BEFORE THE NEW ZEALAND LAW PRACTITIONERS DISCIPLINARY TRIBUNAL

IN THE MATTER of the Law Practitioners Act 1982

AND

IN THE MATTER of an application by **MAURICE HENRY COUGHLAN** for restoration of practitioner's name to the roll

Tribunal:	K N HAMPTON QC	Chair
	J O MEDLICOTT	
	A M SPENCE	
	S R SAGE	
	J W ROWE	
	D M SHEARD	
	A J Nicolson	Secretary
	K A O'Brien	Stenographer

Counsel: MR M H COUGHLAN appears in person

Venue: Tribunals Hearing Room 2
Christchurch District Court
83 Armagh Street
CHRISTCHURCH

Hearing: 15 October 2003

Decision: 15 October 2003

DECISION OF THE TRIBUNAL

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Mr Coughlan, the Tribunal will tell you right at the outset that your application is granted and without conditions imposed. But there will be an order, pursuant to S129 of the Act, that you pay to the New Zealand Law Society costs and expenses in the sum of $2,192.80 as set out in that schedule that has been provided to you.

More importantly before the Tribunal turns to the reasons, this Tribunal offers you its best wishes for the future and is confident - and we hope that our confidence is not misplaced; we do not think it will be - that you will make a success of your future professional life, that what has occurred in the past will remain there and that there will be no repetition of any such events.

In terms of the reasons, the application is one made by Mr Coughlan under Section 116 of the Law Practitioners Act for restoration of his name to the role of barristers and solicitors.

S116 of the Law Practitioners Act 1982 provides as follows in its relevant parts:

> (1) Any practitioner whose name has been struck off the roll under the foregoing provisions of this Part of this Act or before the commencement of this Act may, in accordance with rules made for the purposes of this Part, apply to the New

Zealand Disciplinary Tribunal for the restoration of his name to the roll.

(2) On hearing the application, the 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 practitioner's name be restored to the roll.

(3) Without limiting subsection (2) of this section, any such order may impose the condition that the Applicant shall not practise as a solicitor on his own account, whether in partnership or otherwise, until authorised by the Tribunal to do so.

The concentration at this hearing has been on the matters contained in ss(2), namely whether the Tribunal has been satisfied that Mr Coughlan is a fit and proper person to practise as a barrister and solicitor in order to determine whether an order should be made that his name be restored to the roll.

On 8 June 1992 the applicant, Mr Coughlan, admitted the facts and pleaded guilty to a charge of:

> "Between 25 May 1988 and 27 September 1988 Maurice Henry Coughlan, whilst acting as a solicitor for himself and for (name suppressed), failed to comply with his undertaking to provide a registrable first mortgage security to (name suppressed) to secure a personal loan of $147,000, and failed to register such security despite having received and disbursed the funds to prior mortgages."

Notwithstanding that the prosecuting District Society did not seek an order striking off, but rather an order under S112(2)(c) that Mr Coughlan not practise as a solicitor on his

own account, the Tribunal reached the unanimous view that it was of the opinion that Mr Coughlan, by reason of his conduct, was not a fit and proper person to practise and ordered that he be struck off, that he be censured, and that he pay certain costs. An order was also made prohibiting publication of Mr Coughlan's name. That latter order as to suppression will be commented on again shortly. It should also be mentioned in this decision that at the start of the hearing in 1992 the Tribunal made a permanent order suppressing publication of the names of persons mentioned in the charges, and that order still continues.

As has been said, notwithstanding the stance taken by the District Law Society in 1992 in not seeking a striking off, the Tribunal viewed the matter seriously and in its decision culminating in the order striking off said amongst other things this:

> "Unfortunately Mr Coughlan on receipt of the funds you didn't take the steps necessary to secure a release of the (name suppressed) mortgage. As you have accepted by pleading guilty to this charge, the undertaking was breached. The evidence before us shows that in the end result, the (name suppressed) has suffered a loss to the extent of $135,094.00.
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> This Tribunal has said on previous occasions - and we say again - that undertakings are to be complied with "to the letter". The whole profession depends upon undertakings being performed. On this occasion, you were involved in a matter where you were personally able to gain a benefit by not complying with an undertaking. The consequences are sad as far as you are concerned.

> We have been told about your alcoholic problems extending over a period of years, but only really recognised by yourself in recent times. We have also had the benefit of medical reports as to your present position. Mr Coughlan, you have indicated to us - and we accept - that you regret what has happened. But at the end of the day, this Tribunal has to step back and consider the breach of this undertaking on this occasion. This was a serious breach; it had serious consequences; it related to a matter in which you were personally involved - the mortgage advance was, of course, to you personally.
>
> The Tribunal has heard from Mr Gendall that the Southland Society does not seek a striking off order. But, having anxiously considered the matter, the Tribunal has concluded that, by reason of your conduct, you are not a fit and proper person to practise as a barrister and solicitor, and it makes an order pursuant to section 112(2)(a) that your name be struck off the roll."

At the hearing in 1992 Mr Coughlan appeared for himself, traversed the financial problems in connection with the purchase of the building which led to him breaching the undertaking and then went on to place emphasis on medical matters. In relation to suppression of his name Mr Coughlan relied on medical reports of three doctors in relation to his problems with alcohol which he said then to the Tribunal came to a head in July 1990. The Tribunal granted the order for suppression accepting in essence the grounds advanced by Mr Coughlan, namely "medical grounds, family grounds, the lapse of time since the events occurred (which were some four years before the charge itself) and finally the rehabilitative steps that have been taken and continue to be taken" by Mr Coughlan.

The present application in terms of procedures is governed by Part II of the New Zealand Law Practitioners Disciplinary Tribunal Rules 1984. On 3 September 2003 this Tribunal gave directions as to the persons and bodies to whom notices of the hearing were to be given, including, amongst others, all practitioners practising in the Auckland District Law Society district, which is the last district the applicant, Mr Coughlan, had practiced in prior to his being struck off, and to all practitioners in the Southland District Law Society district, the district in which he had been practising when the offence was committed for which he was struck off. Further there was to be advertisement of the application in the NZLS publication Law Talk, and this took place in the edition of Law Talk number 612 of 29 September 2003.

To enable those notices and advertisements to be properly made and attention properly brought to the application, on 8 September 2003 the Tribunal made an order that the previous order prohibiting publication of Mr Coughlan's name be revoked. A notice of hearing dated 9 September 2003 in compliance with the rules and the earlier directions of the Tribunal was then issued and served on all parties directed to be served.

The New Zealand Law Society, which does have the right to appear and be heard, has chosen not to exercise that right, but has advised the Tribunal in writing that it abides the decision of the Tribunal in the matter. There has been no formal response received from either of the two District Law Societies already mentioned, or indeed from any other District Law Society. There has been no formal response from any members of the profession, or any members of the public.

Mr Coughlan's present circumstances and his history over the past 13 years or so are set out in two affidavits from him. The first filed in support of the application itself, the second produced to the Tribunal today and in effect being his evidence-in-chief on oath in front of this Tribunal.

In the affidavit tended to the Tribunal today Mr Coughlan, in paragraph 3, revisits, with a degree of objectivity and insight in the Tribunal's view, the actions which led to his, as he puts it, "sole breach of many undertakings given over many years". And he goes on to comment that he has "dearly paid for the singular blunder. I have learned that such disasters are typical of my alcoholic lack of foresight and often appear as a precursor to such an event".

To give some idea of Mr Coughlan's life and in particular his working life since he was struck off, reference is made to the

first affidavit sworn on 4 July 2003, and in particular to paragraphs 3, 4 and 5.

> 3. "In 1993, I took up a position as Project Lawyer for the Papua New Guinea Government in Port Moresby Papua New Guinea and continued there for some six years amassing considerable experience in project field work and policy and governance issues. I studied customary law, administrative and constitutional law at the University of Papua New Guinea to reinforce the work that I was doing. I also studied by distance for a Master in Business Administration and a Doctor of Philosophy by research into forestry and natural resource Law in Papua New Guinea. I also qualified for a certificate in Project Management with the New Zealand Society of Accountants and am continuing studies at James Cook University in Australia for a Masters Degree by research in Project and Natural Resource Law. I have enjoyed affiliations with a number of professional organisations such as the Australian Institute of Arbitrators and Mediators, the Transport Institute and a number of churches in instituting drug and alcohol education programmes.
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> 4. Over the last ten years I have developed some expertises (sic) in natural resource laws, policy, compliance, governance, regulatory regimes and negotiations with indigenous resource owners developers and State agencies in setting up and renewing sustainable and environmentally friendly major State contracts and projects. I have worked closely with Legislative Counsel, the State Solicitor, Attorney General prosecutors and instructed counsel and managed litigation for the government. In addition I have advised provincial and national governments Cabinet and its committees and PNG Ministers and prime ministers on resource and environmental policy. In addition to negotiating numerous disputes and projects, I also have initiated a number of drug education programmes for settlements and villages, written newspaper articles on addiction and alcohol abuse and drafted plans for village level drug education programmes and promoted a drug treatment facility. As a result of my efforts for the land owners of Morobe Station I was made a Chief of the Suenna Tribe, an honour which I believe has not been bestowed on any other expatriate. I have also written a text on forest resource law in Papua New

> Guinea and a legislative critique of the Resource Legislation.
>
> 5. Throughout some twenty years legal practice in various capacities (the last twelve years as a sole practitioner) I had not the slightest infringement on my solicitor/client relationships and my trust account rigorously audited by Broad Christie and Partners was operated with absolute integrity and without breach. I believe there has been a substantial change in my overall status over the last fifteen years since this charge arose and that I have taken positive steps to advance my ability and fitness to carry out the responsibilities inherent in properly exercising a practicing (sic) certificate. I respectfully refer to the attached affidavits of Rodney Irvin and Michael Veres in support of my application for reinstatement as a Barrister and Solicitor."

In paragraph 3 there is reference to the further studies and education which Mr Coughlan has undertaken over the years and it is an impressive and a commendable list of studies. Indeed, in his supplemental affidavit he told us in paragraph 2 of further studies that he has undertaken in more recent times and that he is presently lecturing at a tertiary institution in Auckland, lecturing in business law.

In the supplemental affidavit in paragraph 4 Mr Coughlan gives further details of, in particular, his work in Papua New Guinea and of some of the difficulties he has experienced over the years in finding employment, those difficulties being at least in part, it would seem, due to the fact that he has been struck off the roll of barristers and solicitors in New Zealand.

Mr Coughlan gave evidence on oath before the Tribunal and has been examined by the members of the Tribunal as to his present circumstances, his employment history over the past ten years or so, his further education and his reasons for this present application. The Tribunal says at once that it had been impressed with Mr Coughlan and on the materials in front of it (and those materials over and above Mr Coughlan's own evidence and affidavits we will come to shortly) is of the view that he has indeed turned his life around and has redeemed himself and his character since 1992.

There were two supporting affidavits filed with the original application made by Mr Coughlan, both deponents being residents in Queensland Australia, both having been members of AA with Mr Coughlan. Both those deponents, one a businessman, the other a farmer, depose as to Mr Coughlan's successful efforts to deal with his alcoholism.

At the hearing Mr Coughlan has provided to the Tribunal some 11 testimonials from a range of people in various occupations and residing in various countries. Those testimonials include material relating to Mr Coughlan's considerable efforts to assist other people suffering from alcoholism and those efforts as commendable. More importantly from this Tribunal's perspective in terms of this application, there are testimonials from barristers and solicitors up and down

New Zealand and from Papua New Guinea. The matters which are traversed by those practitioners, many of whom are senior, give this Tribunal confidence as to Mr Coughlan, as to his character, and as to his fitness to practise as a barrister and solicitor.

Under S116(2) it is for Mr Coughlan to show to the Tribunal and satisfy it that he is now a fit and proper person to practise as a barrister and solicitor. It is only then, if the Tribunal is so satisfied, that an order may be made for restoration to the roll.

When a candidate for original admission to the roll applies, that candidate has to satisfy the High Court that he or she is of good character and a fit and proper person to be admitted. It is interesting as well to look at the provisions of S57 and S58 of the Act as to practising certificates. By S57(3) if the name of a practitioner is struck off the roll, every practising certificate issued to that person ceases to be in force. Once the practitioner has been without a certificate for more than two years, then the provisions of S58 come into play, and a District Council, "shall not authorise the issue of a practising certificate ... unless it is satisfied that the practitioner is of good character and is a fit and proper person to practise..."

It is obvious from the period of time that Mr Coughlan has not held a practising certificate that if his name is restored to the roll and if he does want to resume practice then he will still have to clear the requirements of S58(5), that is good character and fit and proper. It seems to this Tribunal that both matters of good character and as to whether he is fit and proper are at issue here. Why would a Tribunal restore a person to the roll, that person having been struck off for professional misconduct, and specifically found to be not a fit and proper person to practise, unless at the very least the Tribunal was satisfied as to the good character of that person and that he or she was a fit and proper person to practise?

That approach accords with various precedent authorities. For many a year now the Tribunal in restoration cases has acted upon the principles laid down in the case of *In re Lundon [1926] NZLR 656 CA* where Skerrett CJ at page 658 said this:

> "The relations between a solicitor and his client are so close and confidential and the influence acquired over the client is so great, and so open to abuse, that the Court ought to be satisfied that the person applying for admission is possessed of such integrity and moral rectitude of character that he may be safely accredited by the Court to the public to be entrusted with their business and private affairs. In the case of an application for readmission by a solicitor who has been struck off the rolls the onus lies upon the applicant to establish, affirmatively, that "he has since the date on which he was struck off the rolls so far amended his ways and character that he is now a fit and proper person for readmission to the position

which he then forfeited": per Salmond J. We adopt the language of Mr Justice Isaacs in *In re Meagher*: He says:

'It may be that the error, though flagrant, has proved to be a solitary lapse. It may be that after a sufficient time has passed the applicant can satisfy the tribunal that the purgation is complete, his repentance real, his determination to act uprightly and honourably so secure that he may be fairly re-entrusted with the high duties and grave responsibilities of a minister of justice. But that obligation lies on him, and it is no light one. There is therefore a serious responsibility on this Court (I interpose here this Tribunal) a duty to itself, to the rest of the profession, to its suitors, and to the whole of the community to be careful not to accredit any person worthy of public confidence who cannot satisfactorily establish his right to that credential. It is not a question of what he has suffered in the past - it is a question of his worthiness and reliability for the future.'"

As the Tribunal has said these principles have been adopted and re-adopted on many occasions by this Tribunal, but most recently in the case of *Hesketh (25 May 1999)*. It is worth citing as well this oft repeated passage from *Bolton v Law Society [1994] 2 All ER 486, 492 (CA):*

"It often happens that a solicitor appearing before the Tribunal can produce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and to redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they

> instruct will be a person of unquestionable integrity, probity and trustworthiness."

Public interest is paramount. The applicant has to establish affirmatively that his integrity, his character are now such that he is a fit and proper person for re-admission, that there is no question as to his worthiness and reliability for the future and that he now may be "trusted to the ends of the earth" using the words from *Bolton*.

As was said by this Tribunal in *Cole (15* July 1991) (and there is a helpful summary in that decision of various New Zealand and other Commonwealth judgments):

> "The Tribunal must start from a proposition that the applicant was, by order of the Tribunal ... found as at the date of the order, by reason of his or her conduct, not to be a fit and proper person to practise as a barrister and solicitor. So, it accepts the submissions made by both counsel that the Tribunal has a heavy responsibility in hearing any application for restoration under Section 116, and further says that it has to be satisfied so far as is reasonably possible that the present character of the applicant is such that the practitioner will not re-offend again (sic). The Tribunal must also be satisfied that in this case the practitioner herself was sufficiently conscious of the error of her conduct at this time, and that she is so conscious of her present duties to her clients, to the Court, to the public and to the profession as a whole, that we can have confidence that she will not offend again." (p3)

As in *Cole* (p6) the Tribunal then turns to the disqualifying conduct here. What was the nature of it? Did it involve fraud or dishonesty or misappropriation? Were there

circumstances in that conduct such as to disqualify Mr Coughlan for life from applying for re-admission? (See e.g. *Bolton 491* "Only infrequently ... has it been willing to order the restoration ... of a solicitor against whom serious dishonesty has been established" and at *492* "To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission.")

The Tribunal's answer to that last question, which the other questions lead to, is "no" in these circumstances. The circumstances and the conduct here is not, in the Tribunal's view, sufficient to disqualify Mr Coughlan for life from applying for admission. There were not circumstances which would lead, inevitably, to expulsion forever. That stated, then, as was said in *Lundon*, a vital aspect to be considered is the conduct since the date of striking off. Has there been genuine reformation? Has he so far amended his ways and character as to be a fit and proper person?

That is the fundamental question here. To it can be added, in the circumstances here, these questions: has sufficient time elapsed since the making of the order to render it appropriate to make an order for restoration? Has sufficient time elapsed to enable Mr Coughlan to show reformation of character? To

those two questions this Tribunal answers "yes" on the evidence it has in front of it. Which goes back to what was said earlier about the Tribunal being impressed by what they have read as to Mr Coughlan and his efforts over the last 12 or so years, and from what they have heard from Mr Coughlan himself today. He impressed this Tribunal as being candid with it in all respects, and he impressed the Tribunal as being a man of mature insight as to what has occurred in his past and as to his determination to prevent such events occurring in his future. It should be added that he is now 55 years of age.

It seems to the Tribunal that Mr Coughlan is and has been realistic as to his life in the last few years, has taken time and has only come to this Tribunal seeking restoration after a considerable lapse (and perhaps longer than one might have expected in the circumstances).

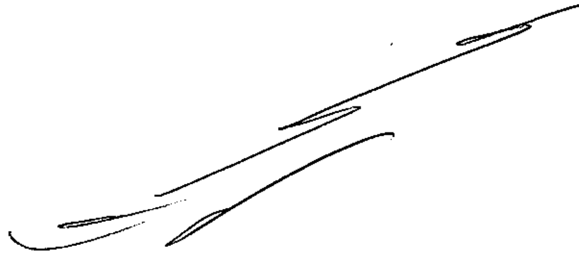
In the end the decision that this Tribunal has to make is in one of those areas where it acts as an informed and expert body on all the facts and makes a fine and difficult exercise of judgment. The judgment is that Mr Coughlan has redeemed and reformed himself, that he now is of good character and is a person fit and proper to practise as a barrister and a solicitor and that his name should be restored to the roll.

There is the ability in this Tribunal to impose a condition under S116(3) that a person restored to the roll should not practise as a solicitor on his own account, whether in partnership or otherwise until authorised by the Tribunal to do so.

The Tribunal has spent some time deliberating as to whether such a condition should be imposed. Mr Coughlan has set out his reasons why he would rather not have such a condition imposed, and they relate primarily to the difficulties that that condition might raise in terms of his employment in the future, and which he still sees as being primarily overseas. The Tribunal has been persuaded by the reasons which he has given that such a condition should not be imposed, but the Tribunal does note the assurance, or indeed undertaking given by Mr Coughlan in the course of his evidence, that he would not in the future practise in New Zealand as a solicitor on his own account, whether in partnership or otherwise, but if he was to return to New Zealand and practise it would be rather as an employed solicitor, or as a barrister sole.

The Tribunal has noted his evidence. It will be part of the record. The Tribunal believes that those words given in evidence by Mr Coughlan will not come back to haunt him. The Tribunal hopes its trust and belief in that is not misplaced.

Nothing more remains to be said Mr Coughlan but to repeat again, as was said at the outset, the Tribunal's best wishes.



K N Hampton
Chair