SUPREME COURT OF QUEENSLAND

CITATION:	*Greg Gregory v QLS Inc* [2001] QCA 499
PARTIES:	**GREG GREGORY** (applicant/appellant) **v** **QUEENSLAND LAW SOCIETY INCORPORATED** (respondent)
FILE NO/S:	Appeal No 5462 of 2001 Appeal No 5511 of 1998
DIVISION:	Court of Appeal
PROCEEDING:	Application for admission
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	13 November 2001
DELIVERED AT:	Brisbane
HEARING DATE:	7 September 2001
JUDGES:	McPherson and Thomas JJA, White J Separate reasons for judgment of each member of the Court; each concurring as to the orders made
ORDER:	**Application refused with costs to be assessed**
CATCHWORDS:	PROFESSIONS AND TRADES – LAWYERS – MISCONDUCT, UNFITNESS AND DISCIPLINE – MISLEADING COURT AND PERVERTING THE COURSE OF JUSTICE - DISCIPLINARY ORDERS - STRIKING OFF AND ANCILLARY ORDERS – where solicitor attempted to suborn a Crown witness – where the Solicitors Complaints Tribunal suspended him from practice for 2 years – where the Society gave him permission to work as a law clerk subject to certain conditions – where he was later struck off the roll of solicitors by the Court of Appeal in 1998 – where he continued to work as a law clerk PROFESSIONS AND TRADES – LAWYERS – READMISSION TO PRACTICE – AFTER BEING STRUCK OFF – where the applicant applied for readmission two and three quarter years after being struck off – relevant principles – whether in all the circumstances the Court considers the applicant to be a fit and proper person to practice – where removal from roll resulted from a single but very serious incident – whether application for readmission premature – where no recognisable time frame – where the

essential criterion is rehabilitation – where applicant presented himself as a rehabilitated person whose behaviour had been impeccable since the incident which led to his striking off – where subsequent evidence revealed the applicant had breached conditions imposed by the Society when working as a law clerk and showed a lack of candour in present application – where an application for a prompt readmission following striking off for such serious conduct could succeed only if supported by an unblemished record

Attorney-General v Gregory (Appeal No 5511 of 1998, 4 December 1998, considered
Clyne, Ex Parte (1969) 89 WN (NSW) 39, considered
Davies, Ex Parte (1949) 50 SR (NSW) 158, considered
Evatt, Ex Parte (1969) 90 WN (NSW) 30, considered
Munro, Ex Parte (1969) 91 WN (NSW) 39, considered
Janus v Queensland Law Society Incorporated [2001] QCA 180; Appeal No 9202 of 2000, 15 May 2001, considered
Re a Former Practitioner of the Supreme Court [1933] SAR 93, considered
Re Bell (Full Court Motion No 622 of 1991, 6 December 1991) considered
Re Taylor [1997] 1 Qd R 533, considered

COUNSEL: A J Kimmins for the applicant
J D McKenna for the respondent

SOLICITORS: Price & Roobottom for the applicant
McCullough Robertson for the respondent

[1] **McPHERSON JA**: The facts underlying this application for re-admission by the applicant are set out in the reasons of Thomas JA, which I have had the advantage of reading. The applicant was struck off the roll of solicitors following an appeal by the Attorney-General from the Solicitors Complaints Tribunal, which had ordered his suspension from practice for two years.

[2] The misconduct which led to the order of the Court of Appeal arose out of an event preceding the trial of a man named Rehavi for a criminal offence in respect of which the applicant was the defence solicitor. He was found by the learned District Court judge to have attempted to suborn Ms Robbins, a prosecution witness, who was at court waiting to testify. That attempt was obviously serious; but I consider that his conduct immediately preceding it bore the aspect of an attempt to intimidate her, which, for my part, I regard as equally serious. I am bound to say that, in reporting what had been said to her by the applicant, Ms Robbins displayed considerably more character and appreciation of the impropriety of the applicant's conduct than he did himself. As a solicitor, he ought to have known much better than she that what he was doing was wrong and that he should not have acted in the way that he did. In fact, she showed more respect for the law and concern for justice than did he.

[3] The learned District Court judge, who was trying, or about to try, the charge against Rehavi, fined the applicant $4000. He was not prosecuted for the offence under s 140 of the Criminal Code of attempting to pervert the course of justice, which is a misdemeanour carrying a penalty of up to two years imprisonment. Having been dealt with for contempt, it may be that s 16 of the Code protected him from further punishment for the same act or omission for which he had already been punished by fining for contempt. In that respect, the applicant may have been fortunate.

[4] Solicitors ought by their conduct to be setting an example to members of the public of respect for the law, and not putting them under pressure to disregard it, as the applicant did to Ms Robbins in the present case. I have little doubt that it is that consideration which weighed with the Court in striking off the applicant by the order made on the appeal on 4 December 1998. That order increased the penalty imposed on the applicant from suspension for two years from 13 May 1998 to removal from the roll. Now, barely three and a half years after that suspension and not quite three years since the order for his removal, the applicant has returned to seek his restoration to the roll. If we were now to intervene in his favour, it would demonstrate little regard for the order of this Court removing him from the roll that was made as recently as 4 December 1998. It might indeed imply that we were reversing the decision of this Court made on that occasion, which of course we have no authority to do.

[5] The authorities referred to in the reasons of Thomas JA show that the jurisdiction to re-admit ought not to be exercised with a view to punishing or further punishing a practitioner who has already been disciplined for misconduct. It may be that, as his Honour's analysis shows, the Court of Appeal in ordering that the applicant be struck off the roll, adopted a view of one aspect of the facts of the applicant's misconduct that was to some extent at odds with and perhaps less favourable to the applicant than that arrived at by the District Court judge, on whose findings the Court of Appeal reached the decision on 4 December 1998. Nevertheless, taken with the other conduct of the applicant since his suspension, his behaviour suggests that he has not yet genuinely or sufficiently realised the wrongfulness of his original misconduct as to demonstrate his fitness to be re-admitted to practise as a solicitor.

[6] After giving careful consideration to the matters placed before us, I have come to the conclusion that those factors militate against the applicant in this case, and that he should not now be re-admitted to practise as a solicitor so soon after his removal from the roll. I would therefore refuse his application with costs.

[7] **THOMAS JA:** This is an application for re-admission as a solicitor after a striking off. The application is opposed by the Queensland Law Society Incorporated ("the Society").

Background

[8] The applicant was born in 1957. He was admitted as a solicitor in 1987. In 1991 upon suffering from psychiatric problems he closed his practice. He had a period of convalescence in Cyprus and returned to Australia. Between 1991 and 1993 he did not practise law, and for a time he assisted his brother-in-law in a building business. In 1993 he recommenced practice in partnership, and thereafter practised or worked as a solicitor in various capacities until 1997. In that year he commenced working

with Messrs Baxter & Associates as an associate. Although lacking experience in criminal law he was given the conduct of a criminal case brought against a client named Rehavi whom he also knew socially.

[9] On 8 October 1997 at or about the commencement of Rehavi's trial, he acted improperly in relation to Ms Robbins who was a Crown witness. She immediately complained to the authorities. The applicant was brought before the trial judge and charged with contempt of court. Rehavi's trial was adjourned. In respect of the contempt proceedings, his Honour found that there had been a conversation between the applicant, an acquaintance of the applicant (Zawadski) and Ms Robbins, in the course of which the applicant had deliberately sought to influence Ms Robbins to change her proposed evidence so that it was more favourable to the defendant. His Honour also found that during the conversation Zawadski had said, "Is there $10,000 in it for us?", upon which that Ms Robbins had jokingly said, "That's an idea," and the applicant had said to her "That can be arranged". On 31 October 1997 his Honour convicted the applicant of contempt of court and fined him $4,000. His Honour noted a number of mitigating factors including the applicant's lack of experience in criminal law, and commented that he had no doubt that he did not quite appreciate the serious nature of what he was doing. His Honour also noted medical evidence suggesting that the applicant's judgment was clouded at the time, his lack of planning to carry out the offence and his remorse.

[10] The applicant was immediately dismissed from his employment, but was re-employed by another firm, retaining that employment until a determination by the Solicitors Complaints Tribunal (on 13 May 1998) that he be suspended from practice for two years.

[11] On 10 June 1998 the Society granted leave to the applicant's previous solicitor-employer to employ him as a law clerk, subject to certain undertakings. He has remained so employed until the present time. However, following the Tribunal's decision the Attorney-General appealed to this Court. In consequence, on 4 December 1998 judgment was pronounced striking the applicant from the roll.

[12] In the reasons for judgment delivered in that appeal a more serious view was taken of the applicant's misconduct than had been reflected in the two year suspension imposed by the Tribunal. The relevant circumstances are comprehensively recited in the reasons of White J, and, subject to one qualification, it will be unnecessary to restate them. As this qualification has some relevance to an argument presented before us, it will now be mentioned.

[13] In the course of the proceedings for contempt, the learned District Court Judge made findings of fact. Having referred to the relevant meeting between the applicant, Zawadski and Ms Robbins, his Honour stated, "I am prepared to accept that the initial contact with Zawadski arose from Zawadski saying 'hello' to Mr Gregory." Subsequently, in dealing with the creditworthiness of the various witnesses his Honour observed that Ms Robbins' account, compared with the applicant's, was the more likely, and his Honour concluded that "the conversation progressed in the way she claims in evidence it did". Reading his Honour's reasons as a whole it seems to me that this later statement of general preference of her evidence should be taken to be subject to the earlier more specific acceptance of the initial 'hello' having come from Zawadski.

[14] The only person who heard the relevant witnesses and determined the primary facts was the learned District Court Judge. The proceedings before the Tribunal were conducted in reliance upon a transcript of the evidence given in the District Court and upon further materials including his Honour's findings and some further exhibits including references. The appeal to the Court of Appeal was not a hearing de novo. There does not appear to have been any basis for the Court of Appeal making any different findings of primary fact than those made by the learned District Court Judge and none was suggested. However in the course of her reasons (with which the other members of the Court agreed), White J, without reference to the earlier finding to which I have referred, mentioned his Honour's acceptance of Ms Robbins' evidence in preference to that of Mr Zawadski and the applicant. Her Honour then recited the effect of Ms Robbins' evidence, according to which it was the appellant who had said "hello" first. In this respect it seems to me that there is an inconsistency between the facts as stated originally by his Honour and those as stated in reasons for judgment of the Court of Appeal. In this situation, upon the present proceeding, this court may draw such inferences from the material before it as seem appropriate. I can see no basis for acting upon any different view of the primary facts than that taken by the learned District Court Judge.

[15] This inconsistency on a non-central fact would probably not have mattered very much, but for the circumstance that in his written submissions, Mr McKenna, counsel for the Law Society, placed considerable emphasis upon the applicant's statement (in his affidavit sworn for the purposes of the present application) that he had not initiated the conversation with Zawadski. Mr McKenna proceeded to contrast this statement with the facts stated in White J's reasons, whose statement he submitted "must be accepted as accurate for the purposes of the present proceedings". This ultimately led to the submission that the applicant had not unequivocally acknowledged the correctness of such judicial findings and that his affidavit presents a selective and unbalanced account of matters which were subject to findings by this Court. This was used in support of a final submission that the applicant has not yet reached a point where he had properly acknowledged and accepted his own culpability, and that he was therefore a suitable candidate for re-admission.

[16] I do not consider that the premises upon which that submission is based are justified. Nor do I see any impropriety or unconscionability in the applicant repeating a fact, favourable to him, that had been found by the learned District Court judge. It is true that the applicant's affidavit in the present application seeks to present a case for re-admission and sets out such factors of mitigation and explanation as can be found in the material. In that sense it may be said that the material is selective. However, at the same time, he presented to the Court a full transcript of the proceedings in the respective earlier proceedings and of the respective findings of the District Court judge, the Tribunal and the Court of Appeal. I do not consider that there is any serious substance in the submissions on behalf of the Society to which I have so far referred.

Relevant principles

[17] In proceedings for striking off a legal practitioner, and in proceedings for the re-admission of a practitioner after striking off, the Court is not concerned with the

question of punishment[1]. The basic question for the Court upon an application of the present kind is whether the applicant has shown that he is now a fit and proper person to practice. Relevant principles have been restated in a number of relatively recent decisions of appellate courts in Australia.[2] These decisions emphasise that the power to reinstate should be exercised with considerable caution and only upon solid and substantial grounds[3].

[18] The Court exercises a protective, not a punitive role, having primary regard to the protection of the public interest and the interest of the profession[4]. One useful way of dealing with the matter is to ask whether in all the circumstances the Court is justified in putting the applicant before the public as a fit and proper person to follow the honourable calling of solicitor[5]. It is recognised that a solicitor applying for reinstatement is in a different and more disadvantageous position than an original applicant, because he must displace the prospect of continuance of conduct of the kind which resulted in his removal. I also agree with de Jersey CJ's further comments in *Janus* that "one should in this inquiry focus on the applicant's intrinsic character, and not be unduly distracted by his good fame, whether within the legal profession or the wider community"[6].

[19] The Court is entitled to readmit unconditionally, or subject to conditions[7]. Indeed when one has regard to the Court's undoubted power as the ultimate admitting and disciplinary authority for practitioners in the jurisdiction,[8] the nature of the order that might be made would seem to be substantially if not entirely unfettered.

Relevant considerations

[20] The main difficulties facing the applicant are the seriousness of the conduct which brought about his striking off, the strong view taken of it by this Court in the previous appeal, and the relatively short period during which the striking off has been in force. The latter factor is of course not decisive, because the Court's function is not punitive. If the applicant can satisfy the Court that conduct of the kind in which he engaged on the day in question will not re-occur, and that he is a fit and proper person to practise, then he may be readmitted.

[21] In the course of his helpful submissions for the Society, Mr McKenna drew attention to the fact that the applicant contested the contempt charge and that he gave a different version in some respects to Ms Robbins' version that was accepted by the

---

1 *Ex Parte Meagher* (1919) 36 WN (NSW) 175; *Incorporated Law Institute of NSW v Meagher* (1909) 9 CLR 655; *Ex Parte Clyne* (1969) 89 WN (Part 2) (NSW) 272; *Ex Parte Evatt re NSW Bar Association* (1969) 90 WN (Part 2) (NSW) 30; *New South Wales Bar Association v Evatt* (1968) 117 CLR 177.

2 *Re Morrison* [1961] Qd R 343; *Re S (a solicitor)* [1986] VR 743 (FC); *Dawson v Law Society of NSW* (unreported; NSW CA, Appeal No 590 of 1899, 21 December 1989); *Re Currie* (unreported; Qld FC; Motion No 417 of 1990, 8 March 1991); *Re Bell* (unreported; Qld FC; Motion No 622 of 1991, 6 December 1991); *Re Giles* (unreported; ACT FC, 17 June 1994); *Re Taylor* [1997] 1 Qd R 533; *Re Dennis* (unreported, NSW CA, 23 December 1998); *Janus v Queensland Law Society Incorporated* [2001] QCA 180).

3 *Re Currie* above citing *Ex Parte Lenehan* (1948) 77 CLR 403, 422.

4 *Re Giles* above citing *Clyne v NSW Bar Association* (1960) 104 CLR 186, 201.

5 *Janus* above per de Jersey CJ at para 11.

6 *Janus* above at para 12.

7 *Re Bell* above at 7-8; *Re Taylor* above at 537.

8 *Re Hope* [1996] 2 Qd R 25, 28; *Queensland Law Society Incorporated v Smith* above at para 3.

Court. I do not consider that this is in itself sinister or surprising, but it must be acknowledged that the learned District Court judge formed the view that he and Mr Zawadski had "tailored" their evidence to fit in with parts of Ms Robbins' evidence. That is an aggravating aspect of the discreditable episode which led to his disbarment.

[22] It is desirable to recapitulate the views which persuaded this Court to determine, only two and three quarter years ago, that striking off was the only reasonable order that could be made:

> "The conduct engaged in here strikes at the very heart of the administration of justice by seeking to induce perjury. The community can rightly be uneasy if an attempt to influence a key witness by one who is in a privileged position as an officer of the Court, is not treated with the gravity which that conduct deserves. It is not the point that this was the practitioner's first criminal jury trial. An understanding as fundamental as the integrity of a witness's evidence from influence or corruption is not learned with experience. One might venture to suggest that a member of the public would know so. A practitioner of mature age and 10 years experience, even without the benefit of a great deal of litigation work, who makes such a basic error of judgment is not a fit and proper person to practice. The comment by the practitioner's treating specialist that the heavy dosage of medication which the practitioner took to settle his anxieties may have clouded his judgment does not answer the concern. Neither do undertakings not to practice in litigation or criminal law. The appropriate course is to strike the practitioner from the roll of solicitors leaving it open to him to apply to be restored when he can demonstrate to the satisfaction of the court that the state of his health and any other relevant matters make him a fit and proper person to be entrusted with the duties, responsibilities and privileges of a solicitor in this State".[9]
>
> "A solicitor who attempts to suborn a witness in criminal court proceedings strikes audaciously into the heart of the judicial process. Whether committed on the spur of the moment, as said to have occurred here, or with more premeditation, such misconduct will inevitably establish unfitness to practice. That is because it demonstrates the absence of critically important qualities: honesty, objectivity, respect for the court and respect for the process. In the absence of some quite exceptional circumstance – which I am presently at a loss to imagine – such conduct should lead to the striking off of the offender. The appropriate course is that he should then be left, before reapplying for admission – if he wishes to take that course – so to conduct himself as to demonstrate redevelopment of the qualities he must for the present be taken to lack".[10]

---

9 *Attorney-General v Gregory*, Appeal No 5511 of 1998, 4 December 1998, per White J at para 16-17.

10 Ibid, per de Jersey CJ at para 4.

> "The conduct of the respondent in attempting to suborn a Crown witness in these circumstances was such that the only appropriate order is that he should be struck off the Roll of Solicitors.
> This does not preclude him from reapplying to the Court for admission as a solicitor at some future time, if he can establish his rehabilitation".[11]

[23] The applicant was admitted as a solicitor at about age 30 and is now 44 years old. His removal from the Roll resulted from a single incident, on 8 October 1997, rather than from any sustained course of misconduct.

[24] As earlier mentioned, he suffered from a psychiatric condition in the early 1990s. This is outlined in the report of Dr Ziukelis. That condition would have adversely affected sound decision making. It presented a serious problem to his practising. He behaved responsibly, sought treatment and ceased practice for a time. His condition resulted in a suspension of his practicing certificate and his taking up alternative occupations for about three years. Since 1992 however his condition has steadily improved. There has been no recurrence of psychotic symptoms since June 1992 and since the end of 1998 he has ceased requiring medication for lesser symptoms such as insomnia. His prognosis is favourable. It is now unlikely that he will experience a recurrence of that condition. If this were to happen, his past conduct suggests that he would deal with it responsibly.

[25] Four years have elapsed since his transgression, and he has been under suspension or disbarment for three and a quarter years of this. After being suspended from practice the applicant applied to the Society for permission to work as a law clerk. Leave was granted to do so with the firm of Messrs Smith Whitehead Morwood Payne on 10 June 1998. The alteration of the order from suspension to striking off in November 1998 did not produce any change to this arrangement. He has continued working in as a legal clerk, and affidavits from Mr Smith state that he has provided proper and valuable service to his employer and to his employer's clients. This has included work in commercial law, property, conveyancing, civil litigation, family law and criminal law. That work is said to have been performed under fairly strict supervision. Further material filed on his behalf suggests that he has taken advantage of continuing legal education, and in particular has applied his mind to the subject of legal ethics and professional conduct. In his affidavit he asserts his awareness of his duties to the law, duties to the court, duties to the public, duties to the profession and duties to the client. He rather boldly asserted, "I am up to date with all the current changes in the law," but later qualified this by indicating that he intended to convey that like any careful solicitor he had kept abreast of changes.

[26] There is also positive evidence of his community interests including a willingness to assist those in the Greek community and participation in a life saving club and a soccer club. There are also some references from those with whom he has come into contact during his work as a law clerk in recent years.

[27] Mr McKenna fairly conceded that the applicant has made strong efforts to rehabilitate himself and that his previous medical problems have been overcome and

---

[11] Ibid, per McMurdo P at para 2-3.

are no longer a problem. He submitted, however, that legal practice is not "a sunny day" exercise and that practitioners must be able to deal with stressful situations, and that if the applicant were to be tested on a "dark day" his fibre might be found wanting. He submitted that the evidence was not convincing enough to satisfy the court that he should be allowed back into practice.

[28] During the hearing of this appeal the applicant was subjected to cross-examination by Mr McKenna. The cross-examination was designed to show that he does not understand or accept the nature of his wrong-doing. The Applicant had difficulty in explaining his transgression other than through a combination of the circumstances of inexperience, stress, stupidity and error of judgment. He agreed with Mr McKenna that he had never really regarded himself as someone who lacked honesty, objectivity or respect for the court. Mr McKenna then submitted that such answers were fatal to the application because they showed that he does not truly accept the quality of what he did wrong.

[29] With due respect for the subtlety of the exercise conducted by Mr McKenna, there is a risk that such questioning was a better test of the applicant's capacity for moral discourse than of lack of character. The court, of course, needs to be satisfied that the applicant understands what he did wrong, that there is genuine remorse and that he has the will and fibre to avoid further misconduct. That, however, is not necessarily measured by an applicant's capacity for abasement or for producing the best self-analysis of the nature of his guilt. Such exercises may be a better test of intellect than of rehabilitation. I did not consider the applicant's performance under cross-examination was particularly impressive, but neither did I see anything to raise proper grounds of concern. On the whole, I did not derive much assistance from the cross-examination other than discerning a changed attitude along with the adoption of a disciplined and more professional approach since 1997, and a perception that he is a sadder and a wiser man than he was formerly.

[30] There are cases where the conduct or attitude of a practitioner during disciplinary proceedings demonstrates quite clearly that he or she has no real ethical comprehension, or that he or she possesses values that are inconsistent with a proper professional approach. But I would not infer from his cross-examination that this is so.

[31] For the applicant, Mr AJ Kimmins submitted that if the Court was otherwise satisfied as to the good faith and present capacity of the applicant, it might consider an order which contains conditions such as a limitation upon his right of practice. He referred to what has so far been a satisfactory response by the applicant to working under supervision, and submitted that this was likely to continue. He referred to a number of cases in which such applications had been granted subject to conditions, notably *Re Bell*[12] and *Re Taylor.*[13] Mr Smith's affidavit is relevant to this point. He states that if readmitted the applicant has a secure future with his firm; that he would be continued in employment as an employed solicitor; that he (Mr Smith) would continue to supervise his work; that the applicant would continue to practise in areas of litigation, commercial law, family law and personal injuries; and that the applicant has a "career path" in his firm. The applicant has also indicated a desire to remain

---

12 Above.

13 Above.

with Mr Smith and does not ask for the right to practise on his own behalf or as a partner. The applicant was presented as a person whose behaviour had been impeccable since the isolated serious transgression of some four years ago.

[32] That was the position when this court reserved its decision on 7 September. If the matter had remained as it appeared at the end of legal submissions, it may have been possible to contemplate a postponed order for re-admission accompanied by conditions of the kind suggested by Mr Kimmins. However some additional factors have now emerged.

[33] Some weeks after the matter was reserved, the Society was granted leave to re-open its case and to read four additional affidavits which show that the applicant's conduct whilst working as a law clerk was not impeccable, and even more significantly, that his disclosures to the court in relation to such conduct would seem to have been less than candid.

[34] In one of the applicant's affidavits in the present matter he referred to a complaint that had been made about him to the Law Society. The complaint was that he had, whilst suspended, appeared in the Family Court as a solicitor. He denied this, and deposed that –

> "The circumstances were that I filled the appearance slip and ticked 'law clerk' and also informed the Registrar on the day of my capacity."

[35] That has now been shown to be untrue. The appearance slip has been produced. He did not tick "law clerk", nor any of the relevant capacities. He had previously appeared in that jurisdiction as a solicitor. The transcript of the hearing reveals that the applicant did not seek leave to appear as a law clerk, or in any way inform the Registrar of the capacity in which he appeared. In the Family Court only solicitors and barristers are entitled to appear without leave. The Registrar understood at the time that the applicant was a solicitor, because of his previous appearances in that capacity. Plainly the Registrar was misled by silence when the applicant had a duty of disclosure. The applicant's response to this is to state that his original affidavit was sworn in the belief that it was accurate and that his failure to complete the appearance slip must have been an oversight.

[36] It is not necessary to pursue the question whether or not that explanation is the truth. Even if one accepts the applicant's explanation, there is a quality of looseness with the truth that gives one cause for serious reservation. His application for a prompt re-admission following his striking off would only succeed if supported by an unblemished record since his suspension. The failure to disclose to the Registrar his lack of right to appear as a solicitor stands in the way of satisfaction at this point that he is a person in whom the courts can have the requisite degree of confidence.

[37] There is a further matter which, although not particularly persuasive standing alone, tends to reinforce that doubt. In dealing with the question of his satisfaction of undertakings given to the Law Society that would permit the applicant to be employed as a law clerk, his employer Mr Smith referred to the undertaking that "the applicant will not interview clients on his own", and deposed –

> "Mr Gregory has strictly adhered to the conditions of the Queensland Law Society set out in its letter…"

However, a former client (Ms M) has now complained that the applicant interviewed her alone in breach of that undertaking. The extent of the breach is disputed, in that affidavits by the applicant and by the associate who had conduct of that matter (Mrs Kerry Smith) declare that Mrs Smith took Ms M into the applicant's office and introduced him as the person who would "prepare the documents". The applicant then prepared a Form 7A Response and a Form 17 Financial Statement with the client. Whilst doing so he was alone with her for some periods of time. Mr Smith deposed however that –

> "as Mr Gregory took details.., I continually popped into the room for checking on [the client's] emotional welfare. She was an emotional wreck and kept crying about her situation and advised that she felt she was having a breakdown."

The applicant further deposes –

> "In short, I didn't interview [the client] in its strict sense, the said conference was about filling the appropriate forms for the court on instructions received by Kerry Smith."

[38] The undertaking however plainly prohibited him from having professional interchange with clients on his own. There would seem to have been some stretching of the limits on his and his employer's behalf, when this and his subsequent appearance before the Registrar on the same matter are considered. Standing alone this might not seem important, and I do not suggest that this applicant's conduct, other than his original misdemeanour, is of the kind that would otherwise disqualify him from practice. But in the context of the other matters referred to, it becomes impossible to submit on his behalf that he has behaved impeccably and satisfactorily established an appropriate capacity and attitude to justify re-admission.

[39] Mr McKenna submitted that the application is in any event premature. There is, of course, no recognisable time frame for the making of such applications. Courts are not in the habit of giving "not before" indications in relation to re-admission applications. The essential criterion is rehabilitation. Sometimes that may be perceived after a relatively short time, whilst in others, especially where the applicant's conduct has been less than reassuring during the interim, very long periods have been held to be not enough.[14]

[40] Mr McKenna was unable to find any examples of successful applications for re-admission made within a short time frame after striking off, and was able to produce five decisions in which reapplications made between two and three and a half years after striking off had been regarded as "too short" or "insufficient".[15]

---

14 *Re Morrison* [1961] QR 343; cf the *Meagher* saga in which Meagher was struck off in 1896 (17 NSWLR 157), re-applied unsuccessfully in 1904 and 1906. He was reinstated in 1909 (9 SR (NSW) 304), but this was overturned by the High Court in 1909 (1909) 9 CLR 655. Further applications were refused in 1917 (17 SR (NSW) 305) and 1920 (36 WN (NSW) 175). See also article by C K Allen, "R v Dean" *Law Quarterly Review* (1941) Vol 57 85.

15 *Ex Parte Munro* (1969) 91 WN(NSW) 39; *In Re a Former Practitioner of the Supreme Court* [1933] SASR 93; *Ex Parte Evatt* (1969) 90 WN(NSW) Pt 2 30; *Ex Parte Clyne* [1961] NSWR 709; *Ex Parte Davis* (1949) 50 SR(NSW) 158.

[41] The cases he referred to included *Re a Former Practitioner of the Supreme Court*,[16] *Ex Parte Evatt*,[17] *Ex Parte Munro*,[18] *Ex Parte Clyne*[19] and *Ex Parte Davis*.[20] In *Re a Former Practitioner of the Supreme Court*, (misappropriation of trust monies, isolated incident), the Full Court noted that a period of two and a half years between striking off and re-admission was "much too short to supply the necessary evidence." In *Ex Parte Evatt* (barrister charging excessive fees, misconduct for two years), the Court of Appeal refused to readmit, regarding a period of one year between striking off and the application as "so short a time." In *Ex Parte Munro* (gross overcharging, falsification of accounting records for a period of a year), a period of three and a half years between removal and re-admission was "too short to warrant a reversal of the original decision." In *Ex Parte Clyne* (barrister, initially disbarred for false allegations of fraud against a practitioner, also evidence of dishonest property dealings for a period of over two years), a period of two years was regarded as "insufficient." In *Ex Parte Davis*, the barrister was not guilty of financial dishonesty, but had concealed the fact he had been convicted of a felony in 1934. A period of two years was also considered "insufficient."

[42] These were mostly cases involving some form of financial dishonesty, with misconduct occurring over a protracted period. The reference to "insufficient time" is, of course, not to be taken as a suggestion that there had been insufficient punishment, but rather as an indication that the Court thought that in the circumstances insufficient time had elapsed to enable the applicant to provide the Court with the requisite degree of satisfaction that rehabilitation had occurred.

[43] Having considered the relatively short period between his serious transgression and the present application, along with additional circumstances revealing some degree of lack of candour, firstly with the Family Court Registrar and now with this court, I am not satisfied that rehabilitation has occurred to the extent that he should now be readmitted. The onus which he bears has not been discharged.

Orders

Application refused with costs to be assessed

[44] **WHITE J:** I have read the reasons for judgment of Thomas JA and accept his approach to the findings of fact about the incident which gave rise to the disciplinary action against the applicant.

[45] I agree with his Honour that the present application for re-admission to the roll of solicitors of this court is premature particularly in light of the further matters which have been agitated since the hearing of the application on 7 September 2001. It is not the case, as his Honour and the authorities make plain, that there is any period of time which must pass before re-admission can be considered. It must, however, be an adequate period so that the court may be confident that appropriate rehabilitation has been effected and that the conduct which gave rise to the striking off is most unlikely to occur again.

---

16 [1933] SAR 93.
17 (1969) 90 WN (NSW) 30.
18 (1969) 91 WN (NSW) 39.
19 (1969) 89 WN (NSW) 272.
20 (1949) 50 SR(NSW) 158.

[46] Where, as here, the impugned conduct was due, in large part to flawed judgment about the proper way to behave that is a defect of character which may prove difficult to address and, in turn, to persuade the court that it is no longer a concern. In the case of the applicant there were other factors, such as ill health, which have been mentioned by Thomas JA, which have been treated or addressed. The continuing concern is the less than frank manner with which the applicant dealt with his appearance before the Registrar in the Family Court which is discussed by Thomas JA. There is the further matter of the applicant's adherence to the conditions imposed by the Law Society and in particular the prohibition against interviewing clients on his own. When the applicant deposed that he did not interview clients "in its strict sense" when referring to a conference with a client to obtain information to fill in the appropriate Family Court forms a sense of unease is generated that the applicant is being disingenuous.

[47] It is not so much the conduct before the Registrar of the Family Court or the departure from the terms of the conditions imposed by the Law Society so soon after his suspension which is important in considering the application but a certain want of candidness on the part of the applicant in recounting and explaining these matters to this court.

[48] I agree with Thomas JA that the court cannot be confident to the requisite degree that the applicant is yet ready to be restored to the solicitors' profession.

[49] I agree with the orders proposed by Thomas JA.