

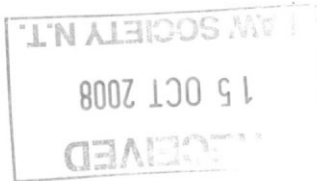
IN THE LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL
LEGAL PROFESSION ACT 2006

IN THE MATTER OF:

Law Society Northern Territory

-and-

Ian John Rowbottam, a legal
practitioner.



CONSEQUENTIAL ORDERS ON FINDINGS OF PROFESSIONAL
MISCONDUCT

- [1] On 3 October 2008 the Tribunal reconvened in order to consider what orders or directions should be made following its judgement on 15 September 2008 that Mr Rowbottam, the legal practitioner, had on two separate occasions knowingly made a misleading statement to the court and on the same occasions had failed to act with honesty and candour in his dealings with the court. .
- [2] The Tribunal was told that the Law Society had informed Mr Rowbottam of the Society's preferred position and that the legal practitioner had agreed upon the appropriate consequential orders arising out of his conduct as found by the Tribunal.
- [3] The parties preferred position was that in respect of all 4 charges that the Tribunal should:

- 3.1 Cancel the practitioner's local practising certificate pursuant to section 525 (3) (b) of the Legal Profession Act 2006;
 - 3.2 Order that the practitioner not be granted a local practising certificate for a period of six months;
 - 3.3 Require that the practitioner complete a course in Legal Ethics to the satisfaction of LSNT, and
 - 3.4 Order that the practitioner pay legal costs to the LSNT in the sum of \$27,632.57.
- [4] The Orders that might be made by the Tribunal as a consequence of findings adverse to a practitioner are, of course, a matter for the Tribunal and not the parties.
- [5] Although submissions from the parties are always of assistance in formulating the appropriate orders, the Tribunal did not have the benefit of detailed submissions from the parties, but was advised of a preferred resolution that was acceptable to both the Law Society and Mr Rowbottam.
- [6] In the event, the Tribunal is disposed to make similar orders to those orders suggested to it, but considers that some explanation for this approach is required.
- [7] The circumstances of the first complaint should be assessed against a background of great turmoil due to a marital breakdown between the two equity partners in the partnership; and the

practitioner's workload and management of his court and client commitments.

- [8] Mr Rowbottam was acting as counsel in a jury trial that had extended to 3 weeks and was about to overrun its allotted time. The trial was possibly going to overlap with another criminal matter, involving Mr Rowbottam as counsel, that may have taken two weeks, had it also proceeded as a jury trial. So the practitioner must have been under considerable professional pressure.
- [9] Additionally, the principals of the firm in which Mr Rowbottam was employed were in acrimonious dispute over their marriage, to the extent that Ms Farmer applied for and obtained a domestic violence order against Mr Maley. The practitioner would have wondered how this would affect the firm and, no doubt, was drawn into the emotional nature of the dispute.
- [10] Mr Rowbottam's circumstances should also be assessed against what occurred in his appearance before Justice Southwood on 17 May 2005.
- [11] The practitioner would have been relieved that in R -v- Ibbotson, the Crown eventually decided to withdraw the final and contentious charge against his client so that the matter could proceed as a guilty plea to the remaining charges and Mr Rowbottam could attend to the pleas on behalf of Mr Ibbotson.
- [12] It is clear from the transcript that Mr Rowbottam was taken off guard by the hypothetical enquiry made by Justice Southwood and that he clearly reacted to the enquiry without any proper

consideration of its import, instead seeking to avoid any criticism of his preparation for the hearing.

- [13] It is also clear from the transcript that Justice Southwood was not misled by the response given by the practitioner.
- [14] The Tribunal considered that the appropriate order in respect of the first complaint is that Mr Rowbottam should have been reprimanded. The Tribunal would also have ordered that he prepare and deliver a lecture to the local legal profession concerning the obligation of honesty by counsel in dealings with the Court.
- [15] The circumstances surrounding the second complaint and the conduct of the practitioner in the course of those circumstances are far more perplexing and in the view of the Tribunal, far more serious.
- [16] This was not a case of the practitioner being caught off guard when dealing with a hypothetical question from the court but instead was a deliberate act of swearing an affidavit implicating the conduct of a judge of the Supreme Court.
- [17] The genesis of the conduct also appears to have involved a matter of personal embarrassment to Mr Rowbottam when he discovered that the custodial sentence handed down by Justice Southwood was not the partly suspended sentence that he had recommended to His Honour or the one that he had informed his client would likely be made by the Court.

- [18] The manner in which Mr Rowbottam gave evidence before the Tribunal demonstrated that the practitioner has a very keen appreciation of the rightness of any position that he takes. It must have come as some shock to the practitioner when he realised that Justice Southwood had not sentenced his client in the manner he had suggested. Further, Mr Rowbottam continued to maintain a strong, but erroneous belief that Justice Southwood had made an error in failing to sentence his client in the manner recommended.
- [19] In addition, the practitioner would likely have been embarrassed when explaining to his client that the sentence was to be altered so as to increase his client's time in prison.
- [20] It seems to the Tribunal that Mr Rowbottam rationalised his surprise and embarrassment into a wrongly held belief that he had been dealt with aggressively and dismissively by Justice Southwood. This belief would also preclude any suggestion that the practitioner's conduct and management of the guilty plea warranted any criticism.
- [21] No doubt it was also part of the practitioner's approach that his client would not and should not be penalised by the "error" of Justice Southwood and the affidavit might help to rectify the client's situation.
- [21] Nonetheless, it is clear from the reasons of the Court of Appeal that the practitioner's client did not suffer any detriment because of the tender and contents of Mr Rowbottam's affidavit.
- [22] The Tribunal considers the seriousness of its finding that Mr Rowbottam knowingly intended to mislead the Court of Appeal

when he deposed to untrue assertions about the behaviour of Justice Southwood, must warrant a sanction that reflects the gravity of the misconduct.

- [23] The courts are entitled to expect honesty and candour from all legal practitioners appearing before them. The functioning of the court system depends on the mutual trust between practitioners and the judiciary.
- [24] On 17 May 2005 and in February 2006, Mr Rowbottam did not demonstrate the honesty and candour required of a legal practitioner. There are many authorities that misleading the court may result in a practitioner being struck off.
- [25] Although the misconduct occurred in 2005 and February 2006, this Tribunal must consider the practitioner's fitness to practice at the present time.
- [26] The mere passage of time that has elapsed since the unfortunate events, without evidence of any further complaints against Mr Rowbottam, is not to be treated on its own, as leading to a finding that the practitioner can be trusted not to engage in similar conduct again,
- [27] The Tribunal has not had the benefit of receiving submissions on the practitioner's behalf, although we have been informed that a number of character witnesses may be called on behalf of Mr Rowbottam if the Tribunal were not satisfied that he is most unlikely ever to repeat his misconduct.
- [28] The Tribunal accepts that the practitioner was not motivated by greed or personal gain when he engaged in the misconduct. Mr Rowbottam seemed genuinely to hold the belief that Justice

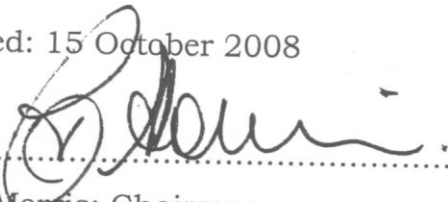
Southwood treated him differently to other lawyers. In cross-examination, and in the absence of any objective evidence in support, Mr Rowbottam conceded that he might not be justified in some of the conclusions he had reached.

- [29] The Tribunal has concluded that the protection of the public does not require that the practitioner be struck off. However, to reinforce the gravity of the conduct in question, the practitioner should have his legal practising certificate cancelled and he should be prevented from being granted a practising certificate for a specified period.
- [30] If Mr Rowbottam's practising certificate were only suspended, he could automatically regain it at the expiration of that suspension. The protection of the public requires that his fitness to practice be assessed by the body responsible for issuing practising certificates, the Law Society.
- [31] To assist the Law Society's assessment of Mr Rowbottam's fitness to practice, the Tribunal requires that he satisfactorily complete a course in Legal Ethics.
- [32] As Mr Rowbottam has been found guilty of professional misconduct, and in the absence of any submission that exceptional circumstances exist, under s.529, the Tribunal must order him to pay costs. The sum of \$27,632.57 was agreed between the Law Society and Mr Rowbottam, although this sum apparently relates to disbursements, being a contribution to counsel's fees, photocopying etc.

The Tribunal makes the following orders:

- (a) That the practitioner's local practising certificate be cancelled pursuant to section 525 (3) (b) of the *Legal Profession Act 2006*;
- (b) That the practitioner not be granted a local practising certificate for a period of six months, section 525 (3) (c);
- (c) That the practitioner complete a course in Legal Ethics to the satisfaction of the Law Society NT. – section 525 (5) (b) and
- [d] That the practitioner pay legal costs to the LSNT in the sum of \$27,632.57 – section 529(1).

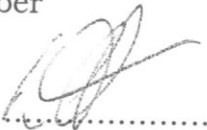
Dated: 15 October 2008



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Ian Morris: Chairman



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Joan Cruse: Member



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David Farquhar: Member