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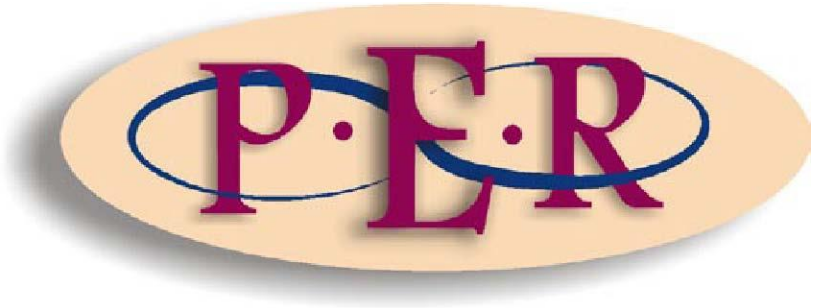
PROTECTING THE FOUNDATION AND MAGNIFICENT EDIFICE OF THE LEGAL PROFESSION: REFLECTIONS ON *THUKWANE v LAW SOCIETY OF THE NORTHERN PROVINCES* 2014 5 SA 513 (GP) AND *MTSHABE v LAW SOCIETY OF THE CAPE OF GOOD HOPE* 2014 5 SA 376 (ECM)

eISSN 1727-3781



2015 VOLUME 18 No 7

http://dx.doi.org/10.4314/pelj.v18i7.07

PROTECTING THE FOUNDATION AND MAGNIFICENT EDIFICE OF THE LEGAL PROFESSION: REFLECTIONS ON *THUKWANE v LAW SOCIETY OF THE NORTHERN PROVINCES* 2014 5 SA 513 (GP) AND *MTSHABE v LAW SOCIETY OF THE CAPE OF GOOD HOPE* 2014 5 SA 376 (ECM)

TC Maloka*

1 Introduction

The law reports are replete with cases involving applications for admission and enrolment in the roll of attorneys, removal from the roll, counter-applications challenging striking-off, and for readmission and enrolment. In each of these instances the critical issue is whether an applicant is a "fit and proper person" to be admitted or, in the case of an errant practitioner, whether he or she is still a "fit and proper person" to remain on the roll of attorneys. However, the threshold for being considered a "fit and proper person" is much higher than otherwise in proceedings for readmission and reenrolment. Put differently, the additional question to be answered in an application for re-admission is whether there has been a genuine, complete and permanent reformation on the part of the disbarred practitioner.

While the battle between the law societies or bar councils and disbarred practitioners over readmission and reenrolment is a perennial feature on the rolls of many divisions of the High Court,[1] the issue that had to be determined by Rabie J in *Thukwane v Law Society of the Northern Provinces*[2] and Goosen J in *Mtshabe v Law Society of the Cape of Good Hope*[3] respectively was different. It concerned a novel issue of whether a person previously convicted of a criminal offence and who was still serving a sentence in the sense of being a parolee could be admitted or re-

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1 See the most recent incarnation of the quest for redemption: *Theron v Law Society of the Cape of Good Hope* 2015 ZAWCHC 23 (6 March 2015); *Noordien v Cape Bar Council* 2015 ZAWCHC 2 (13 January 2015).

2 *Thukwane v Law Society of the Northern Provinces* 2014 5 SA 513 (GP) ("*Thukwane*").

3 *Mtshabe v Law Society of the Cape of Good Hope* 2014 5 SA 376 (ECM) ("*Mtshabe*").

admitted. *Thukwane* and *Mtshabe* engage important and interrelated issues demanding definitive and systematic consideration.

Foremost is the term "fit and proper person". While it is not defined either in the *Attorneys Act* 53 of 1979 or the *Advocates Act* 74 of 1964, in Oliver Wendell Holmes' irony-tipped phrase, it casts a "brooding omnipresence"[4] over entry into the profession and throughout a legal practitioner's life. The second is the controversial question whether, and to what extent, a parolee can be considered a "fit and proper person" to be admitted and enrolled. The third issue is whether the law society can create a legitimate expectation that the parolee would enter the legal profession *inter alia* by permitting the parolee to attend the School for Legal Practice and to write the attorneys' admission examination. Lastly there is the troubling issue concerning the duty of the relevant law society, as *custos morum* of the profession,[5] in fulfilling its statutory responsibility as an interested party in proceedings concerning the re-admission and reenrolment of a parolee. Granted that in the specific context of *Mtshabe* the law society did not oppose the re-admission of the applicant. That does not necessarily mean that it was persuaded that the applicant is a "fit and proper person" to be re-admitted as an attorney despite the applicant's being a parolee.

2 The brooding omnipresence of the fitness requirement

As officers of the courts lawyers play a vital role in upholding the *Constitution* and ensuring that the justice system is efficient and effective.[6] While lawyers occupy a venerable position in society, rampant, sometimes virulent criticism of the legal

4 *Southern Pacific Co v Jensen* 244 US 205 (1917) 222.

5 See *Solomon v Law Society of the Cape of Good Hope* 1934 AD 401; *Hassim (also known as Essack) v Incorporated Law Society of Natal* 1977 2 SA 757 (A).

6 In his keynote address to the Cape Law Society AGM, Justice Chaskalson spoke on the topic "The rule of law: The importance of independent courts and legal professions", in which he discussed the *Legal Practice Bill* [B20-2012] (LPB) and other topics linked to the independence of the judiciary. Justice Chaskalson highlighted the role of an independent legal profession as an essential component of a constitutional democracy. He commented: "Although not specifically mentioned in the Constitution, the judiciary depends on an independent legal profession to enable it to perform its constitutional duty. This is an incident of the rule of law which is entrenched in our Constitution. … Without the assistance of lawyers, judges would not be able to discharge their constitutional duty to uphold the law without fear or favour." (Chaskalson 2013 *De Rebus* 13).

profession is longstanding.[7] One of the overriding considerations behind the overhaul of the legal profession is the perceived ineffective regulation of legal practitioners by different constituent bodies at the expense of the public interest.[8] The advent of constitutional democracy has in no uncertain terms demonstrated that the requirement of being "fit and proper" is decidedly a constitutional issue.[9] The other aspect of constitutionality relates to the right to practise one's trade or profession.[10] In recent years, high profile cases involving the suspension and subsequent removal of the National Directors of Public Prosecution following probes into their fitness have brought the matter into sharp focus.[11]

Conceived as a gatekeeping standard in the legal profession, the fitness requirement casts a brooding omnipresence over a lawyer's career regardless of whether the person is in legal practice or not. Although in exercising its disciplinary powers the court is usually concerned with conduct in the course of a lawyer's practice, one who has demonstrated unethical conduct unconnected with practice may still be found to be lacking the requisite honesty and integrity to remain in practice.[12] The overriding concern is to safeguard the good name of the profession and the public interest.[13]

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7 Ponnan JA in *General Council of the Bar of SA v Geach* 2013 2 SA 52 (SCA) para [87] begins his concurring judgement with the striking observation: "'The first thing we do, let's kill all the lawyers' is Dick the Butcher's exhortation in *Henry VI* to Jack Cade – 'the head of an army of rabble and a demagogue pandering to the ignorant'. That oft misunderstood phrase was William Shakespeare's homage to lawyers as the primary defenders of democracy. Through it, the Bard recognised that for tyranny and anarchy to flourish, the law and all those who were sworn to uphold it had to first be eliminated. Lawyers, because of the adversarial nature of litigation in this country, will never be universally loved by the public. That is not to suggest that as members of a distinguished and venerable profession they do not occupy a very important position in our society. After all they are the beneficiaries of a rich heritage and the mantle of responsibility that they bear as the protectors of our hard won freedoms." Also see Rose 1998 *Stetson L Rev* 345-369.

8 *Legal Practice Act* 28 of 2014.

9 Section 12(6)(a)(iv) of the *National Prosecuting Act* 112 of 1998. See further *DA v President of the RSA* 2013 1 248 (CC) paras 14-49.

10 See *De Freitas v Society of Advocates of Natal* 1997 4 SA 1134 (N).

11 See Ginwala 2008 http://www.gov.za/sites/www.gov.za/files/ginwala_report_1.pdf. Currently, President Jacob Zuma is going ahead with a probe into National Director of Public Prosecutions Mxolisi Nxasana's fitness to hold office (Legalbrief Today 2015 http://legalbrief.co.za/diary/legalbrief-today/story/zuma-decides-to-go-for-npa-head/pdf/).

12 In *Pienaar & Versfeld v Incorporated Law Society* 1902 TS 11 16, the Transvaal High Court formulated a test that still forms a sound basis for distinguishing between conduct by a practitioner that is intrinsically and necessarily unprofessional, and conduct that may be unprofessional and undesirable only because of the contingent conditions of legal practice within which it occurs. Innes JP asked: "Has [the Court] the power to prohibit conduct on the part of

What constitutes a fit and proper person for the legal profession is a notoriously elusive proposition.[14] The fitness requirement is a question of fact, although it involves a value judgement. Central to the determination of this question is whether the applicant for admission is a person of absolute personal integrity, reliability and scrupulous honesty.[15] The same ethical standards are demanded of advocates.[16] It has been said that an advocate, whose calling is "one which is praiseworthy and necessary to human life", should "always cling to the famous principle that the true jurist is an honest man".[17] These qualities of honesty and integrity must continue to be displayed throughout a legal practitioner's career. A practitioner who lacks these qualities cannot be expected to uphold the high standard of professional ethics.

This brings to our attention a related consideration of fundamental importance to constitutional democracy. Like a dormant volcano, the simmering question of fitness to hold judicial office is bursting beneath the rarefied surface of the South African bench against the backdrop of allegations of incapacity, incompetence[18] or impeachable misconduct.[19] This is apparent from the unfolding conundrum facing the judiciary in the aftermath of grave allegations made against the Judge President of the Western Cape.[20] In lodging a complaint of gross misconduct against Hlophe JP for violating the judicial authority of the apex court with the Judicial Service

practitioners, which though not in itself immoral or fraudulent, may yet in the opinion of the Court be inconsistent with the proper position of its practitioners and calculated, if generally allowed, to lead to abuses in the future?" Also see *Pretoria Society of Advocates v Ledwaba* 2014 ZAGPPHC 849 (22 October 2014); *Incorporated Law Society of the Transvaal v Mandela* 1954 3 SA 102 (T) 107B-108C.

13 See *New South Wales Bar Association v Hamman* 1999 NSWCA 404 417; *Legal Services Commissioner v Hewlett* 2008 QLT 3.

14 For a more complete exposition see Slabbert 2011 *PELJ* 212-218.

15 *Vassen v Law Society of the Cape of Good Hope* 1998 4 SA 532 (SCA) para 14.

16 Section 3(1)(A) of the *Advocates Act* 74 of 1964. See *Kekana v Society of Advocates of SA* 1998 4 SA 649 (SCA) 655I-656A; *General Council of the Bar of SA v Matthys* 2002 5 SA 1 (E) paras [34], [35].

17 *Vereniging van Advokate van SA (Witwatersrand Afdeling) v Theunissen* 1972 2 SA 218 (T).

18 For further engagement: Okpaluba 2013 *JJS* 106-127; Okpaluba 2014 *SALJ* 631.

19 See for eg *Motata v S* 2010 ZAGPJHC 134 (29 November 2010).

20 The unprecedented events giving rise to the ongoing litigation have their roots in four related cases which were heard by the Constitutional Court during March 2008, conveniently referred to as the "Zuma/Thint cases" (*Zuma v National Director of Public Prosecutions* 2009 2 SA 277 (SCA); *Zuma v National Director of Public Prosecutions* 2009 1 SA 1 (CC); *Zuma v National Director of Public Prosecutions* 2009 1 SA 141 (CC)).

Commission, and the latter's counter-complaint against the Constitutional Court justices,[21] the "Langa Court"[22] unwittingly opened a proverbial can of worms.[23]

If the JSC eventually cuts the Gordian knot on the Hlophe matter, society will no longer be able to evade the spill-over. Put differently, the removal of a judge from office on the recommendation of the JSC after a finding of guilt constitutes the judiciary's version of capital punishment. It is the ultimate sanction that can be recommended by a Judicial Conduct Tribunal. But where, as in this case, the judicial officer in question rather than taking the personal initiative of resigning from office resorts to using the judicial process to forestall the disciplinary proceedings, the vexed question is whether such a judicial officer whose credibility has been impugned by the Judicial Conduct Tribunal or who after making a statement under oath resiles from that evidence[24] can still be considered a fit and proper person to remain on the bench. In many ways, this is a question of enormous import in a constitutional democracy, given that the judiciary plays a sensitive and crucial role in controlling the exercise of power and upholding the Bill of Rights.[25] The principles applying to a judicial officer demand that the holder of that esteemed office be a fit and proper person. The question is: assuming that such a judicial officer resigns or is impeached in the wake of the adverse credibility findings and/or gross misconduct, can he or she be readmitted or reinstated to the roll of legal practitioners? The straightforward answer is in the negative. This was luminously expounded by

21 *Hlophe v JSC* 2009 4 All SA 67 (GJ).

22 The practice of naming a court after its Chief Justice is relatively novel in the Commonwealth, and deserves some explanation. The modern American practice of naming Supreme Court benches after its Chief Justice took hold in the 1960s, when books were published about the "Warren Court". In the period that followed, a number of books have appeared about the "Burger Court" and the "Rehnquist Court". See generally Frank *Warren Court*; Spaeth *Warren Court*; Cox *Warren Court.* In Canada, the practice began in 1984 but reached a high-water mark in 1991 with a special issue of *Manitoba Law Journal* dedicated to the "Dickson Court". Since that time, there have been articles on the "Laskin Court" and the "Lamer Court". For a full exposition: Bryant 1995 *Osgoode Hall LJ* 79; McCormick 1999 *Dalhousie LJ* 93.

23 See *Langa CJ v Hlophe* 2009 4 SA 382 (SCA); *Freedom Under the Law v Acting Chairperson of the Judicial Service Commission* 2011 1 SA 546 (SCA); *Acting Chairperson: Judicial Service Commission v Premier of the Western Cape Province* 2011 3 SA 538 (SCA).

24 *Nkabinde v JSC President of Judicial Conduct Commission* 2011 1 SA 279 (GJ).

25 See *Lawyers Association v Heath* 2001 1 SA 883 (CC); *Justice Alliance of SA v President of RSA* 2011 5 SA 388 (CC); *Re Therrien* 2002 2 SCR 3; *Valente v The Queen* 1985 2 SCR 733.

Bradley H Wright, sitting as the Chair of the Ontario Law Society Hearing Panel in *Law Society of Upper Canada v Kerry Parker Evans*:[26]

> A judge who is found by his or her peers to lack credibility takes a jackhammer to that foundation. Repairing the foundation consists not only in unplugging the jackhammer but in denying the jackhammer access to the foundation and the magnificent edifice which rests upon it for as long as it takes to restore informed public confidence in the soundness of the site. We find that an informed public would have its confidence in the legal profession shaken by a relatively swift restoration to membership in the Society of a former judge whose credibility was impugned by his peers on the bench, and who admits to needing ongoing psychological therapy and practice conditions including monitoring to ensure that the misconduct would not recur.

We are also troubled by the fact that Mr Evans *breached the most serious undertaking any person in Canada can give, an undertaking that no person, save a judicial appointee, can give. It is more serious than any other undertaking than even a Prime Minister can give for, while a Prime Minister may appoint judges, it is the judges who may one day sit in judgement of a Prime Minister.* Mr Evans breached the undertaking, described in *Re Therrien* 2001 2 SCR 3, that a person gives when the person ascends to the bench of a Canadian court and accepts to sit in judgement of others. The sexual misconduct is one thing, and it is bad enough. It is exacerbated when it follows the giving of a solemn undertaking to comport one's self to the highest standards, and not to engage in misbehaviour. For reasons set forth in *Re Therrien*, ascending to the bench is tantamount to giving such an undertaking. From the perspective of the Law Society, *breaching that undertaking is additional misconduct over and above the original misconduct*.

Kerry stands for the proposition that a judge's membership in the law society does not disappear, but goes into abeyance, attesting to a continuing interest of the society in what happens while that person is a judge. This means that although the misconduct occurred while the person was a judge, the law society should apply its standards as if that person was still a lawyer. The fact that a judge abused his position as a judicial officer reflects badly on his standing as a lawyer because he

[26] *Law Society of Upper Canada v Kerry Parker Evans* 2006 ONLSHP 40 paras [101], [102] (emphasis added). The termination of Mr. Evans' career as a justice of the Ontario Court of Justice was by resignation in circumstances where he may be presumed to have regarded his removal as a virtual certainty.

would not have been a judge but for having been a lawyer to start with. This has bearing for judges appointed from the ranks of the legal profession. In such circumstances, the bar may apply to have the former judge's name struck off the roll.

3 Removal or suspension

The inquiry into whether an attorney is a fit and proper person to remain in practice is governed by the provision of section 22(1)(d) of the *Attorneys' Act* of 1979.[27] This entails a weighing of the conduct complained of against the conduct expected of an attorney and to this extent involves a value judgement.[28] The appropriate sanction, namely a suspension from practice or striking from the roll, lies within the discretion of the court.[29] An application for striking off the roll is in itself a disciplinary enquiry and *sui generis*,[30] and not a *lis* between a law society and the attorney. The law society, as *custos morum* of the profession, places the facts before the court for consideration.[31] The facts on which the court exercises its discretion are to be established on a balance of probabilities.[32] Though the opinion or conclusion of the Law Society that the practitioner is no longer a fit and proper person to practice as an attorney carries substantial weight, the ultimate determination of fitness remains in the court's hands.[33]

Striking off is the legal profession's version of capital punishment, and is the worst sanction that can be meted out by a court. An order for removal from the roll has generally been imposed if it has been found that the practitioner is no longer a fit and proper person to practice as attorney unless there are exceptional circumstances

27 Section 22(1(d) of the *Attorneys' Act* 53 of 1979 reads as follows: "(1) Any person who has been admitted and enrolled as an attorney may on application by the society concerned be struck off the roll or suspended from practice by the court within the jurisdiction of which he practices – (a) – (d). (b) If he, in the discretion of the court, is not a fit and proper person to continue to practise as an attorney."

28 See *Law Society of the Cape of Good Hope v C* 1986 1 SA 616 (A*)*; *Jasat v Natal Law Society* 2000 3 SA 44 (SCA).

29 See *A v Law Society of the Cape of Good Hope* 1989 1 SA 849 (A) 851A-F.

30 *Prokureursorde van Transvaal v Kleynhans* 1995 1 SA 839 (T) 851E-F.

31 *Cirota v Law Society of the Transvaal* 1979 1 SA 172 (A) 187H.

32 *Law Society v Matthews* 1989 4 SA 389 (T) 393I-J.

33 *Kaplan v Incorporated Law Society, Transvaal* 1981 2 SA 762 (T) 781H.

justifying a lesser sanction such as suspension from practice,[34] and has generally been made in the following situations: mishandling of trust monies;[35] practising without being in possession of a fidelity fund certificate;[36] misappropriation of funds;[37] criminal conviction;[38] overreaching;[39] touting;[40] defrauding the revenue;[41] deceitful conduct and perjury;[42] contravention of the referral rule;[43] and ungovernability.[44]

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34 *Van den Berg v General Council of the Bar* 2002 2 All SA 499 (SCA) para [50]; *Mafokate v Law Society of the Northern Provinces* 2013 ZASCA 125 (23 September 2013) para 23; *Law Society of the Northern Provinces v Mogami* 2010 1 SA 186 (SCA) para [4].

35 See *Law Society of the Northern Provinces v Mabando* 2011 4 All SA 238 (SCA); *Botha v Law Society of the Northern Provinces* 2009 3 All SA 239 (SCA).

36 See *Law Society of the Northern Provinces v Viljoen, Law Society of the Northern Provinces v Dykes* 2011 2 SA 327 (SCA).

37 See *Law Society of the Northern Provinces v Coetzee* 2014 ZAGPPHC 621 (12 August 2014); *Law Society of the Cape of Good Hope v Schoeman* 2014 ZAWCHC 110 (29 July 2014).

38 *Ngwenya v Society of Advocates, Pretoria* 2006 2 SA 88 (WLD) 90J-91; *Hassim (also known as Essack) v Incorporated Law Society of Natal* 1977 2 SA 757 (A) 768A-B; *Incorporated Law Society of the Transvaal v Mandela* 1954 3 SA 102 (T) 104A.

39 *General Council of the Bar v Geach* 2013 2 SA 52 (SCA) paras 130-132.

40 *Law Society of the Northern Provinces v Sonntag* 2012 1 SA 372 (SCA). See also Boome and Slabbert 2015 *THRHR* 407

41 See *Legal Services Commissioner v Stirling* 2012 VCAT 347 para [85].

42 *Kekana v Society of Advocates of SA* 1998 4 SA 649 (SCA) 655G. Hefer JA stated: "I share the view expressed in *Olivier's* case *supra* at 500H *ad fin* that, as a matter of principle, an advocate who lies under oath in defending himself in an application for the removal of his name from the roll, cannot complain if his perjury is held against him when the question arises whether he is a fit and proper person to continue practising." Also see *General Council of the Bar v Geach* 2013 2 SA 52 (SCA) paras [142]; *Johannesburg Society of Advocates v Van Blankenberg* 2015 ZAGPJHC 41 (13 March 2015).

43 *Cape Bar Council v Noordien* 2013 ZAWCHC 138 (30 August 2013); *Eastern Cape Society of Advocates v Vusani* 2014 ZAECGHC 93 (31 October 2014); *Rosemann v General Council of the Bar of South Africa* 2004 1 SA 568 (SCA).

44 The decisions of disciplinary panels of the Canadian Law Society are instructive. The concept of "ungovernability" was considered by the panel in *Law Society of BC v Spears* 2009 LSBC 28 para [7]. The Law Society Panel described the concept as follows: "The Panel is very concerned that the Respondent has in the past demonstrated an unwillingness to comply with conditions imposed upon him by the Law Society. *It is a fundamental requirement of anyone who wishes to have the privilege of practising law that that person accept that their conduct will be governed by the Law Society and that they must respect and abide by the rules that govern their conduct.* If a lawyer demonstrates that he or she is consistently unwilling or unable to fulfil these basic requirements of the privilege to practise, that lawyer can be characterized as 'ungovernable' and cannot be permitted to continue to practise." Also see *Law Society of Upper Canada v John Phillip Thomas Middlebrook* 2013 ONLSHP 103; *Law Society of Upper Canada v Munro* 2015 ONLSTH 45. It is submitted that majority of cases on suspensions and disbarment in South Africa fall under the rubric of ungovernability. See eg *De Wet v Law Society of the Northern Provinces, In Re: Law Society of the Northern Provinces v De Wet* 2014 ZAGPHC 799 (10 October 2014); *Law Society of the Cape of Good Hope v Qoboshiyane* 2013 ZAECGHC 35 (18 April 2013).

4 The question for determination in proceedings for re-admission

The path to a successful re-entry into the profession by a practitioner previously struck off the roll for conduct involving dishonesty is an arduous one.[45] As a general rule, an order of striking off for serious professional misconduct is intended to be permanent.[46] Re-admission is the exception rather than the rule. The applicant bears the difficult and formidable onus of proving that he or she is a fit and proper person to be re-admitted. In contrast to an application for admission, an application for re-admission by a disbarred practitioner invariably attracts strict scrutiny.[47] Refusal by an applicant to present appropriate evidence in support of his or her own readmission application is fatal.

The crisp question for determination in proceedings for re-admission or reinstatement is whether there has been a genuine, complete and permanent reformation on the part of the disbarred practitioner seeking reinstatement.[48] This involves an enquiry as to whether the defect of character or attitude which led to the practitioner being adjudged not fit and proper has been purged. In turn, this raises the delicate issue of an assessment of the reformation of the applicant's character and the prospects of his or her successful conformation in the future to the exacting demands of the profession that he or she seeks to re-enter. This brings to the fore the problematic issue of whether there is evidence of the careful and considered soul-searching required in order to demonstrate that the defect in character has been remedied and the applicant is indeed reformed. In effect, until and unless there is such a cognitive appreciation on the part of the disbarred practitioner, it is nigh impossible to see how the defect can be cured or corrected. Accordingly, any true and lasting reformation of necessity depends upon such appreciation. This is because the standards of the legal profession are exacting. There are cases where the gravity of professional misconduct by its very character may exclude the prospect of rehabilitation.[49] Even though there is evidence indicating that it is

45 For a full discussion: Slabbert and Boome 2014 *PELJ* 44.
46 *Malan v Law Society of the Northern Provinces* 2009 1 SA 216 (SCA) para [8].
47 *Ex parte Aarons, Law Society Intervening* 1985 3 SA 286 (T) 290C-G.
48 See *Law Society of the Transvaal v Behrman* 1981 4 SA 538 (A) 557A-C; *Society of the Cape of Good Hope v C* 1986 1 SA 616 (A) 640C-D.
49 *Budricks v Law Society of the Cape of Good Hope* 2008 ZAECHC 73 (24 April 2008) para [13].

unlikely that a disbarred practitioner will repeat his or her previous misconduct, the first duty of the law society is to protect the public interest, particularly public confidence in every member of the profession.

5 Facts and legal issues in *Thukwane*

What weight should be given to the fact that an applicant for admission is still on parole for a serious offence? This is a novel issue in so far as admission or re-admission in South Africa is concerned. At issue in *Thukwane* was the refusal to register the applicant's contract of articles on the ground that as a parolee he had failed to prove that he was a fit and proper person pursuant to section 4 of the Act. The applicant contended that he had been fully rehabilitated and that he was a fit and proper person to enter the profession. It was the position of the Law Society that given the nature and gravity of conviction for murder, violence and dishonesty, absent convincing evidence of genuine and enduring rehabilitation[50] the applicant cannot be considered to have demonstrated good character, repute and fitness as envisaged by the provisions of section 4(b) of the Act. In seeking to review and set aside the respondent's decision, the applicant raised three principal arguments, namely legitimate expectation, the status of a parolee, and the lack of a fair hearing. In the ensuing discussion, only the issues of legitimate expectation and parolee status are considered.

6 Legitimate expectation argument

It was contended in *Thukwane* that the law society created a legitimate expectation that the parolee could enter the legal profession by way of articles, *inter alia* by allowing him to attend the practical legal training school and to write the attorneys' admission examination. The contention could not be sustained because there is no fitness requirement in respect of attendance at any of the courses or of writing this examination. Rabie J held that:[51]

> The applicant would have known that the question whether he was a fit and proper person would for the first time be considered and decided when he applied for the

50 *Thukwane* paras [20]-[31].
51 *Thukwane* para [42].

> registration of his contract of articles of clerkship. He thus knew that nothing had gone before could relieve him of his statutory obligation to prove to the respondent that he was a fit and proper person. The Act does not require of the respondent to consider the issue of fitness and propriety prior to a person applying for registration of his/her articles of clerkship.

7 The question of parolee status

The problem of applicants with a criminal record seeking admission into the honourable profession was extensively deliberated upon and the guiding principles established in the leading South African case on the subject – *Ex parte Krause.*[52] The approach of South African courts is encapsulated in the following passage in the judgement of Innes CJ:

> The real fact is this - that in most cases the fact of the criminal conviction shows the man to be of such a character that he is not worthy to be admitted to the ranks of an honourable profession. That is the real ground upon which the Court acts in such cases; and it is from that standpoint in my opinion that we should regard the facts of this case.[53]

In the present case it will be recalled that the applicant was still serving parole. In the context of the core principles and considerations referred to in cases dealing with applicants with criminal convictions,[54] the court and society had to be more careful in deciding whether an applicant had proved his or her fitness in order to serve articles. As the High Court in *Mtshabe* explained:[55]

> The fact that the applicant had been placed on parole by the Department of Correctional Services should therefore be seen in the correct perspective. The decision to allow a convicted person to conclude his sentence outside of prison and subject to certain conditions is taken by the relevant parole board on the basis of certain criteria which obviously differ from the criteria used to establish whether a person is fit and proper to be allowed to have his contract of articles of clerkship registered, or to be admitted to practise as an attorney. The granting of parole is not an indication that the applicant should be regarded as a fit and proper person as envisaged by the Act and as was discussed in the cases referred to.

For an applicant on parole to contend that he is a fit and proper person is to overstretch purpose and import of section 73(5) of the *Correctional Services Act* 11 of 1998. A sound interpretation of the relevant provisions makes it clear that parole

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52 *Ex parte Krause* 1905 TS 221.
53 *Ex parte Krause* 1905 TS 221 223.
54 *Ex parte Moseneke* 1978 4 SA 884 (T) 888E-889B; *In re Ngwenya v Society of Advocates, Pretoria* 2006 2 SA 87 (W).
55 *Mtshabe* para [69].

is a form of correction which may be imposed upon a sentenced prisoner in order to meet the broader objective of rehabilitating and reintegrating offenders into the community. Being on parole is antithetical to the requirements of being a fit and proper person. It should be borne in mind that the status of a parolee is not equivalent to one who has been unconditionally released from prison as having served his or her sentence of incarceration.

It is appropriate to take note of two decisions of American courts cited by the High Court in *Mtshabe*.[56] In the matter of *In re Lazcano*[57] the Supreme Court of Arizona was confronted with the question whether a person who was subject to Texas deferred adjudication[58] may be admitted to practise law in Arizona. Whilst an undergraduate student in Texas in 2002, the applicant had been arrested and indicted for burglary and sexual assault. The Texas court deferred adjudication while the applicant completed a 10-year term of probation. After graduating from law school he passed the Arizona bar examination and sought admission to practise in 2008. The Arizona Committee on Character Fitness by majority recommended admission. The matter came before the Supreme Court by way of review and the court sought submission on the question as to the effect of the deferred adjudication on the applicant's fitness to practise law. The Supreme Court denied the application, citing amongst other reasons the public interest dimension at stake.[59]

By contrast, the applicant in *Michael T Miranda v The People of the State of Colorado*[60] was readmitted to practise whilst still on parole. He had been convicted of driving his vehicle whilst intoxicated and causing the death of a person. He received eight years imprisonment followed by five years mandatory parole. His law licence was suspended for two years. The court had found that the applicant had demonstrated the requisite degree of rehabilitation. He had for instance refrained from drinking since the motor vehicle accident; since then participated in

56 *Mtshabe* paras [33]-[35], [37]-[44].
57 *In re Lazcano* 222 P 3d 896 (201).
58 A person on deferred adjudication is treated, in terms of the *Texas Penal Code*, as if the charge is still pending. (See *In re Lazcano* 222 P 3d 896 (201) fn 1).
59 *In re Lazcano* 222 P 3d 896 (201) paras [15] and [16].
60 *Michael T Miranda v The People of State of Colorado* Unreported Case No 10PDJO97 of 17 April 2012.

programmes run by Alcohol Anonymous; expressed remorse; and demonstrated appreciation of the nature of his conduct and its consequences. In reinstating the petitioner, the court imposed the following conditions: that he disclose in writing to and discuss with all prospective clients his status as a parolee and that he obtain written, informed consent from such clients confirming that he had disclosed his status.

In addressing the vexed question of readmitting a person who is still on parole the Supreme Court of Colorado said the following:[61]

> ... the Colorado Supreme Court has not addressed whether a parolee may properly be reinstated or readmitted to the practice of law. The People cite case law from sister jurisdictions rejecting parolees' applications for reinstatement, but we find those decisions factually distinguishable, inasmuch as the gravity of the applicants' criminal offenses in those cases reflects substantially more serious moral turpitude and thus represents a much larger hurdle to reinstatement. And even though some jurisdictions do apply a *per se* rule excluding parolees from the practice of law, the Hearing Board does not view the Petitioner's status as a parolee as an insuperable obstacle to his reinstatement. Instead, we conclude that the fact that the Petitioner is serving a parole sentence ought to be considered as but one element in the totality of the circumstances in order to determine whether his resumption of legal practice will be injurious to the public.

Unlike the parolee in *Michael T Miranda*, Thukwane could not demonstrate sustained rehabilitation. The fact that the applicant in *Thukwane* conducted himself well during parole cannot on its own be regarded as clear and convincing evidence of rehabilitation.[62] It is trite that parolees typically behave well while on parole, therefore admission authorities cannot properly evaluate rehabilitation. In short, an application for admission whilst on parole for serious criminal offences is premature. It is also relevant to take note of the Canadian case of *Miller*.[63] There a doctor had engaged in an affair with a vulnerable patient and as a consequence he had been

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61 *Michael T Miranda v The People of State of Colorado* Unreported Case No 10PDJO97 of 17 April 2012 cited in *Mtshabe* para [34].

62 A report from a psychologist considered by the law society noted that it is "difficult to predict how the applicant would cope with the stress of private practice as it would depend on the manner in which he feels accepted and valued in the situation he finds himself in and the manner in which he addresses his defence mechanisms in time to come". It was also recommended to the applicant that he submit himself to psychotherapy sessions and submit another report to the Law Society in that regard (*Mtshabe* paras [28]-[31]).

63 *Barry Miller v Law Society of Upper Canada* 2004 ONLSHIP 4. A slightly different version of the facts in *Barry* can be gleaned from the leading duress case of *Preller v Jordaan* 1956 1 SA 483 (A). For further discussion: Glover 2006a *SALJ* 97-124; Glover 2006b *SALJ* 285-314.

removed from the medical register in Manitoba. He then obtained a law degree and applied for admission to the Law Society of Upper Canada. When he did so, he provided untruthful particulars about the sexual misconduct, admitting that he had been accused of it, but denying that it had happened. The LSUC Panel found that, at the time of the hearing, the evidence clearly established that Miller was a man of honesty, integrity and empathy, and that the incidents of his untruthfulness to the Society were not as a result of a fundamental character flaw or repeated course of conduct, but had resulted from a deep depression from which he had recovered. This is distinguishable from either *Thukwane* or *Mtshabe*.

8 The problem of unresolved issues of the aftermath: *Mtshabe*

Unlike *Thukwane*, in *Mtshabe* the applicant parolee was a disbarred practitioner who, rather like the 13 advocates in *Geach*,[64] had "mounted the steed of greed".[65] In *Mtshabe* the question for determination was whether the applicant parolee had demonstrated that he had long since removed himself from the circumstances that led to his striking-off and from any unsettled or unresolved issues of the aftermath. Put another way, was there clear and convincing evidence of genuine, complete and lasting reformation on the part of the applicant. It is often said that courts are justifiably slower to reinstate and to put into the hands of an unworthy, disgraced practitioner that almost unlimited opportunity to inflict wrongs upon society possessed by a practising lawyer.[66] The onus on an applicant in a readmission application is both high and stringent.[67] In determining whether or not the onus has been discharged a court is called upon to have regard to the nature and degree of the conduct which led to his removal from the roll; the explanation afforded by him for such conduct; his actions in regard to an enquiry into his conduct and

64 In *General Council of the Bar of SA v Geach* 2013 2 SA 52 (SCA) para [181] Wallis JA refers to a case of a senior advocate appearing before the Pretoria Bar Disciplinary Committee on charges of double briefing and overreaching the RAF, who is reported to have explained his conduct with the telling expression: "*As dit pap reen, moet jy skep*." (If it rains porridge, you must help yourself).

65 *Mtshabe* para [17].

66 See generally *Swartzberg v Law Society of the Northern Provinces* 2008 5 SA 322 (SCA) paras [14], [22].

67 *Kudo v Cape Law Society* 1972 4 SA 342 (C) 345H-346A; *Lambert v Incorporated Law Society* 1910 TPD 77; *Ex parte Wilcocks* 1920 TPD 243; *W v Incorporated Law Society, Transvaal* 1953 4 SA 189 (T) 191A–B.

proceedings to secure his removal; the lapse of time between his removal, the expression of contrition by him and its genuineness; and his efforts at repairing the harm which his conduct may have occasioned others.

Leaving aside the issue of the parolee status, the salient features of *Mtshabe's* case in their totality did not remotely show that the applicant satisfied the relevant principles and considerations enunciated in seminal readmission cases from *Krause, Behrman,* and *Aarons* to *Swartzberg*. In this instance the applicant had been convicted of fraud and he was still on parole. During the criminal proceedings the trial court made adverse credibility findings against the applicant.[68] In short, it found him to be a patently dishonest witness and rejected his evidence. The High Court spoke of the applicant's testimony in these words:[69]

> Having regard therefore to the nature of the offence for which the applicant was convicted as well as the dishonest and lying nature of the defence he proffered at trial, it is apparent that this is a matter in which the applicant must of necessity realise that his prospects of being readmitted to the profession of attorneys must be very slim indeed. In order to gain any prospect of readmission the applicant will have to discharge a heavy onus to demonstrate by clear and convincing evidence that he has indeed reformed and he is now a fit and proper person.

A finding of lack of credibility by a court is very damning and one which the law society would have trouble setting aside regardless of an expression of contrition.[70] In the words of the Chair of the Ontario Law Society Hearing Panel,[71] "if there is a sterling quality of a lawyer, it has to be his candour and truthfulness".

Since being struck off the roll following his conviction for fraud, the following questions may be posed: what was the explanation afforded by him for such transgression? What was the applicant's attitude in regard to an enquiry into his conduct and proceedings to secure his removal? The applicant sought to assign responsibility for his own conduct to his former candidate attorney. In the application for his removal he was found to be uncooperative, even obstructive in

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68 In *S v Mtshabe* 2006 ZAECHC 80 (25 July 2006) para 34 Chetty J stated the following: "The accused's blatant untruthfulness ... permeated every aspect of his evidence. He was not only a shocking witness with no regard for the truth but moreover he was an extremely evasive witness, whose answers during cross-examination bore little relation to the questions asked."

69 *Mtshab*e para [14].

70 *General Council of the Bar of SA v Geach* 2013 2 SA 52 (SCA) paras [99]-[101].

71 *Law Society of Upper Canada v Kerry Patrick Evans* 2006 ONLSHP 40 para [93].

dealing with the allegations against him. He then launched a counter-application vigorously resisting his removal from the roll, in the process making specious attacks against the law society.[72]

The enormity of the applicant's conviction and professional misconduct and his parolee status bring to the fore problematic questions of rehabilitation. In effect, this prompts the difficult question: how does an applicant redeem himself where his integrity has been found wanting in serious respects, where he has made himself guilty of dishonest and unprofessional conduct, and where he has evinced defects of character which show beyond question that he was not a fit and proper person to be an attorney? The answer can be only by adducing cogent evidence of sufficient quality to "convince" the court of the applicant's "genuine, complete and permanent reformation," that "the defect of character" which caused the transgression "no longer exists," and "that he can in the future be trusted to carry out the duties of an attorney in a satisfactory way as far as members of the public are concerned".

The evidence of reformation came from the applicant himself and supporting affidavits came from a former inmate, officials of the Department of Correctional Services and a number of organisations. These were buttressed by faith-based character witnesses. It is accepted that the applicant in reinstatement proceedings must show that his or her conduct is unimpeached and unimpeachable, and this can be established only by the evidence of trustworthy persons, especially members of

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72 In giving short shrift to the counter application, Jones J in *Law Society of the Cape of Good Hope v Ntsikane Zim Michael Mtshabe* (ECM) Unreported Case No 743/2007 16 cited in *Mtshabe* para [23] 382D-F made devastating findings regarding the applicant's insight into the nature of his conduct: "A reading of the respondent's papers in this application reveals anything but recognition of the seriousness of the fraud which he committed, anything but the need for a complete change of character. His attitude, and that of some of his character witnesses, is that he is guilty of no mere than 'a blunder'; or 'making a mistake'; or merely overcharging his clients; or an error of judgement for which he requires no more than a rap over the knuckles by way of a sanction. He was even so misguided as to suggest that the Law Society is somehow to blame for his default: the notion is, apparently, that he should have been taught to submit proper accounts to his clients. Is he really saying that the Law Society should train candidate attorneys how not to draw up fraudulent accounts? He refers in his documents to cases where forgiveness has publicly been given to prominent political personalities for serious offences, including offences of dishonesty. The terms in which he does so give rise to the inference that he does not appreciate that what has he did is particularly offensive *because he is an attorney* [original emphasis] and not a member of some other profession or organization. *There is no evidence of soul-searching or coming to terms over the past ten years with the seriousness of what he did*. There is no factual basis upon which we can with conviction hold that what he did in the past should not preclude him from practice in the future." (Emphasis added).

the profession and persons with whom the applicant has been associated since striking off.[73] In this respect such evidence should demonstrate that the witnesses are sufficiently aware of the salient features of the disbarment to be able give informed and relevant evidence concerning the applicant. Otherwise the weight accorded to their evidence will be reduced.

Reverting to the case at bar, the applicant described his period of imprisonment as a sabbatical and an opportunity to rediscover and reunite with his God. There was no doubt that the applicant made strenuous efforts whilst in prison and subsequent to his release on parole to demonstrate his commitment to reform his character. The applicant maintained that he had entirely purged his guilt and made amends. He tendered a supporting affidavit deposed by the former candidate attorney confirming that he had apologised to her and that she had accepted his apology. He also made settlement arrangements with the revenue and the Assets Forfeiture Unit. In a nutshell, on the basis of these measures and in particular the fact that he was now a "born again" Christian, the applicant considered himself entirely reformed in character, and accordingly a fit and proper person to be readmitted to the roll of attorneys.

Granted that the applicant was an exemplary inmate and a born-again Christian with a long list of witnesses to his good character, these factors standing alone are never enough to discharge the difficult and formidable onus of demonstrating genuine, complete and permanent reformation. Goosen J reasoned as follows:[74]

> His description of being "born again" and his resort to a stylised biblical rhetoric capturing the image of the prodigal son returned does not provide a substantive basis upon which a balance of probabilities can be determined. These proceedings are not about "forgiveness" or about "pardoning" the "sins" of the errant practitioner. The applicant is required to discharge a burden of proof. His faith does not assist in determining probabilities. It is his own case that he was a lay minister at the time of the commission of these offences. From this it must be assumed that he was at the time - at least outwardly - functioning in accordance with the tenets of the faith that he now says will preclude him from any further transgressions. We have only his word to go on. That word must be evaluated in the context of what is known about the serious defects in his character which rendered him unfit to be an attorney of this court.

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73 See for instance, *General Council of the Bar of SA v Geach* 2013 2 SA 52 (SCA) para [204].

74 *Mtshabe* para [28].

The applicant's argument that he is reformed must be measured against some of the questionable assertions made in his readmission application. For instance the applicant's dogged assertion that he had "only inflated the claims beyond the tariff" reflected little or no appreciation of the gravity of his misconduct as an attorney. To make matters worse for the applicant, the picture presented in the readmission application was more serious than in the striking off application. While acknowledging committing fraud and lying during his criminal trial, he characterised his conduct as a "blunder, which is more than a mistake". The sincerity, frankness, and truthfulness of the applicant in presenting and discussing the factors relating to his removal and readmission did not meet the threshold test of complete and genuine rehabilitation.

A common thread between *Thukwane* and *Mtshabe* is that a sufficient period of time had not lapsed before the application for admission or readmission was launched. As already stated, both applicants were on parole. The requirement that sufficient time must elapse is designed partly to ensure than an applicant is clear of the brambles that arose from the thorny ground of his criminal convictions and subsequent striking off, and partly to ensure as much as possible that the decision to readmit is supportable, will not redound harmfully to the Law Society, and is in the long-term interests of the public and the profession. Viewed through the prism of analysis in *Swartzberg*,[75] like the disbarred practitioner in *Budricks*,[76] *Mtshabe* did not demonstrate that he had fully extricated and distanced himself from the conduct and circumstances that led to his disbarment. In this regard one can do no better than to quote from a speech by Sir Thomas Bingham MR in *Bolton*:[77]

It often happens that a solicitor appearing before the tribunal can adduce 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

75 See *Swartzberg* v *Law Society of the Northern Provinces* 2008 5 SA 322 (SCA) paras [25], [26].
76 In *Budricks v Law Society of the Cape of Good Hope* 2008 ZAECHC 73 (24 April 2008) para [13]. See also *Budricks v Law Society of the Cape of Good Hope* 2003 2 SA 11 (SCA).
77 *Bolton v Law Society* 1994 1 WLR 512 (CA) 518 (emphasis added).

made, and the former solicitor may also be able to point to real efforts made to re-establish himself and 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 ...*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.*

It would seem to be very clear that nothing is more corrosive to the public confidence in the legal profession than the spectre of a court reinstating a practitioner who was removed for dishonesty only for the practitioner to commit another act of dishonesty. A readmission court must be convinced (very closely to) beyond a reasonable doubt that the delinquent practitioner will not re-offend.

9 The failure of the *custos morum* to participate in proceedings concerning re-admission of a disbarred parolee

In a situation where a court is faced with an application raising novel and potentially far-reaching questions of principle concerning the reinstatement of an errant legal practitioner who is still on parole for a very serious offence, the decision taken by the respondent law society in *Mtshabe* not to oppose his application for readmission does not accord with the well-settled constitutional notion of public accountability in South African public law.[78] Accordingly, the High Court rightly found the attitude displayed by the law society astonishing. It will be recalled that the applicant had vehemently opposed the respondent's application to strike his name from the roll. No doubt the High Court deprecated the unacceptable stance adopted by the respondent law society as *custos morum.* Goosen J said:[79]

> The statement made by the respondent, indicating that it does not oppose the admission of the applicant, must necessarily mean that the respondent was indeed persuaded that the applicant is a fit and proper person to be admitted as an attorney "notwithstanding that the applicant is a parolee". In order to have adopted

[78] *President of the RSA v SARFU* 2000 1 SA 1 (CC) para 133; *Public Protector v Mail & Guardian* 2011 4 SA 420 (SCA) para 3. Also see Okpaluba 2006 *Speculum Juris* 248.

[79] *Mtshabe* para [57].

> this view of the application the respondent must have considered the fact that the applicant is a parolee. Quite how the respondent could have considered that this fact in itself does not disqualify the applicant in the light of the complete lack of legal precedent relating to the effect that being on parole has upon an application for readmission as an attorney, defies explanation.

The crucial and sensitive role played by the law society in proceedings for the admission or re-admission of an attorney can hardly be overstated. As respondent in such proceedings, the law society stands as *amicus curiae* in the public interest in relation to the court seized with the matter. This is apparent from the fact that an application for admission or readmission cannot be made without certain jurisdictional facts having been established.[80] In doing so the law society must take into account all the circumstances of the case with due regard to the demands of the proper administration of justice, and the interests of the profession and the public.[81] The opinion of the law society that it is satisfied that an applicant is a fit and proper person carries considerable weight. It is also trite that a court would ordinarily not interfere with the law society's disciplinary process until after it is finalised.[82] It is also clear from Canadian jurisprudence[83] that the readmission or restoration must not be detrimental to the integrity and standing of the profession, the judicial system, or the administration of justice, or be contrary to the public interest.

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80 For instance in the matter of *Hurter v Hough* 1987 1 SA 380 (C), Mr Hough, a private citizen, brought an application for Mr Hurter, a legal practitioner, to be struck from the roll without first lodging a complaint with the law society. The court dismissed the application because complaints of misconduct should be investigated by the Law Society.

81 In *Mtshabe* para [60] Goosen J reminded the respondent of its proper role as *custos morum*: "In relation to the public a law society is required to exercise disciplinary authority over its members. In doing so it must act in the public interest as well as in the interests of the profession as a whole. These obligations impose upon a law society particular responsibilities. In the first instance, a law society is accountable to the public at large in respect of the exercise of its disciplinary powers. Secondly, it is obliged to ensure that its members maintain the highest standards of professional ethics and conduct as are applicable to members of an honourable profession. Thirdly, a law society is obliged to exercise its powers in relation to disciplinary matters, whether or not those disciplinary proceedings are such as are provided for by the Act or the disciplinary proceedings which are *sui generis*, and in respect of which the courts exercise jurisdiction."

82 See *Graham v Law Society, Northern Provinces* 2014 4 SA 229 (GP) paras [78]-[82]; *Law Society of the Transvaal v Meyer* 1983 2 SA 505 (T) 507G-509A; *Law Society v Taute* 1931 TPD 12 17.

83 See *Re Gordon David Goldman*, May 5, 1987 (LSUC); *McOuat v Law Society of British Columbia* 1993 BCJ No 807 (CA); *Re Asgareli Mohamed Manek*, February 23, 1995 (LSUC); *Re George Stephen Weisman*, January 27, 1997 (LSUC); *Watt v Law Society of Upper Canada* 2005 OJ No 2431 (Div Ct).

10 Conclusion

There is, perhaps, a broader significance to *Thukwane* and *Mtshabe,* apart from their providing important guidance on the novel question as to whether a person previously convicted of a criminal offence and who is still serving a sentence under parole can be considered to be a fit and proper person to be admitted and/or readmitted into the legal profession. There can be no dispute that the developments in our nascent constitutional democracy have proved to all and sundry that the fitness requirement is a decidedly constitutional issue. The legal profession forms the cornerstone of the independence of the judiciary as well as a protector of our hard-won constitutional democracy. It therefore stands to reason that legal practitioners of whatever standing ought to be trusted to the ends of the earth.

There are a number of principles and considerations that can be distilled from *Thukwane* and *Mtshabe* to guide the newly constituted SA Legal Practice Council and Provincial Councils in setting up norms and standards for the admission and re-admission as well as regulation of the professional conduct of legal practitioners in order to ensure accountable conduct. In sum, the law society regulates the legal profession in the public interest. Public confidence in the legal profession is more important than the fortunes of any one practitioner or prospective practitioner. Public confidence is predicated on such matters as the lawyer's credibility, integrity, character, repute, and fitness. While compassion for the practitioner has its place, compassion should not compromise an impartial adjudication of such matters. The ability to practise law is not a right but a privilege. The privilege may be regained, no matter how serious the misconduct that led to its loss, provided sufficiently compelling evidence of genuine and permanent rehabilitation is presented. This will be hard to do. The legal profession, of all professions, has a special responsibility to recognize cases of true rehabilitation; however, as rehabilitation will be claimed by virtually all applicants, independent corroborating evidence is required to establish that the rehabilitation is genuine and lasting. Finally, the admission or readmission must not be damaging to the integrity and standing of the profession, the judicial system, or the administration of justice, or be contrary to the public interest.

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LIST OF ABBREVIATIONS

Dalhousie LJ	Dalhousie Law Journal
JJS	Journal for Juridical Science
LPB	Legal Practice Bill
Osgoode Hall LJ	Osgoode Hall Law Journal
PELJ	Potchefstroom Electronic Law Journal
SALJ	South African Law Journal
Stetson L Rev	Stetson Law Review

PROTECTING THE FOUNDATION AND MAGNIFICENT EDIFICE OF THE LEGAL PROFESSION: REFLECTIONS ON *THUKWANE v LAW SOCIETY OF THE NORTHERN PROVINCES* 2014 5 SA 513 (GP) AND *MTSHABE v LAW SOCIETY OF THE CAPE OF GOOD HOPE* 2014 5 SA 376 (ECM)

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SUMMARY

The High Court decisions in *Thukwane v Law Society of the Northern Provinces* 2014 5 SA 513 (GP) and *Mtshabe v Law Society of the Cape of Good Hope* 2014 5 SA 376 (ECM) dealing with the question whether a parolee could be considered a "fit and proper person" to be admitted and readmitted to the roll of attorneys raise important and interrelated issues demanding definitive and systematic consideration. This contribution seeks to isolate some of the vexed questions concerning the novel issue of whether a person previously convicted of a criminal offence and who is still serving a sentence under a parole could be admitted and/or readmitted to the roll of legal practitioners.

Thukwane and *Mtshabe* demonstrate that the admission or readmission must not be damaging to the integrity and standing of the profession, the judicial system, or the administration of justice, or be contrary to the public interest. It is trite that public confidence in the legal profession is more important than the fortunes of any one practitioner or prospective practitioner.

KEYWORDS: admission; readmission; legal profession; fit and proper; parolee; reformation; integrity; honesty; legal practitioner.

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