IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA338/2018
[2019] NZCA 119

BETWEEN	JOHN LLEWELLYN STANLEY Appellant
AND	THE NEW ZEALAND LAW SOCIETY Respondent

Hearing: 26 February 2019

Court: French, Dobson and Brewer JJ

Counsel: J C Gwilliam for Appellant
P N Collins for Respondent

Judgment: 17 April 2019 at 9.30 am

JUDGMENT OF THE COURT

The appeal is allowed.

REASONS OF THE COURT

(Given by Brewer J)

Introduction

[1] Mr Stanley wants to be admitted as a barrister and solicitor of the High Court of New Zealand. He is a mature man, 65 years of age, and he has the necessary academic and professional qualifications. However, the New Zealand Law Society (NZLS) refused to give him a certificate of character, without which he could not be admitted in the usual way.

[2] Mr Stanley applied to the High Court for an order for his admission.[1] Effectively, he had to satisfy a Judge of the High Court that he is a fit and proper person to be admitted.[2] Justice Clark was not satisfied and refused his application.[3] Mr Stanley now appeals that refusal.

The appeal

[3] Mr Stanley has a criminal record of driving offences:[4]

20 March 1978	Driving with excess blood alcohol level	Disqualification from driving; fine
31 August 1988	Drove a motor vehicle at a dangerous speed	Disqualification from driving; fine
19 November 1991	Operated a vehicle carelessly	Fine
23 January 2002	Drove with excess blood alcohol content	Fine
12 September 2007	Drove with excess breath alcohol – 3rd or subsequent	Special circumstances found – no disqualification; fine
6 December 2013	Failed to stop when followed by red/blue flashing lights	Fine
9 May 2014	Drove with excess blood alcohol – 3rd or subsequent	Disqualification from driving; fine

[4] Justice Clark's enquiry into whether Mr Stanley is a fit and proper person to be admitted had to take his criminal record into account. The Lawyers and Conveyancers Act 2006 (the Act) gives guidance on what a Judge might consider in addressing the significance of criminal convictions:[5]

(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:

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1 Lawyers and Conveyancers Act 2006, s 52.
2 Section 49(2)(b).
3 *Stanley v New Zealand Law Society* [2018] NZHC 1154.
4 At [5].
5 Lawyers and Conveyancers Act, s 55(1)(c).

[5] The Act also guided Clark J into considering separately whether Mr Stanley is of good character.[6] Of course, his convictions, particularly the convictions for drink driving, are relevant to the assessment of good character.

[6] Mr Stanley gave evidence before Clark J and was cross-examined. The Judge, in a detailed way, analysed the evidence of the course of Mr Stanley's application to the NZLS for a certificate of good character in the light of the rest of the evidence put before her. The Judge recognised that Mr Stanley's application to the High Court was not an appeal against the decision of the NZLS and that the assessment of whether Mr Stanley is a fit and proper person to be admitted was an assessment for her to make on all the evidence.[7]

[7] Our summary of Clark J's reasoning is:

(a) Mr Stanley's lengthy history of convictions does not give confidence he is reformed:[8]

> I cannot view Mr Stanley's serious lapses in judgement so as to lead him over a period of 40 years to drink and drive as entirely historical or that he would not endanger what he has achieved by a return to that conduct.

(b) Mr Stanley's attitude to his convictions means there is an unacceptable risk he will reoffend and bring the profession into disrepute. He does not, accordingly, have the good character required for admission:[9]

> Mr Stanley has not established he is a reformed person. I have found his assertions of reform to be unpersuasive. Mr Stanley resists any suggestion he may have an alcohol problem yet points to his self-imposed abstinence as being the substantial step which demonstrates there will be no further offending. Mr Stanley proposes to rely only on willpower and self-discipline when, manifestly, this has consistently failed him over a period of decades including into mature adulthood. I accept Mr Collins' submission that the peril for the legal profession is that Mr Stanley will reoffend and bring the profession into disrepute. Further, I hold the view that the public generally, and members of

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6 Section 55(1)(a).
7 *Stanley v New Zealand Law Society*, above n 3, at [40].
8 At [51].
9 At [65].

> the profession, would not regard Mr Stanley as a person of such integrity, probity and trustworthiness as to be a suitable candidate for admission.

Mr Stanley's submissions on appeal

[8] Mr Gwilliam, for Mr Stanley, submits the Judge was wrong to conclude the evidence did not support a finding Mr Stanley was reformed:

(a) His first conviction for drink driving was almost 41 years ago. It is irrelevant to the issue of whether he is now a fit and proper person for admission.

(b) The 2002 and 2007 convictions are not as serious as their existence implies. In both cases there were special circumstances found by the sentencing Judges such that Mr Stanley was not even disqualified from driving. He was merely fined.

(c) The only relevant conviction is the one entered in 2014. However, that was nearly five years ago. There has been no relapse. Further, during those five years Mr Stanley has done considerable unpaid work in the community. He has shown insight into his offending and expressed his remorse. He has "set a policy of zero tolerance" for drinking and driving.

[9] Mr Gwilliam submits also that Clark J erred in viewing Mr Stanley's 40 years record as not being historical.[10] The Judge's conclusion, he submits, was based on an assessment that Mr Stanley has an unacknowledged alcohol problem. He submits there is no evidence of that and the Judge's criticism of Mr Stanley continuing to drink occasionally resulted from a misunderstanding of his evidence:

> The High Court specifically noted that Mr Stanley's evidence was that he has "zero tolerance for alcohol and that he has not had a drink in four years". It is clear from the evidence given by Mr Stanley that the zero tolerance policy he has is with respect to drinking while driving. He refers to "the limit" which clearly refers to the limit of breath alcohol. The zero tolerance policy mentioned by Mr Stanley did not relate to him completely abstaining from

[10] At [51], quoted above at [7](a) of this judgment.

> alcohol. Mr Stanley did not say that he has not had a drink in four years as noted by the High Court and any negative inference that was drawn in light of his evidence that he had had a drink during May 2017 at his son's wedding is unsupported.
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> (footnotes omitted)

[10] It was emphasised by Mr Gwilliam that the Judge did not take into account that the special circumstances found to exist in relation to the 2002 and 2007 convictions, which meant the Court permitted Mr Stanley to continue to drive, do not point to an alcohol problem.

[11] Mr Gwilliam also criticises the Judge's findings that Mr Stanley's expressed attitude to his offending shows lack of insight into its seriousness and a qualified remorse. He points to Mr Stanley's evidence in which he put his statements into the context that he regards the 2002 and 2007 convictions as having been incurred in special circumstances. Mr Stanley also said he feels disgraced and disappointed in himself.

[12] Finally, Mr Gwilliam submits Clark J did not take into account the positive factors going to Mr Stanley's good character. The Judge's attention was fixed on the convictions and her perception of Mr Stanley's attitude towards them. This, it is submitted, was an error of law.

Submissions on behalf of the NZLS

[13] Mr Collins, for the NZLS, supports Clark J's decision and the findings on which it is based. He submits:

(a) The Judge was right to put emphasis on:

> the appellant's evident lack of insight including excuse-making and self-justification. It is compelling that the fit and proper person standard, assessed in a person aspiring to become an officer of the court, incudes respect for the law and for the institutions of the law, which the appellant evidently lacked.

(b) Mr Stanley's repeat offending over such a lengthy period puts him in a category different to that of an applicant with earlier youthful

indiscretions who can point to a responsible lifestyle in mature adulthood.

(c) Mr Stanley's history of offending is sufficient to establish he has an alcohol problem for which he has sought no help and still wishes to rely on a willpower which has failed him repeatedly in the past.

(d) The central question for Clark J to determine was whether the frailty or defect of character, indicated by Mr Stanley's offending, could now safely be regarded as entirely spent. The Judge was entitled to answer this question against Mr Stanley.

Nature of appeal

[14] We address first the nature of the appeal. Mr Collins submitted Clark J, in refusing Mr Stanley's application to be admitted, exercised a judicial discretion:

> An appeal against a High Court judgment refusing admission involves an appeal against the exercise of a judicial discretion. The focus of the High Court in this context is that it must be satisfied that the applicant is a fit and proper person. In order to be "satisfied" the Court is entitled to take into account observations of the applicant in the witness box relevant to the question whether any past moral frailty can safely be regarded as spent. It is in that sense that a judgment of the High Court admitting or refusing to admit a candidate involves the exercise of a judicial discretion.

[15] If the NZLS is correct, then the role of this Court on appeal is limited to deciding whether Mr Stanley has shown Clark J materially made an error of law or principle, took into account irrelevant considerations, failed to take into account relevant considerations, or reached a decision that is plainly wrong.

[16] In our view, Clark J was not exercising a judicial discretion but instead made a judicial assessment requiring an evaluative and objective decision on whether, as a matter of law, Mr Stanley is a fit and proper person.

[17] Part 3 of the Act provides for the admission and enrolment of barristers and solicitors. A person is qualified for admission if he or she is in at least one of three described categories, the first of which is:[11]

> The first category is persons who—
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> (a) have all the qualifications for admission prescribed or required by the New Zealand Council of Legal Education; and
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> (b) are fit and proper persons to be admitted as barristers and solicitors of the High Court; and
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> (c) meet the criteria prescribed by rules made under section 54.

[18] A certificate on behalf of the NZLS certifying that a candidate is both a fit and proper person to be admitted and "meets the criteria prescribed by rules made under section 54 is, in the absence of proof to the contrary, sufficient evidence of those facts".[12]

[19] The Act directs the High Court to admit a candidate as a barrister and solicitor of the High Court if (in this case) the High Court is satisfied the candidate is qualified for admission under s 49(2) and has taken the prescribed oath.[13] In other words, once the prerequisites are satisfied an order for admission is mandatory. The High Court has no discretion to refuse admission to a candidate who satisfies the prerequisites.

[20] Whether a candidate for admission is a fit and proper person is for the High Court to decide.[14] All the Act does is list matters which the High Court may take into account.[15] These include, as we have said, good character and criminal convictions.

[21] This Court in *Taipeti v R* discussed the determination of the two types of decision, ordinary and discretionary.[16] Having reviewed the case law the Court said:[17]

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11 Lawyers and Conveyancers Act, s 49(2).
12 Section 51.
13 Section 52(2).
14 Section 54 of the Act empowers the making of Rules which could prescribe criteria precluding admission such as convictions for specified kinds or classes of offending. The Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008 does not prescribe such criteria.
15 Lawyers and Conveyancers Act, s 55.
16 *Taipeti v R* [2018] NZCA 56, [2018] 3 NZLR 308.
17 At [49].

> These decisions show that the classes of case which appeal courts classify as an exercise of a discretion are dwindling. Three possible indicia of the presence of discretion emerge. First, the extent to which the decision-maker can apply his or her own "personal appreciation" has been identified as a "key indication". Clearly, the greater the level of prescription in terms of what is required of the decision-making process the more likely the decision is an evaluative process, rather than the exercise of a discretion. Second, procedural decisions are more likely to be an exercise of discretion than wider issues of principle involving the application of law to the facts. Third, if only one view is legally possible, that points away from a discretion. In other words, where there is scope for choice between multiple legally "right" outcomes, that points towards a discretion.
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> (Footnotes omitted.)

[22] In our view, the Act makes it clear that the assessment of whether a candidate for admission is a fit and proper person is an objective one. There is no room for "personal appreciation". As a Full Bench of the High Court said in *Re M*:[18]

> Reflection upon [an Australian case], and like opinions in other cases, exposes the necessity to recognise that the test of suitability is necessarily an objective one, where sympathy for the person which a subjective approach might engender, has no place.

[23] The High Court must evaluate the candidate's relevant characteristics. Section 55 gives a non-exhaustive list of matters which "may" be considered in determining whether a person is fit and proper for admission. However, the use of the ostensibly permissive "may" does not afford an option to disregard any of the matters listed, where a matter in the list in s 55(1) assumes any relevance to the assessment of a particular candidate. For example, if a candidate has a criminal history, then it must be taken into account to avoid a criticism of the decision being made without regard to a relevant consideration.

[24] The decision to admit a candidate is a substantive decision, not a procedural one, and the assessment of "fit and proper" is integral to that.

[25] It follows that Mr Stanley's appeal to this Court is a general appeal. We have the responsibility of making our own assessment of the merits of his case.[19]

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18 *Re M* [2005] 2 NZLR 544 at [18].

19 *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 at [5].

What is a fit and proper person?

[26] The requirement that a candidate for admission be a fit and proper person is in the context of the practice of the profession of law. The Act sets out the fundamental obligations of lawyers:

> **4 Fundamental obligations of lawyers**
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> Every lawyer who provides regulated services must, in the course of his or her practice, comply with the following fundamental obligations:
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> (a) the obligation to uphold the rule of law and to facilitate the administration of justice in New Zealand:
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> (b) the obligation to be independent in providing regulated services to his or her clients:
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> (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.

[27] Self-evidently, if a candidate for admission cannot satisfy the High Court that they will comply with these fundamental obligations then they will not have satisfied the High Court they are a fit and proper person to be admitted.

[28] Previous cases are illustrative, whether determined in relation to the Act or to predecessor legislation.

[29] The oldest authority to which we will refer is *Re Lundon*, a 1926 decision of this Court.[20] It establishes the principle that a candidate for admission is not to be punished for past wrongs. Instead, they must be assessed as they are now for the "integrity and moral rectitude of character that [they] may be safely accredited by the Court to the public to be entrusted with their business and private affairs".[21]

[30] In *Re M*, a Full Bench of the High Court considered an application by a person who had criminal convictions (not specified in the Judgment) incurred when she was

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20 *Re Lundon* [1926] NZLR 656 (CA).
21 At 658.

"a teenager, or an immature young woman, and before she had attained her university qualification".[22] In those circumstances, the Court found the central issue to be whether Ms M had demonstrated a change of character or reformation so that, looking forward, she can be said to be a fit and proper person to be admitted to practice law.

[31] The Court also held, and we agree, that it is important to look at the facts of an application for admission in the round, and not focus solely on the previous conviction or convictions. The Court quoted Kitto J:[23]

> … A conviction may of its own force carry such a stigma that judges and members of the profession may be expected to find it too much for their self-respect to share with the person convicted the kind and degree of association which membership of the Bar entails. But it will be generally agreed that there are many kinds of conduct deserving of disapproval, and many kinds of convictions of breaches of the law, which do not spell unfitness for the Bar, and to draw the dividing line is by no means always an easy task.

[32] In *Re Owen*,[24] a Full Bench of the High Court considered an application for admission by Mr Owen, who was then 38 years old and working as an employment advocate having obtained a law degree some seven years previously. The Court set out his history:

> [17] This life is in marked contrast to his life as a teenager and in his twenties. He grew up in Oamaru. He was a rebellious teenager. He was sent by his parents, who had adopted him, to a boys' home because they could not control him. He was expelled from Waitaki Boys' High School at the age of 14 years. By 15 years he was coming to the attention of the police. He was arrested weekly. He was abusing both alcohol and drugs. He got into fights. The drugs he took were cannabis and benzhexol and amphetamine derivatives. He has a long list of petty convictions.
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> [18] He was examined on some of the more serious convictions before us by counsel for the law society. Putting aside what appeared to be minor charges including obscene language, wilful damage, theft and unlawful interference with a motor vehicle, Mr Till concentrated upon two sets of burglary convictions, one in 1986 when he was 25 years of age and the second in 1989. The first was a break-in to a confectionery factory in Oamaru causing some damage and involving the stealing of some confectionery. The second was a break-in through a window into a service station where cigarettes and some tyres were stolen. He was then aged 27.

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22 *Re M*, above n 18, at [15].

23 At [23], quoting *Ziems v Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279 at 298.

24 *Re Owen* [2005] 2 NZLR 536.

> [19] We understand Mr Till to have focused on these because these offences were at an age when Mr Owen could no longer be described as a youth and when he should have turned the corner of a rebellious youth and shown more maturity.
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> [20] On 2 May 1990 he was convicted of wilfully setting fire to property. The events took place after a cricket match at which he had suffered a blow to the head and then later got drunk. Somehow he got himself into a church and set fire to some paper and then, it would appear, put the fire out, but not before it burned some carpet.
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> …
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> [22] As we have noted, he did use cannabis in his youth and was still using it in 1990. At the age of 29 he was convicted for possessing cannabis plant and cultivating cannabis and sentenced for six months' periodic detention.
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> [23] In the mid-1990s (1994, 1995 and 1996), he was convicted of four driving offences, including driving while disqualified. The driving while disqualified offence followed an earlier conviction of that year of driving in a dangerous manner in which he was disqualified from driving for six months. He drove his car, hitherto being driven by his partner, during a snow storm, when his partner lost confidence. He was fined $300 for that offence.

[33] The Court considered Mr Owen's life since those events and was left in no doubt that he had turned his life around from about when he started university in 1991 (some 13 years previously).[25] However, that finding did not determine the central issue:

> [30] To our mind the central issue before us is whether admitting Mr Owen to the status of barrister and solicitor of the High Court would undermine the collective reputation of the legal profession and the necessary public confidence in it, that the Courts must strive to maintain.

[34] Of real significance to this issue was that Mr Owen had been sentenced to one year's imprisonment on one of his burglary convictions and 10 months' imprisonment on the other.[26]

[35] The burglary convictions were convictions for criminal dishonesty. Dishonesty leading to imprisonment will generally be viewed as disqualifying a person from admission, particularly if the applicant was an adult at the time of the

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25 *Re Owen,* above n 24, at [25].
26 At [32].

offending. The Court recognised this and therefore required Mr Owen to satisfy it that: [27]

> the frailty or defect of character indicated by the 1986 and 1989 convictions can now be regarded as entirely spent. Put another way, has Mr Owen achieved such a complete turnaround, or reformation, that the convictions entered during his early adulthood can be safely ignored?

[36] The Court found Mr Owen to be a fit and proper person for admission.[28] It was satisfied that the public and responsible members of the profession would, knowing of Mr Owen's reformation, agree.[29]

[37] *Re Burgess* involved an application for admission from a person who, while he was studying for his law degree, was convicted of six charges of benefit fraud.[30] Mr Burgess's application for admission was successful.

[38] Mr Burgess completed his LLB in 2006 and obtained a Master of Laws Degree in 2008.[31] His application for admission was heard by Andrews J in 2011.

[39] The Judge described Mr Burgess's criminal history:

> [4] … Mr Burgess provided copies of a Summary of Facts and Order for community work. These show that Mr Burgess was convicted on 14 November 2005 on six charges: two under s 127 of the Social Security Act 1964, two under s 307(AA)(1)(a) of the Education Act 1989, and two under s 307(AA)(2)(a) of the Education Act 1989. It appears from the Summary of Facts that Mr Burgess claimed, and received:
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> (a) an Unemployment Benefit Student Hardship Benefit between 26 November 2001 and 3 March 2002;
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> (b) a Student Allowance from 4 March 2002 to 17 November 2002;
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> (c) an Unemployment Benefit Student Hardship Benefit between 25 November 2002 and 2 February 2003; and
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> (d) a Student Allowance from 1 March 2004 to 14 March 2004;
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> while he was employed and receiving an income.

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27 *Re Owen,* above n 24, At [35].
28 At [39].
29 At [38].
30 *Re Burgess* [2011] NZAR 453.
31 At [2].

> [5] It is a condition of receiving both a Student Allowance and a Student Hardship Benefit that the recipient immediately advise of any change of circumstances, including working or receiving an income. Mr Burgess had not done so. Further, Mr Burgess stated in Student Allowance applications, lodged on 2 November 2001 and 16 February 2004, that he was not receiving any income.
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> [6] It is also apparent from the Summary of Facts that Mr Burgess had received a total of $14,048.47 that he was not entitled to. At the time of his application for a certificate of character he was repaying the debt by way of weekly direct credits of $25.00.

[40] Mr Burgess provided Andrews J with evidence of his work and personal life since his offending in affidavit form, and he gave evidence in person. He satisfied the Judge that he had reformed (his "frailty or defect is now spent").[32] He was entitled to be admitted.

[41] Cases where admission has been refused focus on the nature of the conduct going to character and whether the Court can be confident the applicant has reformed:

(a) *Ali v New Zealand Law Society*:[33]

Mr Ali had been subject to student discipline for five incidents of misconduct by plagiarism both during his undergraduate studies and at the Professional Legal Studies Course. The misconduct occurred from 2008 to 2012. Justice Faire was not satisfied that Mr Ali would not be dishonest in the future.

(b) *Brown v New Zealand Law Society*:[34]

Mr Brown was 27 years old when he applied for admission. Prior to studying law Mr Brown was a probationary police constable. He resigned following numerous allegations of sexual misconduct including engaging in sexually explicit text message exchanges with a 13-year-old girl. A key issue was Mr Brown's lack of candour with the NZLS about his employment history when he applied for a certificate of character. Justice Wylie decided that Mr Brown's lack of

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32 *Re Burgess*, above n 30, at [41].
33 *Ali v New Zealand Law Society* [2014] NZHC 1111.
34 *Brown v New Zealand Law Society* [2018] NZHC 1263, [2018] NZAR 1192.

candour, and associated lack of insight, precluded a finding that he was fully reformed and his "earlier frailties in his dealings with young women" were spent.[35]

Analysis

[42] We agree with Clark J that the drink driving convictions in 2002, 2007 and 2014 are sufficiently recent and numerous as to raise a prima facie doubt as to whether Mr Stanley is reformed. The doubt is deepened by Mr Stanley's age. He is a mature man. These are not the indiscretions of feckless youth.

[43] The onus is on Mr Stanley to dispel that doubt. We agree with Clark J that he has not done so. His evidence is that he has changed his behaviour. He has made a decision never to drive after consuming any alcohol no matter how small the quantity. Unfortunately, Mr Stanley's resolution is undermined both by his history of drink driving and his attitude towards it which we will not repeat as it is set out in Clark J's decision. We agree with the Judge that Mr Stanley showed a lack of insight and minimised his offending, and his expressions of remorse are qualified by those factors. Having said that, Mr Stanley in his evidence before Clark J spoke of his commitment to never again offend. The Judge accepted that Mr Stanley was being genuine.

[44] In our view, given the doubt that properly exists as to Mr Stanley never again driving unlawfully having consumed alcohol, the major issue in this appeal is whether that means he is not a fit and proper person to be admitted.

[45] First, Mr Stanley's offending is not the sort which goes directly to fitness to practice as a lawyer. He is not in the position of Mr Owen and Mr Burgess who had relatively recent convictions for dishonesty. Nor does he have the defects in character possessed by Mr Ali and Mr Brown.

[46] At the hearing before us, Mr Collins for the NZLS was asked by the Court about the effect of drink driving convictions on the ability of practitioners to retain

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35 *Brown v New Zealand Law Society,* above n 34, at [66].

their practising certificates. Mr Collins, who has considerable experience in this area, could think of only one case where a practitioner's ability to practise was affected by multiple drink driving convictions. In that case, the most recent drink driving conviction was accompanied by convictions for resisting arrest and disorderly behaviour. The practitioner was not struck off but suspended from practice for a period.

[47] Mr Stanley is a man of good character. He has lived a productive life and pursued a career as an insurance broker. He continues to contribute to the community. He is a committed Christian with a Certificate in Christian Ministry and he is a marriage celebrant. One of his referees, the Deputy Mayor of Hutt City and a Justice of the Peace, said this of Mr Stanley:

> The candidate is an upstanding member of the community who has given many years' service to others, mainly through the church. He has a strong commitment to fairness and justice and helping others.

[48] We do not consider the risk that Mr Stanley might again drink and drive as meaning he cannot be trusted to comply with the fundamental obligations of lawyers set out in s 4 of the Act.[36] Mr Collins submitted the risk goes to the obligation to uphold the rule of law. In an indirect sense a failure to comply with the criminal law can be seen as a failure to uphold the rule of law. But Mr Stanley did not drive knowing he was over the legal limit for breath/blood alcohol. His offending was not at the serious end of the range of drink driving. He was not disqualified from driving for the 2002 and 2007 offending and he was not imprisoned for the 2014 offending. We do not accept Mr Collins's submission.

[49] Justice Clark accepted without analysis Mr Collins's submission "that the peril for the legal profession is that Mr Stanley will reoffend and bring the profession into disrepute".[37] Certainly, a purpose of the Act is to maintain public confidence in the provision of legal services.[38] However, as discussed, the NZLS does not commonly remove practising certificates from lawyers who incur drink driving

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36 See above at [26].
37 See above at [7](b).
38 Lawyers and Conveyancers Act, s 3(1)(a).

convictions. As a candidate for admission Mr Stanley is entitled to be treated more liberally than a practitioner.

[50] We find Mr Stanley's position to be within that described by Kitto J, as already quoted:[39]

> But it will be generally agreed that there are many kinds of conduct deserving of disapproval, and many kinds of convictions of breaches of the law, which do not spell unfitness for the Bar ...

[51] We do not consider the risk of Mr Stanley reoffending is high given his genuine commitment to not doing so. However, if he were to reoffend that would not, in our view, create an unmanageable risk of his bringing the profession into disrepute. The NZLS's disciplinary procedures exist in large part, for example, to maintain public confidence in the profession.

[52] We agree with Mr Gwilliam that Clark J placed undue emphasis on the risk of Mr Stanley reoffending and did not consider his position in the round. In particular, the Judge accepted without analysis that reoffending would bring the profession into disrepute. The Judge did not consider the nature of the offending, which is not of the prima facie disqualifying type present in *Owen* and *Burgess*.

[53] In the round, Mr Stanley is a 65-year-old who has acquired four convictions for drink driving in the period 1978 to 2014. He is of good character and he continues to contribute to society, particularly through his church. He has, as more than one of his referees attests, a commitment to fairness and justice. His attitude to his offending does not show the wholesale reform which led the Courts in *Owen* and *Burgess*, in circumstances where the offending in question was prima facie disqualifying, to grant admission. However, he does have a genuine commitment not to reoffend and were he to reoffend similarly that would not create a meaningful risk of his bringing the profession into disrepute. There is no reason to suspect that, if admitted, Mr Stanley would not comply with the fundamental obligations of a lawyer.

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[39] See above at [31].

[54] We find Mr Stanley to be a fit and proper person to be admitted as a barrister and solicitor of the High Court. As the Full Bench of the High Court said in relation to Mr Owen, we are satisfied that the public and responsible members of the profession would, knowing the facts of Mr Stanley's case, agree.

Result

[55] The appeal is allowed. Justice Clark's refusal of Mr Stanley's application to be admitted is quashed. The application is granted. Subject to Mr Stanley taking the oath prescribed by s 52(2)(b) of the Act, he is entitled to an order admitting him as a barrister and solicitor of the High Court.

[56] As regards costs, our provisional view is that costs should follow the event and the respondent pay the appellant costs for a standard appeal on a band A basis with usual disbursements. However, costs were not canvassed at the hearing and if either party wishes to make submissions, then these should be filed within five working days. Submissions not to exceed two pages in length.

Solicitors:
Main Street Legal Ltd, Upper Hutt for Appellant
New Zealand Law Society, Wellington for Respondent