

**LEGAL PRACTITIONERS'
DISCIPLINARY TRIBUNAL
AT DARWIN**

CITATION: *Calabro v Maley and Law Society NT*
2024-03236-SC

PARTIES: **TINDARO CALABRO**
Appellant
v
PETER MALEY
First Respondent
And
LAW SOCIETY NORTHERN TERRITORY
Second Respondent

FILE NUMBER 2024-03236-SC
HEARING DATE 29 August 2025
DELIVERED 11 February 2026

TRIBUNAL MEMBERS: MR ALASTAIR SHIELDS (CHAIR)
MS HEATHER KING (MEMBER)
MR TOM KORECKI (MEMBER)

REPRESENTATION:

APPELLANT: Self
FIRST RESPONDENT: Mr Jon Tippett KC
SECOND RESPONDENT: Ms Fiona Kepert

REASONS FOR DECISION

1. On 16 October 2024, the Appellant filed a notice of appeal from the decision of the Law Society Northern Territory (Law Society) dated 19 September 2024 (the decision), dismissing the Appellant's complaint against the First Respondent pursuant to section 498 of the *Legal Profession Act 2006* (the Act).
2. An amended notice of appeal was subsequently filed on 19 December 2024, in accordance with an order made at a Directions Hearing on that date.
3. The appeal was heard in Darwin on 29 August 2025.

Preliminary Issue – prior dealings between the Chair and the First Respondent

4. At the first Directions Hearing for this appeal on 28 November 2024 (at which all parties were present or represented), the Chair of the Legal Practitioners' Disciplinary Tribunal (Tribunal) advised the following:

“There is one preliminary thing that I thought I'd mention just before we start. Mr Maley is known to me. I was at law school at the same time; our times at law school overlapped. And he also acted for a nephew of mine in a guilty plea on a traffic matter a few years ago. I don't consider that would compromise me in any way, but in the interests of transparency, I thought I'd let all the parties know. If and when we get to the point where there's a - we form a panel of the Tribunal to hear this matter, you'll be advised of all the parties on it, and obviously if I'm on that panel, then there will be an opportunity for anyone who wants to make an objection to do so at that stage. But I thought I'd let people know from the start.”

5. At the commencement of the Appeal hearing on 29 August 2025, the Appellant queried the presence of the Chair on the Tribunal, given the previous advice by the Chair.
6. The Appellant initially indicated that he objected to the presence of the Chair on the Tribunal on the basis that a conflict of interest existed, because the Appellant considered that the Chair had disclosed that a friendship existed between the Chair and the First Respondent, and that the First Respondent had acted for the Chair's son in a criminal matter.
7. The Chair read from the transcript of the Directions Hearing on 28 November 2024 (quoted above), and clarified there was no personal friendship between the Chair and the First Respondent, and that the First Respondent had acted for the Chair's nephew in a guilty plea on a criminal matter a few years previously.

8. The Chair reiterated he did not consider that his prior dealings with the First Respondent would impact his capacity to be fair on the Tribunal in any way, and that the three members on the Tribunal were committed to giving fair and proper attention to the Appellant's appeal.
9. Following the clarification provided by the Chair, the Appellant did not proceed with an objection to the Chair's involvement with the Appeal.
10. The Tribunal is satisfied that no objective reasonable observer would apprehend or suspect bias due to the previous dealings between the Chair and the First Respondent as outlined above.

Background

11. On 20 January 2024, the Appellant made a complaint to the Law Society in accordance with section 471(d) of the Act about the conduct of the First Respondent. The complaint specified 2 grounds; however the second ground was dismissed on 19 March 2024 by the Law Society pursuant to sections 478(1)(b) and 478(2) of the Act and is not the subject of this appeal.
12. The remaining ground of the complaint alleged that the First Respondent and his firm acted for the Appellant in proceedings against his former partner, Carol Need, (Need) and that in 2023 the First Respondent acted for Need.
13. It is acknowledged by the parties that the First Respondent and his firm acted for both the Appellant and Need as alleged by the Appellant in his complaint to the Law Society.
14. On 19 September 2024, the Law Society dismissed the remaining ground of the Appellant's complaint pursuant to section 498(b) of the Act, on the basis that the Law Society was satisfied there is no reasonable likelihood that the First Respondent would be found guilty by the Tribunal of either unsatisfactory professional conduct or professional misconduct. It is this decision that the Appellant has appealed to the Tribunal.

The Appeal Grounds

15. The Appellant's amended notice of appeal can be summarised as containing the following grounds of appeal:
 - a. That there was a "clear and undeniable" conflict of interest; and
 - b. The First Respondent was deliberate in his decision to represent Need in the criminal proceedings in which the Appellant was the complainant.

16. During the course of the Appeal hearing, it also became apparent that the Appellant contends the First Respondent knew that the Appellant was the complainant in the criminal proceedings when he took initial instructions from Need on 15 February 2023, and that the First Respondent would have continued to act for Need in those proceedings had the Appellant not been present in the Local Court on 3 April 2023, when the First Respondent appeared to seek leave to withdraw as solicitor on the record for Ms Need.

The Nature of Appeals from the Law Society to the Tribunal

17. This appeal to the Tribunal is by the Appellant under section 506 of the Act. The Tribunal is satisfied that the Appellant is an aggrieved person entitled to bring an appeal, and that the appeal was started within the 28-day period required by section 506(3) of the Act.

18. Section 507 of the Act provides that such appeals are by way of rehearing, and that the Tribunal is bound by the rules of evidence in conducting the hearing.

19. It is well accepted that the standard of proof in such appeals is the *Briginshaw* standard, namely the civil burden of proof on the balance of probabilities, but with due regard as to the seriousness of the allegations.

20. Section 511(1)(a) of the Act provides that, on hearing the appeal, the Tribunal must:

- a. Affirm the Law Society's decision; or
- b. Set aside the Law Society's decision and direct the Law Society to start disciplinary proceedings in the Tribunal in relation to the whole or part of the complaint; or
- c. Set aside the Law Society's decision and take action that the Law Society could take under section 499(2) of the Act.

21. The Tribunal's powers in response to an appeal are limited to those set out in Section 511 and, because the Law Society has no power to order compensation under section 499(2), the Tribunal has no power to award compensation or damages in these proceedings as an outcome of this appeal.

Findings on Appeal

22. The Tribunal makes the following findings and determinations:

- i. The First Respondent and his firm acted for the Appellant in multiple matters during 2020 and 2021 and ceased to act for him in or around July 2021. Each of these matters also involved Need in some capacity.

- ii. Need attended at the office of the First Respondent on 15 February 2023 and provided preliminary instructions for the First Respondent to act for her in criminal proceedings.
- iii. Need completed a “New Client/Matter Form” on 15 February 2023, and under the heading “Conflict Check” she wrote down that the name of the other party was “NT Police”. Need also paid a preliminary retainer of \$500 towards her legal fees.
- iv. The First Respondent attended the Local Court on 15 February 2023, and sought an adjournment of Need’s matter, and the matter was adjourned until 3 April 2023.
- v. At some time on or after securing the adjournment on 15 February 2023, and prior to or on 21 February 2023, the First Respondent received the police précis and charges relating to Need’s criminal matter and became aware that the Appellant was the complainant in that matter.
- vi. On 21 February 2023, the First Respondent wrote to Need and explained that because the firm had acted for the Appellant previously, the professional conduct rules preclude the First Respondent from continuing to act for Need, and Need would need to engage the services of another legal practitioner.
- vii. On 3 April 2023, the First Respondent attended the Local Court and sought and obtained leave to withdraw as the solicitor on the record for Need’s criminal matter. Another legal practitioner from a different firm was also present and became the solicitor on the record for Need’s criminal matter.
- viii. There is no evidence before the Tribunal to suggest that the First Respondent was aware that the Appellant was the complainant in Need’s criminal matter until after the First Respondent represented Need at the Local Court on 15 February 2023. The Tribunal has carefully reviewed the file note taken by the First Respondent when he took brief instructions from Need, and the Tribunal is not satisfied that there is anything contained in that file note to suggest that he was aware the complainant in the criminal matter involving Need was his former client, the Appellant.
- ix. The Tribunal accepts the submission on behalf of the First Respondent that the words “good client” in the content of the file note do not necessarily infer anything further than the fact that the client is in employment and has no significant relevant prior convictions. Although the Tribunal is unable to read all of the words in the file note, the Tribunal is satisfied that none of the words are the surname of the Appellant.

- x. It therefore follows that the Tribunal is not satisfied that the First Respondent deliberately agreed to act for Need, in the knowledge that the complainant in the criminal proceedings was the Appellant.
- xi. The Tribunal accepts that it is difficult for a person in the position of the Appellant to accept that someone in the position of the First Respondent would not immediately recognise Need and assume that the criminal proceedings involved the Appellant. The Tribunal considers that it is not unusual for a practitioner with a busy practise to not immediately recognise parties from previous legal representation, particularly, given the 18 month period of time that had elapsed since the First Respondent had last acted for the Appellant.
- xii. The Tribunal however agrees with the statement in the Law Society's decision that the Appellant was correct to be concerned when he learned that the First Respondent was acting or had acted for Need.
- xiii. The Appellant's contention that the First Respondent would have continued to act for Need had the Appellant not been present at the Local Court on 3 April 2023 is not supported by the evidence, particularly the letter dated 21 February 2023 from the First Respondent to Need, in which the First Respondent identified that a conflict existed and that he could no longer act for Need.
- xiv. Rule 3 of the Law Society Northern Territory Rules of Professional Conduct and Practice (SCR Rules) is relevant to consideration of the appeal. Rule 3 provides:
- “3. Restraint on Acting for a Former Client**
Consistently with the duty which a practitioner has to preserve the confidentiality of a client's affairs, a practitioner must not accept a retainer to act for another person in any action or proceedings against, or in opposition to, the interest of a person -
- (a) for whom the practitioner or the firm, of which the practitioner was a partner, has acted previously; and
 - (b) from whom the practitioner or the practitioner's firm has thereby acquired information confidential to that person and material to the action or proceedings; and
- that person might reasonably conclude that there is a real possibility the information will be used to the person's detriment.”
- xv. Section 694 of the Act requires Australian Lawyers (including the First Respondent) to comply with the SCR Rules.

- xvi. The Tribunal is satisfied that the First Respondent was in breach of Rule 3 of the SCR Rules when he accepted instructions on 15 February to act for Need.
- xvii. The Tribunal considers that seriousness of the breach is mitigated by the following:
 - a. the First Respondent only acted for Need for a very short period from 15 February 2023 until 21 February 2023;
 - b. the First Respondent was not aware that the Appellant was the complainant in the Criminal matter where Need was the alleged offender until he received the précis from the DPP;
 - c. the First Respondent ceased to act for Need promptly once he became aware of the First Appellant's involvement in the criminal proceedings;
 - d. there is no evidence to suggest that the Appellant sustained any losses or that Need was advantaged in any way from the breach; and
 - e. the First Respondent's firm has since improved their conflict checking processes to seek to enable early detection of similar conflicts in future.
- xviii. Although the Appellant did not deal with this aspect of the Law Society's decision as part of this appeal, the Tribunal has considered the First Respondent's conflict checking process and has concluded that, irrespective of whether a conflict checking process was carried out in this case, the conflict checking process would not have identified that the Appellant was a previous client of the First Respondent's firm because Need had not identified the Appellant as the other party on the client form completed by her.
- xix. Having considered all of the available evidence, the Tribunal is satisfied that although the First Respondent was in breach of the SCR rules and that he acted for Need in circumstances where there was a conflict of interest, the nature of the breach was such that the Law Society was correct in concluding that there was no reasonable likelihood that the First Respondent would be found guilty by the Tribunal of either unsatisfactory professional conduct or professional misconduct.

Orders

- 23. The Tribunal affirms the decision of the Law Society dated 19 September 2024, and the Appeal is dismissed.
- 24. The parties have liberty to apply in respect of costs and any other relevant matter.