

**NEW ZEALAND LAWYERS AND  
CONVEYANCERS DISCIPLINARY TRIBUNAL**

Decision No. [2009] NZLCDT 13

LCDT 001/08

BETWEEN

CANTERBURY DISTRICT LAW  
SOCIETY COMPLAINTS (NO. 2)  
COMMITTEE  
Complainant

AND

LEUATEA IOSEFA  
Practitioner

Judgment: 13 October 2009

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**RESERVED DECISION AS TO COSTS**

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[1] In the reserved decision of the Tribunal as to penalty of 18 June 2009 the Tribunal Court required Mr Iosefa "... to file a declaration of his financial means which is to set out his assets, addition and that of any family trust of which he is a trustee or beneficiary ...".

[2] Mr Iosefa duly complied with that direction and the Tribunal has had the opportunity of considering Mr Iosefa's position in relation to a request for costs by the Society under s.249(1). Section 249 reads:

**"249 Order for payment of costs**

(1) The Disciplinary Tribunal may, after the hearing of any proceedings, make such order as to the payment of costs and expenses as it thinks fit."

[3] Also the further mandatory provisions contained in s.257:

**“257 Reimbursement of costs of hearing**

- (1) Except where any regulations made under this Act otherwise provide, where the Disciplinary Tribunal hears a charge against any person,--
- (a) the New Zealand Law Society must, if that person is a lawyer or a former lawyer or an incorporated law firm or former incorporated law firm or an employee or former employee of a lawyer or incorporated law firm, pay into the Crown Bank Account the amount required to reimburse the Crown for the costs of the hearing; and
  - (b) the New Zealand Society of Conveyancers must, if that person is a conveyancing practitioner or a former conveyancing practitioner or an incorporated conveyancing firm or former incorporated conveyancing firm or an employee or former employee of a conveyancing practitioner or incorporated conveyancing firm, pay into the Crown Bank Account the amount required to reimburse the Crown for the costs of the hearing.
- (2) The costs of the hearing--
- (a) include not only out-of-pocket expenses in relation to the hearing but also a reasonable sum in respect of--
  - (b) the remuneration and allowances payable under clause 4 of Schedule 4 to the chairperson, deputy chairperson, and lay members of the Disciplinary Tribunal; and
  - (c) the costs of the accommodation and the administrative and secretarial services provided to the Disciplinary Tribunal by the Ministry of Justice; but
    - (i) do not include any part of the costs of the hearing that are, under any order made by the Disciplinary Tribunal, recovered by the Tribunal from any other person.
- (3) The amount payable under subsection (1)(a) and the amount payable under subsection (1)(b) are to be fixed in each case by the chairperson of the Disciplinary Tribunal.

Status Compendium”

[4] This section requires the Chair to make an assessment of the actual costs of the hearing of the charge and fix those as payable by, in this case, the New Zealand Law Society. Having reviewed such costs I now fix the award against the Law Society under s.257 in the sum of \$4000.

[5] In relation to s.249 Mr Iosefa's counsel submits that he simply does not have the means to make a contribution towards the costs of his prosecution and penalty hearing. Mr Iosefa was, as a result of the criminal proceedings, ordered to make significant reparation to the client whose funds had been taken. That, together with Mr Iosefa's inability to work has significantly depleted his resources and indeed he is entirely reliant on his wife's income. He has a very large tax liability and a debt to his accountant. In order to make payment of reparation he has borrowed further from friends and family as well as the financial institution which holds a mortgage over the family home, which is in the name of a family trust.

[6] At the end of the day the Tribunal is persuaded that any award of costs against Mr Iosefa would be a futile exercise in terms of recovery because he has no assets or income upon which such might be levied.

[7] The Tribunal recognises that the effect of this is to burden other members of the profession, however in these circumstances that is seen as unavoidable. It may in due course be a matter for further consideration should Mr Iosefa at any time apply for reinstatement to the roll of Barristers and Solicitors. He might at that time be expected to at least make a significant contribution to the costs which have fallen upon his former colleagues.

D F Clarkson  
Chair  
New Zealand Lawyers and  
Conveyancers Disciplinary Tribunal