

**BEFORE THE NEW ZEALAND LAWYERS AND
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No. [2010] NZLCDT 2

LCDT Nos. 06/09 and 07/09

IN THE MATTER

of the Lawyers and Conveyancers
Act 2006 and the Law
Practitioners Act 1982

AND

IN THE MATTER

of MAUA JAMES FALEAUTO
of Auckland, former Barrister

CHAIR

Mr D J Mackenzie

MEMBERS OF THE TRIBUNAL

Mr J Clarke
Ms S Sage
Mr P Shaw
Mr B M Stanaway

DECISION ON PENALTY

Introduction

1. Mr Faleauto faced four charges of misconduct in his professional capacity. The charges were heard in Auckland on 19 November 2009. By its decision of 21 December 2009, this Tribunal found three of the charges proven and directed the parties to file submissions on penalty. Those submissions have since been received and considered.
2. The three charges proven are particularised in our decision of 21 December 2009, but in general terms involved;
 - 2.1 Misconduct under S. 101(6) Law Practitioners Act 1982 (refusing or failing to comply with a requirement to provide documents);
 - 2.2 Failing to render an invoice or bill of costs to a client in respect of fees; and,
 - 2.3 Obtaining, and attempting to obtain, money from client sources for matters in respect of which legal aid was available.

Law Society position

3. The Law Society makes the point in its submissions on penalty that the charge noted in paragraph 2.3 above involves gross dishonesty. We agree, as the evidence showed that Mr Faleauto had deliberately misled his client and his client's family about funding the criminal proceedings. He made extraordinary claims to his client and his client's family about the need to avoid legal aid, about other counsel, about the police, and about the state and public officials.
4. In our view all of these matters amounted to a continuing and calculated attempt to pressure a family living in [E] to provide Mr Faleauto with money he said he needed for fees and disbursements, when in fact he was entitled to seek payment for such matters from the Legal Services Agency.
5. Legal aid had been granted, and would have been available to meet Mr Faleauto's charges. Mr Faleauto knew this, as he had made the legal aid application on behalf of his client, had received advice of grant, and was communicating with the Legal Services Agency about the proceedings. His approach to family members seeking payment, and what he told them in justifying his requests, was deceitful and unacceptable conduct from a barrister and solicitor of the High Court, quite apart from the breach of provisions relating to legal aid.
6. In respect of the charge noted in paragraph 2.2 above, the particular circumstances of Mr Faleauto's constant visits to his client (and his client's wife) seeking money for fees, and receiving over a period a sum in excess of \$155,000 without rendering an account, showed again Mr Faleauto's unacceptable approach to such matters.
7. The Law Society submitted that Mr Faleauto should be struck off the roll of barristers and solicitors. The Society pointed to the need to protect the public from such behaviour, noting the aggravating features of Mr Faleauto's behaviour.

Mr Faleauto's position

8. Mr Faleauto asked for additional time to complete his submissions on penalty. They were originally due by 12 February 2010, but the Tribunal allowed Mr Faleauto additional time and his submissions were filed on 19 March 2010.
9. There is nothing in Mr Faleauto's submissions which mitigate what has occurred. In fact his approach to submissions, sending the Tribunal various articles on "bullying", indicates to us that Mr Faleauto does not comprehend his professional failings nor feel any remorse for the way he has treated his clients and the actions he took. That, together with the particular facts relating to these charges noted in our decision of 21 December 2009, confirms to us a continuing risk to the public if Mr Faleauto was to practise again.

Decision on penalty

- 10 We agree with the Law Society that the evidence before us at the substantive hearing of the charges, as detailed in our decision of 21 December 2009, reflects serious professional misconduct by Mr Faleauto.
- 11 Mr Faleauto has been deceitful and dishonest. He has deliberately circumventing legal aid obligations and has used the vulnerability of a client's family residing overseas who are not familiar with New Zealand's processes and institutions for his own financial advantage. In respect of another client he has demanded and received payments totalling over \$155,000 without rendered any invoice or bill. The demands were seen as threatening and intimidating by that client and his wife.
- 12 Also, Mr Faleauto has taken a cavalier approach to answering and dealing with the various charges he faced. This approach is reflected in the charge noted at paragraph 2.1 above, where Mr Faleauto would not produce material requested in the course of another investigation into his professional conduct being undertaken by the Law Society. Mr Faleauto's approach to these disciplinary matters reinforces our view that he has little regard for ensuring proper professional standards are observed.
- 13 Having found three charges of professional misconduct proven against Mr Faleauto, and taking into account the particular facts relating to his misconduct as noted in our decision of 21 December 2009, and after considering relevant points made in submissions on penalty, we have unanimously reached the conclusion that Mr Faleauto is not a fit and proper person to practise as a barrister or solicitor.
- 14 The public are entitled to protection from the sort of behaviour Mr Faleauto has been found guilty of undertaking. He does not appear to recognise his failings. There has been serious misconduct on Mr Faleauto's part because of the elements of deceit and dishonesty involved. There has been a complete failing of integrity, probity, and trustworthiness in Mr Faleauto's actions.
- 15 In those circumstances he must lose his right to practise to ensure public protection, and also to ensure that the integrity of the profession is upheld.
- 16 The principles in *Bolton v Law Society*¹ support the application of the ultimate professional sanction, striking off, as appropriate in this case. In the particular circumstances of the charges proven against Mr Faleauto such a penalty is the only response appropriate to protect the public and to ensure the integrity of the profession is upheld.

¹ [1994] 2 All ER 486

Orders

17 This Tribunal orders;

The name of MAUA JAMES FALEAUTO shall be struck off the roll of barristers and solicitors;

Mr Faleauto shall pay Ms A such amount in US dollars as represents \$5,000 in New Zealand currency at the time Mr Faleauto makes such payment. The amount is to be compensation under S.106(4)(e) Law Practitioners Act 1982 for payment of US \$3,310 improperly obtained from Ms A by Mr Faleauto in December 2007, and including an allowance for contribution towards associated costs, commissions, and interest foregone or incurred on the amount paid to Mr Faleauto by Ms A. If the Honorary Consul in New Zealand for the Republic of H is willing to assist Ms A in this matter, payment by Mr Faleauto shall be made to such Consul whose receipt on behalf of Ms A shall discharge Mr Faleauto's obligation to pay the amount to Ms A;

Costs of \$10,873 shall be paid by Mr Faleauto to the New Zealand Law Society, relating to its costs of and incidental to the charges on which Mr Faleauto has been found guilty; and,

The interim suppression of Mr Faleauto's name shall lapse, but the names of the complainants and their associated persons, and details of the criminal proceedings in respect of which the complaints against Mr Faleauto arose, are permanently suppressed. Any publication of Mr Faleauto's name shall be undertaken in a context that shows that the person concerned is Maua James Faleauto, to avoid confusion with any other practitioner having the name Faleauto.

Dated at Wellington this 31st day of March 2010

D J Mackenzie
Chair