

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 118/2024

[2025] NZSC 3

BETWEEN DAVINA VALERIE REID
Applicant

AND NEW ZEALAND LAW SOCIETY
Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: J Mason and U A Kuddus for Applicant
P N Collins for Respondent

Judgment: 21 February 2025

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is granted.**
- B The application for leave to appeal is dismissed.**
- C The applicant must pay the respondent costs of \$2,500.**
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REASONS

[1] In February 2015 the applicant, Ms Davina Reid (née Murray), was struck off the Roll of Barristers and Solicitors by the Lawyers and Conveyancers Disciplinary Tribunal following her conviction for smuggling contraband to Mr Reid, a serving prisoner for whom she acted.¹

¹ *Auckland Standards Committee No 1 v Murray* [2014] NZLCDT 88; and *Auckland Standards Committee No 1 v Murray* [2015] NZLCDT 6 at [34]. Ms Reid later married Mr Reid.

[2] In March 2023, the Tribunal dismissed Ms Reid’s application to be restored to the Roll.² The High Court dismissed Ms Reid’s appeal in August 2023,³ and thereafter declined Ms Reid’s application for leave to appeal to the Court of Appeal.⁴ The Court of Appeal itself declined leave in August 2024.⁵

[3] Ms Reid now seeks leave to appeal the High Court’s judgment dismissing her appeal directly to this Court. She applies also for extension of time to bring that application.

[4] The Tribunal’s jurisdiction to make orders restoring a person’s name to the Roll is found in s 246 of the Lawyers and Conveyancers Act 2006 (the Act):⁶

246 Restoration of name to roll or register

(1) Any person whose name has been struck off the roll under this Act ...may, in accordance with rules made under this Act, apply to the Disciplinary Tribunal for the restoration of his or her name to the roll.

...

(3) On hearing an application under subsection (1) ..., the Disciplinary Tribunal, *if satisfied that the applicant is a fit and proper person to practise as a barrister or as a solicitor or as both ... may order that the applicant’s name be restored to the roll ...*

The Tribunal

[5] The Tribunal’s assessment of Ms Reid’s character was a forward-looking evaluation. In summing up its conclusions, it referred to Ms Reid’s lack of insight, propensity to downplay her wrongdoing, lack of compassion for the Corrections officers she falsely accused and lack of remorse. It cited her history of blurring boundaries, becoming over-involved with clients, disregarding the law and obscuring truth.⁷ The Tribunal considered principles of tikanga in its assessment, concluding that Ms Reid’s redemption falls short of what tikanga would require. It observed:⁸

² *Reid v New Zealand Law Society* [2023] NZLCDT 7 [LCDT decision].

³ *Reid v New Zealand Law Society* [2023] NZHC 2370 (Muir J) [HC judgment].

⁴ *Reid v New Zealand Law Society* [2024] NZHC 411 (Muir J) [HC leave judgment].

⁵ *Reid v New Zealand Law Society* [2024] NZCA 399 (Thomas and Hinton JJ) [CA leave judgment].

⁶ Emphasis added.

⁷ LCDT decision, above n 2, at [68]–[70].

⁸ At [61].

The principle of *muru* (reciprocity) to those wronged, has not been understood nor undertaken by Ms Reid. Tikanga may provide a different process but it does not alter the threshold to enable Ms Reid to re-join the profession if she is unqualified by reason of character.

The High Court

[6] Muir J applied the guidance given by this Court in *New Zealand Law Society v Stanley* to readmission.⁹ He reasoned that although admitting wahine Māori to the profession upholds te Tiriti o Waitangi, the importance of doing so cannot substitute for a proper application of the fit and proper person standard. His assessment included findings and consideration of Ms Reid's response to the gravity and consequences of the offending, her lack of insight, lack of remorse and her broader defensiveness. The Judge agreed with the Tribunal in its consideration of tikanga. Ultimately, he was not satisfied that Ms Reid was a fit and proper person to be readmitted to the profession.¹⁰

[7] In declining leave to appeal to the Court of Appeal, the Judge observed that Ms Reid's principal argument was that tikanga was inadequately considered in the substantive judgment. Rejecting this argument, he considered tikanga was properly accounted for and did not change the statutory standard.¹¹

The Court of Appeal

[8] The Court of Appeal, in a detailed judgment, refused leave to appeal. It considered the merits of each of Ms Reid's proposed grounds of appeal. It concluded that it was being asked to reconsider findings of fact, there was no possibility of a miscarriage of justice and that it was not in the public interest to hear the appeal. It agreed with the High Court's assessment of the relevance of tikanga.¹²

⁹ HC judgment, above n 3, at [29] citing *New Zealand Law Society v Stanley* [2020] NZSC 83, [2020] 1 NZLR 50.

¹⁰ HC judgment, above n 3, at [71]–[75].

¹¹ HC leave judgment, above n 4, at [6] and [11].

¹² CA leave judgment, above n 5, at [47]–[54].

Proposed appeal

[9] In summary, Ms Reid contends that:

- (a) the proposed appeal raises a matter of general or public importance because it involves a significant issue related to te Tiriti o Waitangi (protecting tikanga) and because unclear criteria have resulted in discrepancies in decisions of the Law Society and the Tribunal;¹³
- (b) a substantial miscarriage of justice has occurred because the applicant has been discriminated against;¹⁴ and
- (c) there are exceptional circumstances warranting an appeal directly to this Court.¹⁵

Our assessment

[10] The delay in filing the application for leave to appeal being explained satisfactorily, and there being no prejudice, we will grant the application for extension of time.

[11] The application in the Court of Appeal was brought under s 254(1) of the Act. Subsection (4) states that “[t]he decision of the Court of Appeal on any appeal under this section is final.” In *Skagen v Wellington Standards Committee*, a strike-off case involving an appeal under the same section, it was accepted by the respondent that this did not exclude this Court’s jurisdiction to entertain a direct appeal when denied leave by the Court of Appeal.¹⁶ This Court must not, however, give leave to appeal unless the application meets the ordinary leave criterion *and* “there are exceptional circumstances that justify taking the proposed appeal directly to the court”.¹⁷

¹³ See Senior Courts Act 2016, s 74(2)(a).

¹⁴ Section 74(2)(b).

¹⁵ Section 75(b).

¹⁶ *Skagen v Wellington Standards Committee of the New Zealand Law Society* [2022] NZSC 145 at [4]. This Court has also acknowledged, but not answered, this “potential issue” in the strike-out context: see *Taia v Auckland Standards Committee* 5 [2023] NZSC 16 at [8].

¹⁷ Senior Courts Act, s 75.

[12] Ms Reid’s first ground concerning te Tiriti o Waitangi and tikanga raises a matter of arguable general and public importance in the abstract only; this Court has given general guidance on these matters in *Ellis v R*,¹⁸ which was considered by the High Court in its substantive judgment.¹⁹ Nor, in contrast to the respondent, did the applicant adduce independent expert evidence of tikanga. We would not consider this an appropriate vehicle in which to consider the first ground proposed.

[13] Nor do we see any appearance of a miscarriage of justice, as that term is used in the context of civil proceedings, in the application by the High Court of the relevant principles to the facts of the case.²⁰ The “fit and proper” standard was explained by this Court in *Stanley* in the distinct, but related, admission context, and applied here by the High Court.²¹ The concurrent conclusions reached by the High Court (and the Tribunal) were supported by evidence. Nothing presented by Ms Reid suggests their analysis was wrong.

[14] We are not therefore satisfied it is necessary in the interests of justice for this Court to hear and determine the proposed appeal.²² Nor do we consider there are exceptional circumstances warranting an appeal directly to this Court.²³

Result

[15] The application for an extension of time to apply for leave to appeal is granted.

[16] The application for leave to appeal is dismissed.

[17] The applicant must pay the respondent costs of \$2,500.

Solicitors:

Phoenix Law Ltd, Wellington for Applicant

C L Walker, New Zealand Law Society | Te Kāhui Ture o Aotearoa, Wellington for Respondent

¹⁸ Section 74(2)(a); and *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239.

¹⁹ See HC leave judgment, above n 4, at [11]; and CA leave judgment, above n 5, at [49].

²⁰ Senior Courts Act, s 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

²¹ *New Zealand Law Society v Stanley*, above n 9; and HC judgment, above n 3, at [25]–[34] and [43]–[73].

²² Senior Courts Act, ss 74(1) and 75(a).

²³ Section 75(b).