Inspectorate is difficult to comprehend. In the absence of an explanation for a somewhat quarrelsome approach, we are driven to conclude that Mr Gartrell represents a potentially serious risk to the public in placing his own interest consistently before those of his clients, the profession and the public interest.”

[23] This has clearly been a difficult impression to shake, despite medical evidence having been provided to the Society which would form the explanation the Tribunal at that time felt was absent. The Society in its submissions referred us back to the January 2009 decision, which in turn recorded the December 2008 suspension, in which Mr Gartrell was recorded as lacking insight into the risks he posed to the public and that “*..when left to his own devices is noncompliant...*”. These comments were said to be sufficiently fresh to justify very close scrutiny of Mr Gartrell’s proposed practise arrangements.

[24] Mr Gartrell has obtained a job offer with a large group of companies for whom he had acted some 20 years prior to his suspension. His immediate superior, a Director of the company, Mr M, gave evidence of his expectation of working relatively closely with Mr Gartrell in whom he clearly has a great deal of confidence. The difficulty in terms of providing supervision of professional responsibilities is that Mr M is not a lawyer. Mr Gartrell does not consider he needs supervision and while understandable that is somewhat of a concern to the Tribunal, and clearly to the Society. However, in the course of the hearing we canvassed with him the possibility of a supervisory arrangement using a mentor, and specifically Mr Gartrell referred to Mr Peter Connor who is a senior and respected member of the profession.

[25] Mr Gartrell made inquiries and tells us that Mr Connor would agree to such a role. Mr Gartrell confirms that he is clear that if granted his practising certificate he will be strictly an in-house counsel for this group of companies and indeed the application is prefaced on that basis. Any wider practise is not yet sanctioned and further application would need to be made.

[26] Mr M is a responsible mature businessman, he is aware of the disciplinary decisions and has been cross-examined today. He says he would step in if he had concerns about Mr Gartrell going beyond his terms of engagement.

[27] At this stage Mr Gartrell will only be employed half time although he says his health is fully recovered. He is on a medication regime for life and his doctor confirms he is complaint with that.

[28] We do not consider that Mr M requires any protection from Mr Gartrell.

[29] The bankruptcy is discharged. Mr Gartrell's financial circumstances are tight given his health and inability to work for the past few years, and he seeks to return to the work for which he is qualified and enjoys.

[30] We consider that with undertakings from him that these would secure the public confidence aspect and also would assist in Mr Gartrell's rehabilitation and we consider with those undertakings, including reintegration into the profession, that he ought to be able to resume his former profession.

Conclusion

[31] The appeal is allowed on the basis that Mr Gartrell provide undertakings to the Society to meet fortnightly with Mr Peter Connor who is to confirm in writing his agreement to this arrangement.

[32] Mr Connor is asked to monitor Mr Gartrell's compliance with professional obligations under the Act and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, and subject to client confidentiality which has been waived for this purpose by Mr M, to review Mr Gartrell's current matters for his employers and any problems arising from these.

[33] This undertaking is to be reviewed by the fitness for practice committee in six months and may be discharged if there have been no negative reports by Mr Connor. Mr Connor is to notify the Society if Mr Gartrell is not attending meetings or failing in any way in his professional obligations.

[34] The second undertaking we require from Mr Gartrell is that he join the Corporate Lawyers Association of New Zealand (CLANZ) as a way of re-establishing a collegiality which is quite properly submitted by Mr Collins to be a protective matter from a professional disciplinary point of view.

[35] On the basis of those undertakings the appeal is granted.

DATED at AUCKLAND this 31st day of August 2012

Judge D F Clarkson
Chair