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IN THE MATTER OF PART VI OF THE LAW PRACTITIONERS ACT 1989

AND

IN THE MATTER OF SIOSIFA TU'UTAFAlVA, LAW PRACTITIONER

BEFORE THE LORD CHIEF JUSTICE

**RULING AND ORDER**

1. On 4 October 2012 the Disciplinary Committee of the Tonga Law Society found the Law Practitioner guilty of two counts of professional misconduct contrary to Section 21(1)(a) of the Act. The Practitioner did not dispute that he had received substantial sums by way of legal fees, that he had not performed the services for which he had been paid and that he had not repaid the money received, despite repeated requests.
2. In June 2013 the Disciplinary Committee met to consider how to exercise the powers conferred on it by Section 21(2) of the Act. On 4 June the Committee heard the two complainants who advised that the moneys paid by them in 2003 and 2008 respectively had been substantially repaid following their complaints to the Society
3. On 6 June the Committee heard the Law Practitioner and also considered a written plea in mitigation dated 7 May 2013.

4. After taking into account all facts and matters placed before it both by the complainants and the Law Practitioner the Committee found that the Law Practitioner's conduct "amounted to an abuse of the relationship of confidence and trust between practitioner and client stated in Rule 1.01 of the Rules of Professional Conduct for Law Practitioners 2002".
5. The Committee also endorsed the view that "the misconduct of the [Law Practitioner] is serious and harmful to the clients and does not reflect the image and standing of the lawyers in Tonga, or elsewhere, too well. It does not promote the integrity and good name of the profession in the Kingdom". "The Committee feels that the penalty must be such that not only the Respondent but other lawyers are reminded that they must always act in the best interests of their clients, which is their primary concern". The Committee recommended that the Law Practitioner's practising certificate be suspended for 12 months.
6. In *Bolton v Law Society* [1984] 2 All ER 486, 491 the Master of the Rolls explained that:

"It is required of lawyers ... that they should discharge their professional duties with integrity, probity and complete trustworthiness ... Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him ...".

7. The approach taken in *Bolton* was followed in *Daniels v Complaints Committee* [2011] 3 NZLR 850, 855 in which it was stated:

"It is well known that the Disciplinary tribunal's penalty function does not have as its primary purpose punishment, although orders inevitably will have some such effect. The predominant purposes are to advance the public interest (which include protection of the public) to maintain professional standards, to impose sanctions on a practitioner for his/her breach of duties and to provide scope for rehabilitation in appropriate cases."

"Members of the public who entrust their personal affairs to legal practitioners are entitled to know that a professional disciplinary body will not treat lightly serious breaches of expected standards by a member of the profession.

8. Following receipt of the Committee's recommendation by the Court on 19 June 2013 the Law Practitioner was accorded the 14 days allowed by him under Section 23(1) of the Act to appeal. At the date of writing this ruling no appeal has been received.
9. I am satisfied that the Committee carefully considered and evaluated all the facts and matters placed before it. As pointed out in *Bolton* an appellate court, except in a very strong case, should not interfere with a sentence recommended by a disciplinary tribunal. I am satisfied that in the present case there are no grounds at all to interfere with the recommendation made. Accordingly, it is confirmed.

**ORDER:**

Mr Siosifa Tu'utafaiva is to be suspended from practise as a law practitioner for a period of 12 months from today.

**DATED: 10 July 2013.**



**CHIEF JUSTICE**