IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2023-404-836
[2023] NZHC 2370

UNDER	The Lawyers and Conveyancers Act 2006
BETWEEN	DAVINA VALERIE REID Appellant
AND	NEW ZEALAND LAW SOCIETY Respondent

Hearing: 25 July 2023

Counsel: J N Bioletti and G Whata for Appellant
P Collins for Respondent

Judgment: 30 August 2023

JUDGMENT OF MUIR J

This judgment was delivered by me on 30 August 2023 at 11.00 am, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date: ……

Solicitors: New Zealand Law Society, Wellington

Introduction

[1] Ms Davina Reid (née Murray) is a former criminal barrister who was struck off the roll of barristers and solicitors of the High Court of New Zealand (the roll) in 2015 following conviction for having delivered contraband to a prisoner, being an iPhone, cigarettes and a lighter, in breach of s 141 of the Corrections Act 2004.

[2] In April 2022, she applied for restoration to the roll under s 246 of the Lawyers and Conveyancers Act 2006 (the LCA). On 24 March 2023, the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (the Tribunal) dismissed her application.[1]

[3] She now appeals that decision to this Court. The appeal is as of right under s 253 of the LCA.

Background

[4] At the time of her offending under the Corrections Act, Ms Reid had been practising law in Auckland for approximately five years. She was counsel to Mr Liam Reid, a prisoner convicted in relation to charges of rape, murder and attempted murder. She had acted for him for an extended period. She had, and retains, a firm personal belief in his innocence.

[5] The following summary of the facts and circumstances relating to her offending derives from a judgment of Venning J dismissing her appeal against the District Court's refusal to discharge her without conviction:[2]

> [4] On 7 October 2011 the legal visits supervising officer at Mount Eden Correctional Facility (MECF), Ms Cooper, took possession of an Apple iPhone, a packet of Marlboro cigarettes and a Bic cigarette lighter. The prosecution asserted that they had been introduced to MECF by Ms Murray and given to an inmate, Mr Liam Reid.
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> [5] Ms Murray was Mr Reid's legal adviser. As his counsel she had access to M[r] Reid on numerous occasions over a period of years.
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> [6] Ms Murray denied that she had delivered the contraband to Mr Reid. Her trial took place over seven days. Ms Murray represented herself, although she was assisted by Mr B J Hart as a McKenzie friend and Mr Hirschfeld acted

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1 *Reid v New Zealand Law Society* [2023] NZLCDT 7.
2 *Murray v New Zealand Police* [2014] NZHC 337.

> as amicus curiae. Although Ms Murray did not give evidence at her trial, Mr Reid did. Judge Collins recorded that the defence advanced was that a Corrections Officer, Noel Purcell, had conspired with another Corrections Officer, Maurice Stanley to falsely accuse Mr Reid of possession of the items and Mr Purcell or someone known to him had introduced those items into the Corrections Facility. Ultimately Judge Collins was satisfied beyond reasonable doubt that Ms Murray had introduced the items. My review of the evidence and the judgment confirms the case against Ms Murray was overwhelming.

[6] At sentencing, Judge Collins described her offending as "if not the most serious of its type, very close to that".[3] Nevertheless, although the offence attracted a maximum penalty of three months' imprisonment, he imposed a sentence of 50 hours' community work.[4]

[7] On appeal, Venning J concluded that Judge Collins "was right to find that Ms Murray'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".[5]

[8] Following her conviction, Ms Reid was declined a practising certificate and subsequently struck off the roll on 26 February 2015. In its decision preceding her striking off, the Tribunal described her offence as one that "goes directly to the heart of the standing of the profession in the community",[6] and found that "[t]he breach of trust and abuse of professional privilege most certainly reflect on fitness to practise."[7]

[9] Subsequently, in June 2017, Ms Reid married her former client, Mr Reid, at Paremoremo Prison.

[10] Approximately seven years after her striking off, Ms Reid applied for her name to be restored to the roll. The essence of her case, as summarised by the Tribunal, was that:

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3 *New Zealand Police v Murray* DC Auckland CRI-2013-004-003095, 1 October 2013 at [40].
4 At [42].
5 *Murray v New Zealand Police*, above n 2, at [43].
6 *Auckland Standards Committee No 1 v Murray* [2014] NZLCDT 88 at [41].
7 At [42].

(a) the precipitating event — her conviction for delivering contraband to Mr Reid — was minor and had been expunged from her record by operation of the Criminal Records (Clean Slate) Act 2004 (the Clean Slate Act);

(b) responses to her offence by the criminal courts, the New Zealand Law Society and the Tribunal had been disproportionate and discriminatory and that she should be treated similarly to others who had been re-enrolled;

(c) the force of the precipitating event had now been spent, she had not offended since, she was older and more mature, she had recovered from her whakamā and her mana was now restored;

(d) her re-enrolment would serve sound social purposes given her ability, experience and desire to advocate for the underprivileged, and a need for more wahine Māori lawyers generally; and

(e) restoration would see her skills put more fully to use for the benefit of her employer, Te Whānau o Waipareira and Waipareira Trust, who have provided her with considerable rehabilitative support.[8]

The Tribunal decision

[11] The Tribunal declined Ms Reid's application for re-enrolment citing the most recent and relevant Supreme Court decision, the *New Zealand Law Society v Stanley.*[9] It correctly identified that the matter necessarily evaluated was whether Ms Reid is *now* a fit and proper person to be re-enrolled. Significantly, in an observation that is as relevant to this appeal as to the application before it, the Tribunal stated:[10]

> … 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

8 *Reid v New Zealand Law Society*, above n 1, at [10].
9 *New Zealand Law Society v Stanley* [2020] NZSC 83, [2020] 1 NZLR 50.
10 *Reid v New Zealand Law Society*, above n 1, at [8].

> murder has attracted adverse comment in the press. Her marriage and that comment are irrelevant to our evaluation.

[12] In a lengthy section of its decision headed, "Has the force of past wrongs been spent?", the Tribunal first identified that although Ms Reid's conviction fell under the Clean Slate Act so that, in most contexts, she could now legally state that she had no criminal record, pursuant to s 19(3)(b) of that Act, her record remained nonetheless relevant for the purposes of her application to the Tribunal.[11]

[13] It then undertook an assessment of the gravity of Ms Reid's offending and in doing so ignored any question about how she brought the contraband into the prison and whether her actions were premeditated. It nevertheless came to the same conclusions as Judge Collins and Venning J in terms of gravity, concluding:[12]

> … 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.

[14] The Tribunal noted that, as a consequence of her actions, clients and counsel are now generally separated by physical barriers in the prison environment and that lawyers are delayed in entering prisons because of search requirements introduced in response to her offending.[13]

[15] It is also clear that the Tribunal was equally (if not more so) troubled by Ms Reid's response to the charge laid against her. Although, as the Tribunal pointed out, she was entirely within her rights to put the Crown to proof, her defence proceeded on evidence from Mr Reid known by her to be false, namely, that the items in question had been introduced into the prison by virtue of a conspiracy between two named Corrections officers. The Tribunal regarded her behaviour in relation to those officers as "egregious",[14] stating that 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".[15]

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11 At [17]–[18].
12 At [28].
13 At [28].
14 At [47]
15 At [47].

[16] The Tribunal further noted three previous disciplinary findings against her. It described her record as "remarkable" in the context of such a short career.[16] It said that these previous matters disclosed a similar pattern of failure to observe professional boundaries, which had not been addressed in her application for readmission. As a result, the Tribunal was left with no information on what insights she may have into this pattern of behaviour and what steps she had taken to recognise triggers and avoid repetition.[17]

[17] It also noted what it described as a "lack of candour" when, prior to the operation of the Clean Slate Act on her Corrections Act conviction, she described herself to an Australian employer as having no previous convictions.[18] The Tribunal said that it was "unimpressed" by her explanation that she had assumed only Australian convictions required disclosure.[19]

[18] The Tribunal then proceeded to embark on what it described as its "forward-looking" evaluation. It, correctly in my view, identified its task as not ultimately influenced by the number of referees but by:[20]

> … 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.

[19] In findings critical to the outcome of the application, the Tribunal held:

> [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 of genuine remorse without which change is impossible.
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> …
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> [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

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16 At [30].
17 At [32].
18 At [36]. When the information subsequently came to light, Ms Reid was dismissed from her employment.
19 At [36].
20 At [51].

> 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.
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> [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 whānau.
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> [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", 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*. 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.
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> (footnotes omitted)

[20] The Tribunal acknowledged that Ms Reid had a genuine passion to advocate for those she regards as underprivileged but emphasised that she could not do so as a lawyer if unqualified by reason of character.[21] It concluded that her character defects remained "profound",[22] noting:

> [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.

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21 At [62].
22 At [70].

[21] The Tribunal concluded in a unanimous decision of its five members that it was "far from satisfied" that Ms Reid was a fit and proper person to have her name restored to the roll.[23]

Approach on appeal

[22] Appeals under s 253 of the LCA against, inter alia, decisions declining application for restoration to the roll, are by way of rehearing. Mr Collins, counsel for the New Zealand Law Society, advises me that this is the first occasion on which there has been an appeal to the High Court from such a decision.

[23] I approach the appeal on a basis consistent with the approach taken by the High Court on general disciplinary appeals, applying the well-established principles in *Austin, Nichols & Co Inc v Stichting Lodestar.*[24]

[24] Accordingly, while I must consider the merits of the case afresh,[25] I must nevertheless be persuaded that the decision under appeal is wrong[26] and may give due regard to the fact that the decision declining re-enrolment was made by a specialist tribunal.[27]

Legal principles

[25] The Tribunal's jurisdiction to make orders restoring a person's name to the roll arises under s 246 of the LCA. The essential test is whether the applicant demonstrates that they are a fit and proper person to practise as a barrister or as a solicitor or as both.[28] If so demonstrated, the Tribunal "may order" that the applicant's name be restored to the roll.[29]

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23 At [71].
24 *Austin, Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141.
25 *Kacem v Bashir* [2010] NZSC 112, [2011] 2 NZLR 1 at [31].
26 *Austin, Nichols & Co Inc v Stichting Lodestar*, above at n 24, at [13].
27 *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987, [2015] 2 NZLR 606 at [191] and *Young v National Standards Committee* [2019] NZHC 2268 at [34].
28 Lawyers and Conveyances Act 2006, s 246(3).
29 The Law Society does not contend that its decision in this case involved the exercise of a discretion. It acknowledges that its decision was a substantive determination on the merits after receiving and hearing evidence. As a result, the appeal does not involve "a search for error" as would be the case if the Court was reviewing the exercise of discretion: see *X v Y Standards Committee* [2023] NZHC 1446 at [41].

[26] Section 55(1) of the LCA prescribes relevant matters that can be taken into account for the purposes of determining whether a person is fit and proper to be admitted to the roll. I accept Mr Collins' submission that these are similarly relevant to the assessment of a person's fit and proper status for the purposes of restoration. These matters relevantly include:

(a) whether the person is of good character; and

(b) 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;

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

(iii) the person's age when the offence was committed.[30]

[27] Section 55 must, in turn, be considered within the overarching purposes of the LCA and the obligations which it enshrines, in particular:

(a) the statutory purpose to maintain public confidence in the provision of legal services and to protect the consumers of those services;[31] and

(b) the fundamental obligation of every lawyer to "uphold the rule of law and facilitate the administration of justice in New Zealand".[32]

[28] There is now a substantial body of jurisprudence in relation to the fit and proper standard. The most recent and authoritative exposition emerges from the majority judgment of the Supreme Court in *New Zealand Law Society v Stanley*.[33] In a

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30 Pursuant to s 55(3), the matters listed in s 55(1) are not exhaustive.
31 Lawyers and Conveyancers Act, s 3(1)(a) and (b).
32 Lawyers and Conveyances Act, s 4(a).
33 *New Zealand Law Society v Stanley*, above n 9.

statement approved by the minority,[34] the majority noted the relevant principles as follows:[35]

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

[29] Although *Stanley* was an admission case, I accept these principles as equally applicable in the context of a former lawyer's application for restoration to the roll.

[30] The "forward looking exercise" mandated by the Court has, as part of its ultimate raison d'être, the values of redemption and forgiveness which, as Kirby P explained in *Law Society of New South Wales v Foreman*, fit within a concept for social justice for a very practical reason, namely, the public interest which resides in the constructive use of the skills of qualified persons who have undergone many years of training.[36] The public interest and the interests of the profession, in the encouragement

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34 At [105].
35 At [54].
36 *Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408 (CA) at 419.

of rehabilitation of those members of the profession who have lapsed, is a significant one.

[31] Nevertheless, the nature of any past conviction (or disqualifying conduct) does need to be considered. Offending may be so serious as, for example, in *Layne v Attorney-General of Grenada*, where the relevant conviction was for murder, that an applicant can never effectively meet the good character condition.[37] By contrast, as the Supreme Court observed in *Stanley*, some convictions will be in the trivial category, or be so dated as to lose any significance or may simply stem from youthful immaturity.[38] The ultimate test is whether the past conduct "remains relevant".[39] As the Supreme Court observed, that test mirrors but updates former references to whether the "frailties" or "defects of character" reflected by previous convictions can be regarded as "entirely spent" or "safely ignored".[40] As the Supreme Court further observed, whether past conduct remains relevant is a fact-specific enquiry involving consideration of all the evidence in the round.[41]

[32] One aspect of this holistic assessment will always be how the applicant now responds to his or her previous offending. In *Guest v New Zealand Law Society,* the Tribunal put it in the following way:[42]

> … We also understand the natural human reaction to engage in self-justification and minimization. In this context however a struck off practitioner who seeks reinstatement cannot have it both ways. An applicant for restoration has to acknowledge his or her wrongdoing fully and unambiguously and in so doing must suffer the risk that such wrongdoing will be seen as a disqualifying reinstatement.

[33] I accept that the existence of full and unambiguous acknowledgement of wrongdoing is an important requirement of any assessment into whether past conduct remains relevant. Relevant in this respect means relevance in the context of a current assessment of whether the applicant is fit and proper, including whether they are *now* of good character. Part of good character is an ability to acknowledge fully and

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37 *Layne v Attorney-General of Grenada* [2019] UKPC 11, [2019] 3 LRC 459 at [53].
38 *New Zealand Law Society v Stanley*, above n 9, at [43].
39 At [45].
40 At [45].
41 At [46].
42 *Guest v New Zealand Law Society* [2009] NZLCDT 12 at [82].

unambiguously prior wrongdoing. Only once an applicant has arrived at that point will he or she typically be in a position to identify reliably the triggers of previous wrongdoing and the mechanisms necessary to avoid its reoccurrence. Likewise, demonstration of full and unambiguous acknowledgement is a precondition of genuine remorse which is itself significant in the assessment of whether past wrongdoing remains relevant.

[34] It is clear that these considerations loomed large in the Tribunal's consideration of Ms Reid's application. It concluded that "it appears she continues to look for arguments, however unfruitful, to distance herself from her admitted behaviour".[43] I will need to revert to the evidence on which this conclusion was based later in this judgment.

Ms Reid's case

[35] Mr Bioletti, counsel for Ms Reid, submitted that the Tribunal failed to apply or misapplied the threshold test in *Stanley* by focussing disproportionately on Ms Reid's past wrongdoing when the evidence "in the round" was that she is now neither an actual nor apparent risk to either the profession or the public. He submitted that the Tribunal:

(a) refused to make a prospective assessment of Ms Reid's contribution to Māori consumers of legal services;

(b) made an assessment which was "plainly wrong" in respect of her integrity and good character;

(c) failed to accept evidence of her rehabilitation;

(d) failed to accept that her "defect of character" was now "spent";

(e) failed to objectively assess her role as a wahine Māori in New Zealand's legal environment;

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[43] *Reid v New Zealand Law Society*, above n 1, at [35].

(f) failed to weigh the difference she can make in the area of criminal jurisprudence and, in particular, in the area of forensic analysis; and

(g) failed to recognise her remorse for past wrongdoing.

[36] Mr Bioletti submitted that the Tribunal's decision lacked proportionality, placing too much emphasis on historic events which, by virtue of the Clean Slate Act, have now been expunged. He invokes the Court of Appeal's decision in *Conley v Hamilton City Council*,[44] to suggest that "proportionality" in this context involved application of balancing, necessity and suitability tests.[45]

[37] In oral argument he submitted that there were two "elephants in the room" which needed to be addressed at the outset.[46] The first he said was that Ms Reid had an ongoing and honest belief in the innocence of Mr Reid. The second was that she had formed an emotional attachment to Mr Reid and ultimately married him. He submitted that although the Tribunal stated that it regarded the marriage as irrelevant and that it was immune to the adverse comment which this had attracted in the media, it was nevertheless a factor which operated on the mind of the Tribunal in its assessment of Ms Reid's character. Relatedly, he submitted that Ms Reid's emotional commitment to Mr Reid and her unwavering belief in his innocence, necessarily reflected in a more defensive approach to acknowledgement of previous wrongdoing than might otherwise have been the case, but should not be confused with an absence of genuine remorse or failure to acknowledge wrongdoing.

[38] Mr Bioletti was also critical of how the Tribunal approached the potential application of tikanga to the application. He suggested the Tribunal's comments that,

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44 *Conley v Hamilton City Council* [2007] NZCA 543, [2008] 1 NZLR 789.

45 At [54]–[55]. The Court of Appeal noted that the proportionality doctrine was a "respectable tool" in approaching cases where (inter alia) there is "a distinctly or manifestly improper balancing of relevant considerations". The Court identified three constituent components to the doctrine: a "balancing test", which requires a balancing of the ends which an official decision attempts to achieve against the means employed to achieve them; a "necessity test", which requires that where a particular objective can be achieved by more than one of the available means, the least harmful of these means should be adopted to achieve that objective; and a "suitability test", which requires authorities to employ means which are appropriate to the accomplishment of a given law, and which are not in themselves unlawful or incapable of implementation.

46 An expression which Mr Collins, in my view, accurately defined in reply as an "obvious but unacknowledged source of compelling influence".

"[Professor Rawinia Higgins'] 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"[47] and that "tikanga may provide a different process",[48] both missed the point — namely, that tikanga was relevant to the assessment the Tribunal was required to undertake, was not just a possible procedural adjunct, and that the whakamā Ms Reid had endured, but from which she had now emerged, was a very important consideration in any assessment of whether her redemption could now be considered complete.

[39] In respect of the absence of empathy identified by the Tribunal towards the Corrections officers falsely accused in the context of Ms Reid's defence, Mr Bioletti submitted that 10 years after the event it was now too late for that issue to be addressed and that it would be wrong for her readmission prospects to be permanently blighted by that omission.

[40] Finally, he emphasised:

(a) The considerable support structures of the Waipareira Trust available to Ms Reid within the context of her current employment, the mana of its Chief Executive, the Hon John Tamihere, and the fact that the Trust represents approximately 86,000 people who the Tribunal could assume to repose trust in Ms Reid based on Mr Tamihere's support. He said such support was significantly more meaningful in any current assessment of good character than references from legal luminaries which he suggested were unlikely, given Ms Reid's socio-economic and cultural background.

(b) The importance in contemporary New Zealand of legal representation by wahine Māori and the particular skills Ms Reid could bring to the representation of those facing adversity, given her own experience of such.

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47 *Reid v New Zealand Law Society*, above n 1, at [61].
48 At [61].

[41] Mr Bioletti also drew my attention by way of contemporary demonstration of Ms Reid's good character, to the fact that, on receipt of the Tribunal's decision, she advised, against interest, of the error in its supposition that she was legally aided and not therefore liable to a costs order. In a subsequent minute, the Tribunal thanked her for drawing the matter to its attention and invited the Law Society to advise whether costs were sought and, if so, in what sum. It has since advised that an award of $27,150 is sought. That matter is currently reserved.

[42] Technically, this is in the nature of new evidence on appeal, and I deal with it as if an application had been made in that respect. Obviously, the evidence is fresh in the sense that it post-dates the Tribunal's decision. I accept that, in the respect identified, it indicates Ms Reid showed good character and is relevant.

Discussion

[43] As indicated, I must look at the merits of Ms Reid's application afresh but must be persuaded the Tribunal's decision was wrong. I may also give due regard to what is a specialist tribunal assessment. In that respect, I accept Mr Collins' submission that this was a highly qualified and diverse panel of which two of five members — Ms Gaeline Phipps and Ms Pele Walker MNZM — were female. Tribunal member Mr Hector Matthews, the executive director of Māori and Pacific Health at the Canterbury District Health Board, has a high level of competency in te ao Māori and fluency in te reo. The Deputy Tribunal Chair, Dr John Adams, a retired District Court Judge, presided, and the Panel included retired High Court Justice, the Hon Paul Heath KC. I accept but am not blinded by the Tribunal's specialist competency in assessing character and the range of life experiences which its members brought to that task.

[44] I reject at the outset the proposition that the Tribunal somehow was unconsciously influenced by Ms Reid's emotional connection with and subsequent marriage to a prisoner convicted of rape and murder. That issue was stated to be "irrelevant", as was adverse reaction to the marriage in the media. I take a Tribunal of the quality referred to at its word in this respect. In any event, since I similarly regard the matter as irrelevant and am charged with looking at the matter afresh, it will

have no bearing on the outcome of Ms Reid's appeal. Ms Reid loves her husband. She is entitled to do so.

[45] Similarly, I reject any suggestion of unconscious racial bias in the decision, if indeed that was Mr Bioletti's intention when he referred to the decision as having a "hint of eugenics about it". I again emphasise the diversity of the Panel and the quality of its members. In my view — one formed after reading a transcript of the evidence — Ms Reid's ethnicity had no bearing on the Tribunal's decision which was based solely on its assessment of her character.

[46] As I have indicated, the past conduct to which the Tribunal's ongoing relevancy inquiry was directed, included two principal components:

(a) the offending for which Ms Reid was charged under the Corrections Act; and

(b) the nature of the defence run by Ms Reid to that charge.[49]

[47] Adopting a forward-looking evaluation, these two issues invite slightly different considerations. As to the offending itself, identification of when it occurred and its seriousness is essential for the reasons identified in the Supreme Court in *Stanley* — some convictions will be in the trivial category or will be so dated as to lose significance. Neither was the case here. The offending occurred approximately ten years ago. It is in a very different category in that respect to the offending in cases like *Grant v Restructuring Insolvency & Turnaround Association New Zealand Inc,*[50] which occurred approximately 30 years prior.

[48] I agree with the sentencing Judge, with Venning J on appeal, and with the Tribunal (in both its decision to strike off and on the restoration application) that,

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[49] The Tribunal also considered three prior adverse disciplinary findings and noted that Ms Reid's failure to address "at all" the disturbing pattern of blurred professional boundaries which they suggested, left it without any information on what insight she may have into this pattern, what steps she had taken to recognise triggers and how to avoid repetition. It further considered Ms Reid's 2017 failure to inform Australian employers of her conviction.

[50] *Grant v Restructuring Insolvency & Turnaround Association New Zealand Inc* [2020] NZHC 2876, [2021] 2 NZLR 65 — a judicial review of the application of the good character test in the context of an application for membership of RITANZ.

although the maximum sentence for the Corrections Act offending was only three months' imprisonment, nevertheless, it was, in the particular context in which it occurred (Ms Reid's legal representation of the prisoner to whom the items were given), especially serious. As the Tribunal remarked in its decision preceding Ms Reid's striking off, the conduct went "directly to the heart of the standing of the profession in the community",[51] and constituted a "breach of trust and abuse of professional privilege [which] most certainly reflect on fitness to practice".[52]

[49] Given how serious Ms Reid's offending was, I agree with the Tribunal that a complete and unconditional acknowledgement of wrongdoing and of the gravity of her offending was always a necessary first step towards establishing an absence of contemporary relevance. Only at that point could she be considered to have undertaken the level of self-reflection necessary to identify the relevant triggers behind her wrongdoing and necessary coping mechanisms. Indeed, without such acknowledgement, it is difficult to see how anyone who had erred so significantly and with such consequences for the whole profession could be considered of good character. It is in that sense a sine qua non.

[50] I turn then to the evidence before the Tribunal on this point. Mr Collins commenced his cross-examination of Ms Reid by confirming she understood that the Tribunal was engaged in a forward-looking exercise but one in which it was necessary also to examine the past. She said that she did. The following exchange followed:

> Q. I want to ask you about a finding this Tribunal made of you and the penalty, the decision when you were struck off, it's a decision dated the 16th of March 2015, so about eight years ago. 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 was a fair and accurate statement about you at the time it was made?
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> A. No, I don't.
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> Q. Do you think that misrepresents you?

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51 *Auckland Standards Committee No 1 v Murray*, above n 6, at [41].
52 At [42].

A. I think its manifestly excessive in description.

[51] Subsequently, in response to a request by Member Heath that she articulate why she did not now accept that her actions were wrong, the following exchange occurred:

> A. I just don't know that I can confidently articulate the depth of my understanding.
>
> Q. I'm not sure I understand what you mean by that. Could you just explain it to me? Just take a moment.
>
> A. The wrongdoing has had a severe impact on my whānau, on my friends, of which very few stand with me today. It also impacted my husband's appeal. He has — he was intimidated — oh not intimidated, what's the word, the Press have said such nasty things about him and, you know, I was described as his next victim. And yet he's got legal aid, but they don't give it to anybody. And his senior counsel sits here today solidly working on his appeal. So this has had an impact on the duration of time in which he's remained in prison. That's a lot to carry.

[52] That in turn elicited the following exchange with the Tribunal Deputy Chair:

> Q. Ms Reid, we are interested in understanding whether or not you think what you did was wrong, and you said it was wrong because of the flow-on effects on your whānau, friends and the effect on your husband's appeal and that you wouldn't do the same thing again because it would have those effects. Do I take it that you don't think it was wrong in itself?
>
> A. No, it was wrong, Sir.
>
> Q. Why, why was it wrong?
>
> A. Well, it breached the law is the first thing, everyone is — it's very straightforward what the Corrections Act says, it breached my duties and obligations in terms of the legal profession. And, you know, I know it's not the worse crime in the book, Sir, but it has been treated like one.
>
> Q. There's been a failure — the reaction was over-inflated do you think?
>
> A. Well, Sir, there are a number of cases that the Tribunal, not necessarily all of you, but several decisions that reflect the disparity in sentence that's been given to different counsel.
>
> Q. Can you explain why we should see this as having been a relatively minor indiscretion?
>
> A. Well, the statutory obligations of the Clean Slate Act require that you have seven years of no reoffending. I've met those. That is a statutory

> prescription for rehabilitation. I lean on that because I do come with clean hands, albeit that section 19 I think it says I have to disclose this before you; my offending. But it is fair to say, given the manifest excessive media attention I received, everyone knows that I don't really have a clean slate. But if it was a significant criminal offence it wouldn't be covered by that Act.

[53] To provide full context, I record that in a subsequent exchange with Member Matthews, Ms Reid did acknowledge that the delivering of the contraband was serious and agreed with the proposition that her point had related to the maximum penalty applicable to her offence under the Corrections Act and how it was "less serious than others".

[54] Nevertheless, I agree with the Tribunal's finding that, considered in its totality, this evidence indicated a lack of insight into her wrongdoing, an attempt to downplay it, and a preoccupation with self-interest and regret for the damage she had caused to herself and those near to her.[53] As the Tribunal said:

> [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.

[55] I agree also with the Tribunal that, based on her evidence, Ms Reid's current inability to fulsomely acknowledge her wrongdoing appears based in a continuing belief that the offending was of relatively small moment and that she has been treated disproportionately and discriminatively.[54] The Tribunal was clearly right in saying that anyone who had conducted themselves as she did would have faced similar consequences. And, likewise, they could have expected similar scrutiny on a readmission application. I agree with the Tribunal that Ms Reid's persistence in this view of her offending is a barrier to genuine remorse, without which it is difficult to be confident about lasting change.

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53 *Reid v New Zealand Law Society*, above n 1, at [68].
54 At [55].

[56] I am unable to accept Mr Bioletti's submission that the defensiveness demonstrated by Ms Reid is explicable (and should therefore effectively be excused) by reference to her emotional attachment to Mr Reid and her commitment to the cause of his exoneration. I cannot see any logical connection between unqualified acknowledgement of the seriousness of her offending (and associated remorse) and any betrayal of her emotional attachments. She has long ago conceded that the evidence he gave identifying two Corrections officers as those responsible for introduction of the contraband into the prison was false and that she was the source of introduction. To now accept in an unqualified way the significance of her offending neither advances nor detracts from Mr Reid's position.

[57] Ms Reid does not therefore satisfy me that the Tribunal was in error in its conclusion that she has not yet reached the point of sufficiently full and unambiguous acknowledgement of her offending, its significance and implications, to have shown good character in that respect. Relatedly, she does not establish that the Tribunal was in error when it concluded that, without such unambiguous acknowledgement, her road to rehabilitation was incomplete for the reason that it could not otherwise be satisfied that she had sufficient insight to recognise relevant triggers and avoid repetition.

[58] As to the nature of the defence run by Ms Reid to the charge, the Tribunal described this as "the opposite of frank acceptance" of her offending.[55] It held:[56]

> … She was entitled to put the prosecution to proof and to defend vigorously but to shelter and find 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.

[59] In this context, the Tribunal's assessment of current good character had two facets: first, as with the offending itself, whether the wrongdoing was fully and unambiguously acknowledged; and, secondly, Ms Reid's level of remorse/compassion towards those she had harmed through her previous shortcomings of character.

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55 At [47].
56 At [47].

[60] As to the first, the following exchanges under cross-examination by Mr Collins before the Tribunal are insightful:

> Q. … The District Court Judge spoke of your attempt to mitigate the gravity of your offending, and then said that … "Previous good character must be tempered by the fact that to protect her own position, Ms Murray deliberately and falsely accused others." Now, with time to reflect, do you accept that finding?
>
> A. I think it's a blurry line you're riding, with respect, Mr Collins, and I'll tell you why.

[61] At that point, Ms Reid embarked on a lengthy exposition about the fact that she was not eligible for legal aid and that because of certain defects in the investigation of Mr Reid's possession of the prohibited items, the High Court ultimately quashed what she described as his "internal charge and conviction". This led her to conclude that "there was actually no receiver of the item[s]".

[62] At that point, the following exchange occurred with the Tribunal Deputy Chair:

> Q. Ms Reid, you haven't answered the question that was asked some time ago.
>
> A. Yeah, the reason I haven't answered the question, Sir, is because he's suggesting that my conduct in the hearing was one of bad faith.

[63] The cross-examination then resumed:

> Q. I'm not suggesting it, I'm asking you whether you accept the finding and it's a finding that a District Court Judge upheld on appeal that you deliberately and falsely accused the two prison officers. Do you accept that or do you not accept that?
>
> A. I accept it, it's a finding.
>
> Q. No, no, do you accept that you did it?
>
> A. Right. What I was trying to explain to you was the circumstances surrounding that action, but I accept that it was done, yes.
>
> Q. Do you accept that you facilitated the false evidence of Mr Reid at your trial?
>
> A. No I don't, no I don't.

[64] The position was therefore of an initially qualified acceptance based on a "finding" but ultimately acceptance that she did deliberately and falsely accuse others,

albeit somewhat disingenuously in my view, denying that she facilitated the false evidence of Mr Reid.

[65] As to Ms Reid's remorse for these wrongful accusations, the following exchange occurred:

> 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.
>
> Q. And what steps have you taken to make good to those two prison officers for the hurt that you've caused them which was serious?
>
> A. I haven't taken any steps to contact them. I will remind you that I had a condition not to contact the prison for 12 months immediately after I was convicted.
>
> Q. And that your actions which led to your striking off caused considerable harm to the legal profession?
>
> A. Yes.
>
> Q. And to the criminal defence bar in particular?
>
> A. Yes.
>
> Q. And until today, what steps have you taken to apologise or make known your remorse about that?
>
> A. I have not made any positive steps to apologise to the fraternity, but notwithstanding that I will point out that only four objections were filed when the Gazette Notice was placed in my application to be restored today.

[66] Against this background, the Tribunal found that Ms Reid lacked genuine remorse and compassion for those she had harmed. It identified genuine remorse as a precondition to "change" at the level it considered necessary.[57] Again, I identify no error in the Tribunal's analysis.

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[57] At [55].

[67] Mr Bioletti argues that in assessing this issue, the Tribunal made inadequate reference to tikanga. As indicated, he is critical of the Tribunal's observation that "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".[58] He says (and I agree) that tikanga has potential application not only in terms of "process" but in assessment of the threshold character issue.

[68] In that context, Ms Reid places significant emphasis on her evidence before the Tribunal that for nine years she wore the "cloak of whakamā" which she described as "heavy", "wet" and "something you soak in". She explained further:

> One does look behind every feather of their cloak and one does get to the nitty-gritty of what may have driven them … And that's what I've done. Now I no longer wear that cloak. I have a different cloak on today, it's a cloak of mana.

[69] The Tribunal held, however, that in tikanga terms Ms Reid's "journey of redemption is, at best, in early stages and currently falls far short of what tikanga would require".[59] In regard to those wronged by Ms Reid, the Tribunal referred to the tikanga concept of muru, which encapsulates acts of redress and restorative justice generally. It considered that muru had neither been understood nor undertaken by Ms Reid.[60] It is clear that in this conclusion, the Tribunal was greatly assisted by the exchanges which occurred between Member Matthews and Ms Reid.

[70] So, despite the reference to "process", it is clear that the Tribunal did in fact engage with tikanga concepts in its substantive assessment of character. I note that Ms Reid did not call expert evidence in relation to tikanga, although Mr Tamihere did say any approach to those wronged would, by reference to tikanga, need to be handled carefully to ensure that wounds healed by the effluxion of time were not reopened.

[71] I can identify no error in the Tribunal's assessment of these issues. The fact that Ms Reid says she bore "the cloak of whakamā" for an extended period cannot of itself be decisive in any assessment of current good character. It is what has been learned in the process and it is in that respect that her minimisation of the offending

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58 At [61].
59 At [61].
60 At [61].

and of the implications for those falsely accused was a relevant consideration. I find no error in the Tribunal's conclusion that in tikanga terms her road to redemption is, "in early stages".

[72] This leads to a related point — Mr Bioletti's submission that in terms of the te Tiriti o Waitangi, the Tribunal should have placed greater emphasis on the necessity of diversity in the legal profession and, in particular, the representation of wahine Māori in its ranks. That importance cannot be overstated but neither can it substitute for proper application of the fit and proper test. Indeed, admission of wahine Māori who do not satisfy that test would ultimately be counterproductive in terms of their status within, and contribution to, the profession.

[73] I do accept Mr Bioletti's further point that Ms Reid demonstrated good character in identifying, subsequent to release of the Tribunal's decision, the fact that she was not legally aided, thereby exposing herself to a potential award of costs. I accept this is an encouraging development, albeit that it must be balanced against Ms Reid's non-disclosure of her offending to Australian employers which, like the Tribunal, I consider inconsistent with the character required of an admittee. Viewed in this way, the acknowledgement of her legally aided status simply represents a step on the road towards the redemption of her character which has, hitherto, been a journey of some fits and starts. The question I must ask is whether the Tribunal was wrong in saying that she is yet to arrive at the ultimate destination. For the reasons identified, I am unpersuaded that this is the case.

[74] I wish Ms Reid well in terms of any future application, noting that she has obvious abilities which could be of significant benefit to her employers, Māori and the profession generally. When, by reference to the issues addressed by the Tribunal and summarised in para [68] of its decision,[61] she is capable of discharging the onus of showing that her past wrongdoing no longer remains relevant, she can, in my view, legitimately look forward to re-enrolment.

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61 Reproduced in this judgment, above, at [20].

Result

[75] I dismiss the appeal.

Costs and disbursements

[76] These follow the event and are awarded in favour of the respondent on a 2B basis. If there is any issue in respect of quantification, memoranda may be filed. If, subsequent to the Tribunal hearing, Ms Reid has obtained an award of legal aid (which is not my current understanding), then I reserve leave to apply for recission of my costs order.

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Muir J