New Zealand Law Practitioners Disciplinary Tribunal decisions

John Andrew Tannahill of Wellington – *Date of hearing 26 February 2001*

The practitioner was struck off after a hearing of two charges brought by the Complaints Committee of the Wellington District Law Society. The charges were that on 30 June 2000 the practitioner was convicted in the High Court at Wellington of charges punishable by imprisonment which reflected on his fitness to practise as a barrister or solicitor, or tended to bring the profession into disrepute.

The criminal charges on which he was convicted were that:

1. ... on or about 1 December 1995 at Wellington, with intend to defraud, [he] used a document capable of being used to obtain a benefit for pecuniary advantage, namely a statement of account headed "Administration of Estate" and dated 1 December 1995, for the purpose of obtaining a benefit or advantage for himself; and

2. ... on or about 14 June 1990 at Wellington, having received the sum of at least $7,000 ... [with directions to invest on first mortgage] ... [he] in violation of good faith and contrary to such directions or any of them, fraudulently applied the money to another purpose, namely to replacing ... as investors in a loan secured by a second mortgage over the property at ... which was in default, and where the property over which the security was held had been sold.

Mr Tannahill was sentenced on 30 June 2000 to imprisonment for a term of four months concurrently on each of the criminal charges. An application for home detention later succeeded. He was also ordered to make immediate reparation in the sum of $10,500 in respect of the second charge. This was apparently paid. He completed his period of home detention in September 2000.

The practitioner admitted the disciplinary charges. The tribunal was unanimous that the practitioner was not a fit and proper person to practise as a barrister or solicitor and ordered that his name be struck off the roll of barristers and solicitors. No monetary penalty was set and no order for costs was made.

Permanent orders were made suppressing the names of Mr Tannahill's clients, former firm and former partner.

Application had been made by Mr Tannahill to be employed as a solicitor's clerk. The tribunal made no order giving sanction under s66(1)(b) of the Law Practitioners Act 1982 to allow Mr Tannahill to be employed as a solicitor's clerk but leave was reserved for him to make another application if and when he had details available of proposed employment.

Debra Paget Stevens of Gisborne - *Date of hearing 26 February 2001*

An order was made that Ms Stevens not be employed in a law practice. She formerly worked for a law firm in Gisborne. On 14 March 2000 she pleaded guilty in the District Court at Gisborne to stealing money to a total value of $39,323.51 from the firm's trust account between 8 September 1988 and 1 November 1999, and was sentenced to six months imprisonment. She was also ordered to make a reparation payment of $39,322.51. The judge declined to order permanent suppression of Ms Stevens' name.

Ms Stevens faced a charge brought by the Gisborne District Law Society that, while employed by a practitioner, she had been guilty of conduct that would in the case of a practitioner render her liable to have her name struck off the roll under s112(1)(a), (b) or (d) of the act, namely the use of clients' funds for her private purpose, which constituted theft.

Ms Stevens did not appear at the hearing having previously given notice that she did not intend to appear or have counsel appearing on her behalf.

The tribunal agreed that Ms Stevens had been guilty of conduct that would in the case of a practitioner render her liable to have her name struck off the roll and that had she been a practitioner, she would have been struck off. Accordingly, the tribunal ordered that no practitioner employ Ms Stevens in connection with the practitioner's practice so long as that order remains in force. Having regard to the particular circumstance and having noted that the judge in the criminal hearing had concluded there was no real hope of reparation, the tribunal made no award of costs.

The tribunal made a further order prohibiting publication of the name of the law firm that employed Ms Stevens at the time of the offending.

Pursuant to s134 of the act, the tribunal recommended to the NZLS Council that Ms Stevens' name be published under s135 of the act. She had stated that she did not intend to work for a law firm again and the tribunal wished the NZLS to ensure that law practitioners were warned about her offending and the orders made.

Jock Nicolson
Practice Standards Manager

Crown's prosecution exemption to go

LEGISLATION introduced in April will allow government departments to be prosecuted for breaches of health and safety and building legislation. The proposals implement the last outstanding recommendation of the Noble report into the collapse of a viewing platform at Cave Creek in which 14 people died in 1995.

"There was no justification for the Crown to be exempt from the Building Act 1991 and the Health and Safety Act 1992. While departments have always had to comply with these acts, there has been no ability to prosecute in cases of non-compliance," Justice Minister Phil Goff said when announcing the legislation.

Under the Crown Organisations (Criminal Liability) Bill, government departments will be subject to substantially the same procedures and penalties that apply to private sector organisations that are prosecuted under the Building Act 1991 and the Health and Safety Act 1992. Departments will be prosecuted in their own name rather than in the name of the Crown, and any penalties imposed will be required to be paid out of the department's own funds.

Commercial litigation publication

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