IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA

MISC. 55/2021

IN THE MATTER	of Parts I & III of the Law Practitioners' Act 1993-94
AND IN THE MATTER	of an application for the unconditional restoration to the Register of Barristers and Solicitors of **TEVITA TANGAROA VAKALALABURE aka TANGAROA VAKALALABURE**

Applicant

Date of Application:	22 October 2021
Date of Inquiry under ss 15(3) & 16 of the LPA 1993-94:	23 March 2022
Appearances:	Ms L Rokoika for applicant Mr B Marshall and Ms G L Rood for Cook Islands Law Society
Date:	20 May 2022

DECISION OF HUGH WILLIAMS, CJ

[0272.dss]

For the reasons appearing in this decision, the application for the restoration of Tevita Tangaroa Vakalalabure aka Tangaroa Vakalalabure to the Roll of Barristers and Solicitors of the High Court of the Cook Islands is granted on the conditions set out in paragraphs [62]-[64].

Application

[1] The above named Mr Vakalalabure was previously an enrolled Barrister and Solicitor of this Court but was struck off the Roll by Hon Sir David Williams, CJ in a determination dated 19 October 2009.

[2] On 22 October 2021 Ms Rokoika, counsel for Mr Vakalalabure, applied for his unconditional restoration to the Roll as a Barrister and Solicitor of this Court.

[3] This decision deals with that application.

Procedural

[4] Two assumptions underlie the making and processing of Mr Vakalalabure's application for restoration to the Roll.

[5] The first is that, though omitting any reference to the process for restoration to the Roll of Barristers and Solicitors from the Law Practitioners' Act 1993-94[1], by including the references to restoration in s 5(4), Parliament must have intended that lawyers who have been struck off the Roll were to have a route to reinstatement by way of applications for restoration and that a striking off is not intended to be permanent and unchangeable and may be reversed if the circumstances of the lawyer who has been struck off justify their readmission to the legal profession.

[6] The second assumption, dependant on the first, is that applications for restoration should be determined by means of a process akin to that of applications for admission to the Roll in accordance with Part I of the Act and accordingly that decisions of Chief Justices, in accordance with the onus in s 4(2), may include re-admission "upon such terms and conditions" that Chief Justices think fit.

[7] Both assumptions appear reasonable but, in any revamp of the Act, consideration could perhaps be given to including a statutory process for the making and consideration of restoration applications.

[8] Further procedural matters include that, as required by the Law Practitioners' (Admission) Regulations 1994, the application was advertised in the *"Cook Islands News"* on 6 January 2022, with possible objectors to lodge their objections within 14 days from the date of publication.

[9] No objections were received within the time allowed.

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[1] "The Act". All statutory references in this decision are to the Act.

[10] As required by s 4(1), the application was referred to the Cook Islands Law Society which, in a detailed and carefully reasoned report dated 23 December 2021, reached the conclusion[2] that the Society was unable to recommend Mr Vakalalabure's restoration to the Roll.

[11] Given the background to the application and the issues raised by the Cook Islands Law Society in its report, by minute dated 1 February 2022 it was directed that, pursuant to ss 15(3) and 16, an inquiry as to Mr Vakalalabure's fitness to practise law be held on 23 March 2022 with the Cook Islands Law Society being invited to attend and participate in the hearing. Its President, Mr Marshall, and Vice President, Ms Rood, attended and made helpful submissions to assist the Chief Justice in determining the application.

Circumstances leading to striking off

[12] As mentioned, Mr Vakalalabure was struck off the Roll by Hon Sir David Williams CJ in a determination dated 19 October 2009. The determination followed a series of cases concerning Mr Vakalalabure which began with the decision of Weston J, sitting alone, in *Police v. Vakalalabure*[3] where the Judge heard five defended cases against the accused, four of drunken or careless driving causing injury and one of careless use.

[13] Identity of the driver involved in the matters giving rise to those informations was put in issue by the defence and led to a careful and detailed consideration by the trial Judge of that issue. After reviewing the evidence called, the judgment turned to Mr Vakalalabure's evidence and led to the comment that "he was telling a well-rehearsed story"[4] and to the finding that Mr Vakalalabure "was fabricating his evidence in key respects"[5] for reasons on which the Judge then elaborated.

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[2] At 40.
[3] CRN 322/07, 323/07, 771/07, 772/07, 773/07, Judgment of 27 November 2008 (NZT).
[4] At [54].
[5] At [55].

[14] Mr Vakalalabure was convicted on the charge of drunken driving causing injury with the remaining charges, being alternatives, being dismissed[6].

[15] On 18 June 2009 (NZT) Weston J sentenced Mr Vakalalabure and, because he was an "experienced lawyer who frequently appears before the High Court in criminal matters"[7] directed that copies of his two judgments be referred to the Chief Justice for consideration under s 15.

[16] In the meantime, on 7 July 2008, the Police lodged a complaint of professional misconduct against Mr Vakalalabure following the latter's conviction and fining for contempt of Court by breaching bail conditions – a ban on purchasing or consuming alcohol – imposed after he had been bailed on one charge of male assaults female. The Police complaint alleged breaches of s 15(2)(a)(d)[8].

[17] In a separate decision dated 14 November 2008 on the Police complaint the Chief Justice commented that the "conduct was unbecoming of a barrister because it is quite inappropriate for members of the Bar to commit criminal offences, however minor they may be" and formally censured Mr Vakalalabure.

[18] In the determination of 19 November 2019, the Chief Justice held:

> [6] On a general level, the Oath of Allegiance requires law practitioners to uphold the Constitution of the Cook Islands and as this Court has previously noted:
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> > "It is generally accepted that the legal profession has a special role in maintaining and upholding the rule of law." (Misc No. 67/07 – Application for Admission by Mr Rakuita Saurara Teariki Vakalalabure, Judgment of David Williams CJ dated 20 December 2007, at paragraph 36)
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> [7] Section 10 of the Act provides that every practitioner shall be deemed to be an officer of the Court. As such, and in the interests of the fair administration of justice, the overriding duty of a practitioner is to this Court.
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> [8] In addition to the above general duties, practitioners are required to comply with the duties set out in the scheduled code of ethics pursuant to section 57(1) of the Act. Those duties include inter alia: maintaining the honour and dignity of the profession and abstaining from any behaviour which

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6 At [79].
7 Judgment of 27 November 2008, at [54].

> may tend to discredit the profession (rule 1); maintaining due respect towards the Court (rule 7); and, never giving incorrect factual information to the Court knowingly (rule 8).

[19] The Chief Justice then cited the then newly re-enacted s 20, noted the lack of express power to suspend, cited at length from the judgment of Lord Bingham MR delivering judgment in the well-known restoration decision of the UK Court of Appeal in *Bolton v. The Law Society*[9], and then summarised Mr Vakalalabure's response in the following terms:

> [19] In response to Justice Weston's finding that Mr Vakalalabure had fabricated evidence for his defence, Mr Vakalalabure observed that he had not been charged with perjury, and therefore had not benefitted from an opportunity to defend himself against the charge of fabrication. Mr Vakalalabure also submitted that the evidential findings of a Judge are simply matters of opinion and should therefore be treated with caution. On that basis, Mr Vakalalabure submitted that I should not consider Justice Weston's decision to be binding on me, nor should it be considered as evidence of dishonesty amounting to professional misconduct.
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> [20] As to why Mr Vakalalabure had not appealed Weston J's Judgment, Mr Vakalalabure submitted that he made a conscious decision to attempt to move on from his past behaviour and to recover from the alcoholism and depression that he was suffering from at that point in his life. After receiving preliminary points of appeal from his lawyer, Mr Vakalalabure "advised him that at that stage in my life I was emotionally fragile, and very much mentally unstable [sic] to exercise any effort to continue with an appeal."
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> [21] Mr Vakalalabure did not address the fact the offence under s 25 of the Transport Act of which he was convicted is punishable by imprisonment for a term exceeding one year or the question whether, in terms of s 15(2)(d), that conviction reflected on his fitness to practise as a barrister.

[20] After summarising the submissions and the additional comments by Weston J and a practitioner:

> [36] The proposition that the judgment of Weston J is not binding on me is correct taken literally, but I find that the matters referred by Justice Weston are highly relevant to my determination. I do not accept the proposition that I should not consider Justice Weston's decision as evidencing dishonesty.

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8 The latter misconstrued as the maximum penalty was imprisonment for under one year.
9 [1994] 2 All ER 486, 491-3.

> [37] For the above reasons, I accept Justice Weston's finding and proceed on the basis that Mr Vakalalabure did fabricate evidence for the purpose of making his defence.
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> [38] As indicated above, a finding of dishonesty falls within the most serious category of professional misconduct. In addition to the list of purposes identified by Lord Bingham above, all of which are relevant to the present proceeding, it is necessary to have regard to their unifying principle of ensuring the fair and efficient administration of justice, for that is where the profession's true purpose lies. That ultimate goal requires not only public confidence in the profession, but also the ability of the judiciary to rely on the integrity of counsel appearing in the courts. It is irrelevant whether a member of the profession falls short of complete honesty in an attempt to further his own interests or those of a client.
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> [39] In my view the finding of fabrication of evidence by Justice Weston is sufficient in itself to justify not just suspensions (if that penalty was available) but striking off and that conclusion is confirmed when the other professional misconduct is taken into account.

[21] The determination then reviewed Mr Vakalalabure's other professional misconduct including a list[10] of eleven charges, convictions or complaints brought against Mr Vakalalabure[11].

[22] Those additional matters constituted extra grounds of professional misconduct and led to the order for striking off, the Chief Justice observing:

> [50] In any event, it must be remembered that the purposes of professional disciplinary proceedings do not generally involve imposing punishment where that has already been provided for by the criminal law. By contrast, disciplinary proceedings in relation to behaviour that does not directly impeach a person's ability to discharge his or her professional responsibilities will often, as here, involve the need to preserve the special status within society of a particular profession. In the case of the legal profession … that special status derives from the profession's "special role in maintaining and upholding the Rule of Law." In other words, a lawyer must practice what he or she preaches. As Lord Bingham has put it:
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>> "The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

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10 At [41].

11 To which could now be added *R v. Vakalalabure*, CR 198/09, 30 August 2010, Hugh Williams J. where, on conviction by a jury on one charge of male assaults female, he was sentenced to Probation for 12 months and told he was lucky not to be imprisoned.

Evidence concerning events since striking off

[23] Mr Vakalalabure commenced his first affidavit in support of his application for restoration[12] by saying:

> 4. That my disbarment was a direct result of my inability to control my consumption of alcohol so as not to impair my judgement and lose complete control over my mental faculties to such an extend [sic] that I engaged in behaviour that was unbecoming of a practicing lawyer.
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> 5. That I had unreservedly accepted the determination of the Chief Justice then to strike me off the roll as my conduct then as a practising lawyer had definitely fallen short of the required standard of behaviour expected of members of the legal profession.
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> …
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> 11. That since my disbarment I have moved on and rebuilt my life, focusing on my personal development and I have managed to maintain total control over my alcohol consumption for the past 12 years without falling into an uncontrollable alcoholic lifestyle.

[24] Following striking off he apologised to the Teuukuru Ariki of the district of Reureu Nikaupara on Aitutaki for bringing the village into disrepute – an event confirmed by the Teuukuru Ariki's affidavit – following which he and his wife, Ms Rokoika, shifted to China where they lived for eight years and where he graduated from Jiangsu University with a Masters Degree in Social Medicine and Health Administration in the School of Management, a three year qualification. He provided a testimonial to that effect from Professor Zhou Lulin.

[25] He was employed as a boxing coach in Beijing from 2016 until the couple's return to the Cook Islands. Through boxing he came to know one of those running the UN Environmental Programme in Beijing and a Beijing-based partner in an international law firm focussing on legal needs of venture capital and growth technologies companies. Testimonials from those persons were exhibited to Mr Vakalalabure's second affidavit[13].

[26] Supporting affidavits were filed by a number of persons, including an Inspector Strickland, a long-serving Police officer, saying Mr Vakalalabure was a

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[12] Sworn 21 October 2021.
[13] Sworn 15 March 2022.

"sensible, intelligent and capable, young Cook Islands lawyer when sober" that, since his return, he is not aware of any alcohol-related behaviour.

[27] Mr Gibson, a senior lawyer, filed an affidavit testifying to his belief that Mr Vakalalabure has undergone a transformation since being struck off and continuing:

> 6. 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, and I believe that the Applicant has shown just that since his return from China
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> 7. I believe that the Applicant is not a risk of future misconduct because of the 11 years he has lost as a lawyer, and I believe that he will not do any harm to the profession if his name is restored to the Roll
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> 8. I have had some social gatherings with the Applicant, and I note that he has matured in terms of his alcohol intake
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> 9. That given the Applicant's disbarment in 2009, I believe that the court must consider whether that past conduct remains relevant some 11 years down the line
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> 10. The "fit and proper person" standard is necessarily a high one, although I am of the view that the court should not lightly deprive someone who is otherwise qualified from the opportunity to practise law if indeed he is remorseful for his actions
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> 11. As a senior member of the Cook Islands Bar, I note that the Applicant has (since his return to the Cook Islands 2 years ago) displayed the standard of character and diligence that a member of the public is entitled to expect of a reasonably fit and proper lawyer

[28] A supporting affidavit was also filed by Mr Elikana, a former Solicitor-General and Secretary of Justice who is now a Government Member of Parliament, saying:

> 7. In such an application for restoration, I believe that the Applicant must show that those personal characteristics which led to his disbarment no longer exists and having known the Applicant, I therefore believe that those characteristics of alcoholism and contemptuous behaviour no longer exists in him.
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> 8. That since disbarment, I am of the view that the Applicant has amended his ways and character and his punishment since disbarment will ensure that he will uphold the rule of law as an officer of the Court and equally discharge his duties to his clients.
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> …

> 10. Given my dealings with the Applicant in 2009 and in the last 2 years, I believe that the Applicant now has 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.

[29] Mrs Browne, a senior practitioner and Leader of the Parliamentary Opposition filed an affidavit and gave evidence. She said that, as Chief Executive Officer for the Opposition Office, Mr Vakalalabure is relied on for financial management and that:

> 10. In terms of honesty and integrity, I trust the Applicant's management of the Office in terms of its finances and staff management.
> 11. Together with the Opposition MPs, I trust the Applicant's advice for the cohesion of our Party Politics and values.
> 12. Because of legal background the Applicant has had, on many occasions, assisted the MPs with understanding Bills that were to be debated in Parliament.
> 13. On a few occasions that our Party has conducted community meetings, I have noted that the Applicant has the trust and respect of our community, especially our supporters.
> 14. Having looked after the Office since his appointment, I believe that the Applicant has the ethical behaviour in organisation processes to adhere to standards of integrity, transparency and honesty.

[30] As noted, the application was one for Mr Vakalalabure's unconditional restoration to the Roll but, during his evidence at the inquiry, that aim was significantly modified several times.

[31] He first said that, in this, an election year, he will be fully occupied working for the Democratic Party Opposition preparing the party's policies and preparing for the election, something he expects to occupy his time until the end of 2022. He said Ms Rokoika continues to use him to do a "little bit of research"[14] and that his current work keeps him "abreast of the development of jurisprudence in the Cook Islands" including the country's international relations[15].

[32] He then said he would accept conditional restoration to the Roll[16].

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[14] Transcript 8.
[15] Transcript 8.
[16] Transcript 8.

[33] Asked about his knowledge of the Code of Ethics, Mr Vakalalabure said, with little obvious connection to legal practice, that it raised the same issues as for Members of Parliament[17].

[34] He then said that, given the opportunity to practice, he would ask his wife to take him in as an associate and would work under her supervision until after the election[18].

[35] Asked to say why he was struck off, Mr Vakalalabure said he was not fit to be an officer of the Court at that time because "my personal life was totally a mess"[19].

[36] When asked to comment on Weston J's fabrication finding, he was somewhat equivocal, essentially blaming it on his lawyer at the time[20] saying that the "lawyer that came to defend me asked the scenarios, and I gave the scenarios to him, truthfully, the facts as I knew it and that is what he put before the Court" making the point that he did not appeal the finding. He did not fully accept that he fabricated evidence merely saying "I'll just stick with the findings of the Court. I did not appeal it. It is what it is … I had legal advice and that was the defence that they came up with and I put it to the Court on that advice"[21].

[37] He then spoke of the necessity of honesty in the practice of the law and lawyers' ethical obligations saying that "I know that the changes I've made in my life going forward should be a very stable one in complete compliance of the law what it will be"[22].

[38] Asked about his drinking, he said he only drinks now on "special occasions" as it takes up time he does not have "where I could be doing a lot of other constructive things"[23].

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17 Transcript 10.
18 Transcript 10.
19 Transcript 11.
20 No longer in practice in the Cook Islands.
21 Transcript 12-13.
22 Transcript 13.
23 Transcript 14.

[39] In response to being asked about his intention to set up private practice in Aitutaki where there is only one other lawyer and the chances of collegial discussion are slim, particularly when his wife's advice from Rarotonga cannot be an entirely independent view, he then said he did not think he would be re-joining private practice but intended to remain with Government for the next few years[24]. He next said he did not intend to become a legal officer in Government but hoped to become Secretary of the Ministry of Health. Any necessary supervision could come either from Mrs Browne or his wife whom, if he went into private practice, he would join "if there is a need for supervision"[25].

Cook Islands Law Society Report and Submissions

[40] The Cook Islands Law Society's report of 23 December 2021 – before the affidavits from Mrs Browne and Mr Vakalalbure's second affidavit and exhibits – very carefully reviewed the application, Mr Vakalalabure's striking off and what preceded it.

[41] This application being without precedent in the Cook Islands, the Society requested assistance from the New Zealand Law Society which referred it to passages from *Scragg: The Ethical Lawyer, Legal Ethics and Professional Responsibility*[26] which in turn discusses the leading New Zealand authority on restoration: *Leary v. New Zealand Law Practitioners' Disciplinary Tribunal*[27]. The Society's submissions also referred to *Bolton* and other New Zealand Law Practitioners' Disciplinary Tribunal authorities drawing from that review of the authorities a helpful summary of the applicable principles. That included, correctly, that the onus is on a restoration applicant, especially where dishonesty has been involved, with any remaining doubt being resolved by refusal of the application; there must, viewed prospectively, be compelling evidence of reform and acceptance of error; and the public interest is paramount.

[42] Applying those principles, the Society noted Mr Vakalalabure had been struck off for 12 years, acknowledged his wrongdoing, apologised and made

24 Transcript 15.
25 Transcript 16.
26 2018, para 7.8, pp 156-8.
27 [2008] NZAR 57.

commendable efforts to address his substance abuse but made the point that the supporting affidavits did not include lawyers who had worked with the applicant and all had only the relatively short time which had passed since Mr Vakalalabure's return on which to base their opinions. He had given no evidence concerning trust accounts and other issues part of legal practice and, referring to Mr Vakalalabure's convictions, the submissions emphasised that, although not convicted of it, he had not appealed the fabrication finding, thus leaving unchallenged a finding both of his participation in serious criminal offending and breaches of the Code of Ethics[28].

[43] On the fit and proper test, the Society also referred to the small legal profession in the Cook Islands with the consequence of there only being a reduced number of representation options available to those seeking legal advice. In those circumstances any defaults by practitioners reflect on public confidence in lawyers.

[44] Balancing all those factors against each other, the Society reached the view that it could not recommend Mr Vakalalabure's restoration to the Roll, at least not at the time of its report.

[45] Ms Rokoika submitted Mr Vakalalabure was "currently serving the public on a day to day basis with the nature of his work that he conducts at the Opposition Office" and relied heavily on the affidavit evidence as to the prospective view needing to be taken in relation to the application. She submitted Mr Vakalalabure's contrition and evidence made repetition of his offending unlikely and drew on the testimonials to support the submission that the public could have confidence in the integrity of the profession should Mr Vakalalabure be restored to the Roll. Her submissions reviewed the authorities drawn to attention by the Law Society and relied on *New Zealand Law Society v. Stanley*[29] where the NZ Court of Appeal said that when assessing past convictions the Court must consider whether the past conduct remains relevant, looking at all the evidence in the round and to judging whether the applicant has the present ability to meet lawyers' duties.

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28 Binding on the profession: s 57 and Schedule to the Act.
29 [2019] NZAR 1001: an admission, not a restoration, case.

Discussion and decision

[46] This being the first restoration application in the Cook Islands, New Zealand precedent, especially *Leary*, is helpful.

[47] In *Leary*, a practitioner struck off in 1987 for a number of offences including giving false evidence as to matters concerning clients and financial mismanagement[30] applied 19 years later for restoration to the Roll, buttressing his application by no fewer than 81 testimonials including from retired Judges, QC's and other leading lawyers.

[48] A Full Court of the New Zealand High Court first observed[31]:

> [7] An applicant for admission, or readmission, to the legal profession must persuade this Court that he or she "is of good character and a fit and proper person to be admitted" (s 46(2)(a)(ii)) and, in the case of a restoration application, we accept the observation in *L* (at p 473) that "the greater the fall from grace the more the ground to recover before reinstatement". The gist of the Court of Appeal's observations in *Re Lundon (J R)* [1923] NZLR 236 at pp 242-243 remains apposite:
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>> It is well settled by authority that a solicitor is not so dealt with by way of punishment. He is removed from the rolls because he is deemed unfit to be further trusted with the powers, rights, and duties attached to the responsible position of a solicitor of the Supreme Court. He is deprived of that position not by way of penal discipline in respect of offences committed by him, but for the purpose of protecting the public and the administration of justice from the danger involved in the continued authority of a solicitor who by his conduct has shown that he is not fit to be trusted with the possession of such an office. On an application for readmission, therefore, the question whether the period of his deprivation of office has been long enough to constitute an adequate punishment for his offence is wholly irrelevant. The true question is not whether he has been sufficiently punished, but whether his conduct since his removal has been such as to demonstrate to the satisfaction of the Court that he is now a fit and proper person to be admitted as a solicitor, and that he no longer possesses that disqualifying character which was formerly held to exist and to justify his removal from the rolls.

[49] The Court then noted[32]:

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30 At [10].
31 At 61.

> [42] Turning to the significant issues raised by the appeal, it is to be recalled that the pivotal question in a restoration application is whether, in terms of s 116(2), the applicant can satisfy the onus of persuading the Tribunal – or, on appeal, this Court – that he is a "fit and proper person" to be readmitted to the legal profession.
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> [43] Resolving that question necessarily, as the authorities show, requires the Tribunal to look forward in time and make a value judgment on that issue, drawing on evidence of an applicant's past actions.
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> [44] That exercise, too, necessarily requires an inquiry into the actions which led to the striking-off, which, in its turn, involves acceptance by an applicant that those actions occurred and that they transgressed the legal and ethical standards of the profession. Without recognition that the actions breached applicable standards and the consequences of the breach – particularly to the public, the courts and to all other practitioners – it would be difficult for the Tribunal to conclude the same actions would not be repeated should similar circumstances arise in the future.

before concluding:

> [54] We accept that the views of an experienced tribunal of knowledgeable practitioners reaching views as a matter of discretion on issues before them are deserving of certain deference. But, as the more modern authorities show, such deference needs to be displaced if a court on appeal reaches the view the tribunal's conclusions were wrong.
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> [55] We have, with respect to the Tribunal, reached that view. The focus of a restoration application is prospective. In our view, the evidence demonstrated Mr Leary's acceptance of his past wrongdoing. More importantly, it demonstrated his acceptance of his need for reform and his efforts in achieving that reform in difficult circumstances over 20 years. His evidence, and the very considerable body of support from persons of integrity should have given the Tribunal confidence that Mr Leary would not re-offend. It should have given the Tribunal confidence that he was a fit and proper person to practise as a barrister henceforth. It should have granted his application. In our view, it failed so to do by placing overmuch weight on the circumstances leading up to Mr Leary's striking-off and too little weight on the evidence of Mr Leary's reformative efforts over the years since. As a result, the Tribunal's discretionary decision failed to give adequate recognition to the required prospective view of Mr Leary's restoration application. The Tribunal was thereby led into error and reached a wrong decision.

[50] Applying those authorities to Mr Vakalalabure's application the question is whether, prospectively, he has now demonstrated that he is a fit and proper person to again be permitted to practice law as a Barrister and Solicitor of this Court.

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[32] At 70-1

[51] The Courts' 2008-9 findings clearly demonstrate that at that time Mr Vakalalabure was far from a fit and proper person to practise law. In terms of *Bolton* he failed the tests of "integrity, probity and complete trustworthiness"[33] He now admits that, in addition to his personal failings, his convictions and the unchallenged dishonesty finding made striking off near-inevitable.

[52] However, since being struck off, as the evidence review shows, he has made significant efforts over the intervening 12 years to reform himself, acquire a further qualification and contain the drinking which appears to have been at the heart of his offending. But the Law Society has a point in that almost all of that was in China and very little, other than his present employment, has had anything to do with the law. That said, he has strong support from senior lawyers and other persons respected in the community as to his trustworthiness and fitness to be readmitted to practice.

[53] There presently seems no reason to think Mr Vakalalabure will reoffend but, looking forward, the question is whether he has demonstrated that he is again fitted to be restored to the Roll and, given the various uncertainties as to his future intentions should he be readmitted, whether any restoration to the Roll should be unconditional as his application initially sought.

[54] When measured against the statutory requirements and those set out in *Bolton,* a little legal research over the past two years, one appearance in the Land Division in his own interest and no more than "keeping abreast of changes in the jurisprudence of the Cook Islands" barely amounts to sufficient preparation for the problems encountered by lawyers in day to day practice, unquestioning adherence to the profession's ethical standards or the deep familiarity with the law which practice requires to enable lawyers to give clients comprehensive advice. That said, admission to the profession does not require legal omniscience: the newly-admitted are usually very competent intellectually, but often lack practical application. Conditional admission is designed to overcome that and, in so doing, protect both the public and the profession.

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33 *Bolton,* at 13.

[55] Taking all that into account, and having reflected deeply on all the circumstances of this application in light of the matters discussed in the preceding paragraphs, the appropriate conclusion is that, looking prospectively and conforming with the onus in s 4(2)[34], Mr Vakalalabure has demonstrated that he is again a fit and proper person to be allowed to re-join the legal profession and that public confidence in the integrity of the Cook Islands' legal profession will not be jeopardised by his readmission.

[56] That said, Mr Vakalalabure's restoration to the Roll of Barristers and Solicitors should not be unconditional, if for no other reason than that there was no evidence concerning his grasp of, and upskilling on, the day to day matters which are part and parcel of the practice of the legal profession, such as trust accounting and adherence to the Code of Ethics. Those issues seem not to have been part of his preparation for this application.

[57] That, however, raises a difficulty with the way the Act is drafted.

[58] As Mr Marshall and Ms Rood emphasised, once a person is a "practitioner", defined in s 2 as a "person enrolled as a barrister and solicitor or as a barrister only", the Society is obliged by s 12(1), on payment of the prescribed fee, to issue that person a practicing certificate and they are then free under ss 11(1)(2) and 12(4) to practise law as a barrister or a barrister and solicitor in any way they choose as long as that practicing certificate enures.

[59] The membership of the Cook Islands' Law Society is, perhaps, unusual by comparison with Law Societies in New Zealand and other countries in that only a minority of its members practise law as partners or employees in traditional firms of barristers and solicitors or barristers' chambers. The majority are employed in Government departments or agencies or other Government work, in firms working in the Cook Islands' international banking or trust professions or in other enterprises outside traditional legal practice. Yet all[35] hold unconditional practising certificates. It is members' choice how they will practise, and the Law Society has no power or

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[34] If the requirements of s 3 are fulfilled then, subject to the Law Society's report and compliance with s4, the Chief Justice **shall** (emphasis added) … admit the applicant …" subject only to any conditions the Chief Justice might impose.

[35] Apart from a small number whose admission is conditional.

duty to intervene, provided no breach by members of their duties or obligations comes to notice.

[60] Unconditional restoration to the Roll would entitle Mr Vakalalabure to require the Law Society to issue him a practising certificate and he could then practise law as he chose. His actions between his being struck off and the present do not currently give confidence that he would be able to practise on his own account, unsupervised, with full knowledge of the current state of Cook Islands' law, management of a trust account, observance of the Code of Ethics or full compliance with the many other daily obligations of a lawyer in private practice and in a way which would ensure the standing of the legal profession was not jeopardised.

[61] While Mr Vakalalabure remains in his present position or is employed, whether as a lawyer or otherwise, outside private legal practice, those concerns are not of determinative weight, but were he not to be so employed and wished to set up in practice on his own account, whether in partnership with his wife or otherwise, the necessity for supervision and maintenance of the standards and duties of the profession becomes more prominent.

[62] In light of all of that, there will be an order pursuant to s 5(4) restoring Tevita Tangaroa Vakalalabure also known as Tangaroa Vakalalabure to the Roll of Barristers and Solicitors of this Court but subject to the condition that if, within three years of delivery of this decision, Mr Vakalalabure proposes to go into private practice as a barrister or a barrister and solicitor, whether on his own account or in partnership, before doing so he shall submit his proposals for so doing to the Cook Islands Law Society for its approval, with the proposals to include such provisions as the Society considers appropriate for the independent supervision of his practice for a period, management of any trust account and maintenance of the standards of the profession. Should the Law Society consider that Mr Vakalalabure's proposals do not provide adequate protection for the public and the profession, they are to have the right to revert to the Chief Justice of the day for further directions in that regard.

[63] For completeness it is to be noted that, first, with no disrespect to her, "independent supervision" should not include by Ms Rokoika, and, secondly, that the period of three years is designed to give Mr Vakalalabure time to refresh and

enlarge his familiarity with the precepts mentioned above before going into private practice on his own account and time to ensure the profession's position is not jeopardised by his move.

[64] The terms of s 4(4) appear to require Mr Vakalalabure to again take the Oath of Admission set out in the subsection as part of his readmission. That being the case, he or Ms Rokika is to liaise with the Registrar to make a suitable time for that to occur, either in person or by Zoom.

Hugh Williams, CJ