



**SUPREME COURT OF NEW ZEALAND | TE KŌTI MANA NUI O AOTEAROA**

**17 AUGUST 2020**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**NEW ZEALAND LAW SOCIETY v JOHN LLEWELLYN STANLEY**

**(SC 41/2019) [2020] NZSC 83**

**PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

The Supreme Court has dismissed an appeal from the New Zealand Law Society (Law Society) as to whether the Court of Appeal erred in determining that the respondent, Mr Stanley, was a fit and proper person to be admitted as a barrister and solicitor of the High Court of New Zealand.

Having had a career in business, Mr Stanley completed the necessary academic and professional qualifications for admission. The Law Society refused to give him a certificate of character essentially because of concerns relating to his history of criminal offending, which included four drink driving convictions and his attitude towards that offending. Without a certificate of character, Mr Stanley could not be admitted in the usual way. Instead, the matter proceeded to a contested hearing in the High Court.

The High Court concluded that, in terms of the Lawyers and Conveyancers Act 2006 (the Act), Mr Stanley was not a fit and proper person to be admitted. This decision was overturned by the Court of Appeal and the Law Society was unsuccessful in seeking a stay of the Court of Appeal judgment. Mr Stanley was admitted and has been issued with a practising certificate. The Law Society was later granted leave to appeal to the Supreme Court.

In issue on the appeal was the approach to be taken to s 55(1) of the Act. That section provides that the Court can take into account a number of factors to determine if a person is fit and proper. The relevant factors include any prior convictions.

A majority of the Supreme Court, comprising William Young, O'Regan and Ellen France JJ, dismissed the Law Society's appeal.

The majority noted that there was no controversy as to the legal principles but modernised the language of the test. The majority said that the purpose of the fit and proper standard is to ensure that those admitted can be entrusted to meet the duties and fundamental obligations imposed on lawyers. Those obligations include upholding the rule of law. Reflecting this purpose, the assessment of fitness and propriety focusses on the need to protect the public and to maintain public confidence in the profession. This exercise has a protective, not punitive, purpose. It also involves consideration of whether the applicant is honest, trustworthy and a person of integrity.

Where the applicant has prior convictions, the Court must consider whether the convictions remain relevant. This is a fact-specific inquiry and the Court must look at all the evidence to make a judgement as to the applicant's present ability to meet the duties and obligations of a lawyer. The applicant has the onus to show the standard is met. But, although the standard is a high one, the Court should not lightly deprive qualified persons from the opportunity to practise law.

Applying these principles, the majority held that the Court of Appeal was correct to conclude that Mr Stanley was a fit and proper person. When the evidence was viewed in the round, the concerns arising from Mr Stanley's convictions were not a controlling factor given his otherwise good character, including the fact that he had led a productive life. The majority took into account the fact that, although the offending was of obvious concern, it was not of a character that had a direct connection with legal practice. There was no suggestion of a lack of candour or dishonesty. Further, there was a gap of some seven years since Mr Stanley's last offence and the offending was not at the serious end of the range of drink driving. It was also relevant that both of the Courts below accepted the sincerity of Mr Stanley's commitment to reform. Finally, the majority drew an analogy with the disciplinary context where practitioners who had committed similar offences had not been removed from the roll.

Winkelmann CJ and Glazebrook J dissented and would have allowed the Law Society's appeal.

Although in general agreement with the majority's discussion of the principles to be applied, the minority considered that the High Court was correct to hold that Mr Stanley was not a fit and proper person. The minority emphasised that drink driving was very serious offending as it was inherently dangerous. Further, multiple drink driving convictions would often signal a drinking problem, a contempt for the law or both. Both would directly affect a person's ability to operate as a lawyer. The minority also saw it as relevant that Mr Stanley committed the offending as a

mature man and that he could be seen as acting as though different rules applied to him.

In addition, Mr Stanley continued to minimise the seriousness of his offending. He did not provide any independent expert evidence of an alcohol assessment or of having undertaken treatment, instead relying only on his own assertions that he had stopped drinking. The minority saw the lack of an expert report as fatal and said that Mr Stanley's own assertions as to reform were an insufficient basis for the Court of Appeal's conclusion that his risk of reoffending was not high. Ultimately, the minority concluded that the effect of Mr Stanley's convictions remain relevant and the fact that he was of otherwise good character was therefore irrelevant.

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