

# SUSPENSION DECISION UPHELD

The Northern Territory Supreme Court upheld the decision of the Legal Practitioners Complaints Committee of the Northern Territory to suspend Darwin practitioner Thong Sum Lee for a period of four months following an appeal before Riley J on 10 August 2001.

The suspension came into effect from close of business on Friday 31 August.

Thong Sum Lee has practised as a legal practitioner for some 15 years. On 21 September 1999 charges of professional misconduct were laid against him by the Law Society following an investigation of a complaint concerning a family law matter. These were dealt with by the Legal Practitioners Complaints Committee of the NT(LPCC) at a hearing which commenced on 15 May 2000.

At that hearing Mr Lee made certain admissions upon which the LPCC found him guilty of professional misconduct. In light of those findings Mr Lee gave undertakings to the LPCC, which included:

The legal practitioner undertakes to the Legal Practitioners Complaints Committee to enrol in and study the Northern Territory University unit "Civil Procedure" in semester 2 this year as requested by the Law Society of the Northern Territory in accordance with the special arrangements made for that purpose.

The legal practitioner undertakes to the Legal Practitioners Complaints Committee not to practise as counsel at the trial of any contested matters in any jurisdiction, save for the Small Claims jurisdiction, until he completes the unit "Civil Procedure". This undertaking does not apply to interlocutory applications, mediation, conciliation hearings, and pre-trial conferences, nor to attendances to receive a decision or judgement and to argue costs.

The Legal Practitioners Complaints Committee notes that the word "completes" is intended to denote a successful completion of all assignments, and to sit for and successfully pass all exams to the satisfaction of the Dean of the Law School of the Northern Territory University.

Mr Lee also gave an undertaking not to practise in the area of family law.

On 3 May 2001 a further charge of professional misconduct was laid against Mr Lee. The charge was amended on 17 May 2001. It alleged a "failure by the practitioner to comply with an undertaking given by him for the purposes of the Legal Practitioners Act and, more particularly, in connection with a proceeding under the Act." The charge referred to the practitioner's failure to fulfil his commitment to study and complete the requirements of the "Civil Procedure" course at NTU.

Having enrolled in the "Civil Procedure" course Mr Lee did not pursue the University to provide him with course materials, failed to attend a workshop component of the course and subsequently failed a special examination on 16 February 2001.

This matter was dealt with by the Legal Practitioners Complaints Committee on 18 June 2001. Mr Lee admitted his failure to comply with the undertaking in question.

On the basis of those admissions the Committee found Mr Lee guilty of professional misconduct. The serious nature of the breach of undertaking was acknowledged. The Committee observed there was no satisfactory explanation as to why the practitioner had failed to honour his undertaking.

The Committee considered the various options available to them and concluded:

And we therefore believe that the most appropriate penalty in all the circumstances, having regard to the seriousness of the misconduct in this case ... and of course our primary concern about the protection of the public, is that Mr Lee should be suspended from practice for a period of four months.

Mr Lee appealed that decision on the basis that the penalty was "manifestly excessive as a penalty for the appellant's admitted professional misconduct in failing to comply with the undertaking in question," and that the sentence was harsh and/or inappropriate in all the circumstances.

In rejecting the appeal Riley J noted that:

In my view the Committee correctly characterised the breach of the undertaking as contumelious. Whilst the practitioner

did immediately enrol in the "Civil Procedure": unit he effectively did nothing further. His attitude seems to have been that he did not need to be further informed in this area and that he could pass the examination with minimal preparation. This approach is in contradiction of the need identified by the Committee, and in defiance of the purpose of the undertakings he gave.

In my view, whether his failure arose from misplaced self-confidence or from forgetfulness, or from a combination of the two, the very casualness of his approach amounted to wilful disobedience. See *Long v Specifier Publications Pty Ltd* (1998) 44 NSWLR 545 at 570.

When determining the appropriate response to professional misconduct of this kind, it is the principal concerns of the tribunal to ensure the protection of the public and also to protect the reputation of the profession. It is not to seek retribution. *Attorney-General for the Northern Territory v General Practitioner* (1981) 10 NTR7.

The object involved ensuring that practitioners conduct themselves according to appropriate standards of competence, diligence, honesty and reliability. In this case, the practitioner has failed to so conduct himself.

Riley J said that an inadequate response to the breach by the Committee or the Court would reflect adversely upon the disciplinary procedures available to the profession under the Legal Practitioners Act.

A failure to honour an undertaking given by a legal practitioner is a serious matter. The degree of seriousness will vary depending upon the circumstances of the case. In this case, I regard the breach as moderately serious, given that the undertaking was made to a disciplinary body as a part of a series of conditions of continued practise...

I have considered alternative penalties. I do not think a fine is an adequate response in this case. It seems to me that, in all the circumstances, the penalty imposed by the Committee was appropriate. The ongoing undertaking addresses the need to protect the public, and the suspension addresses the serious nature of the breach and the need to protect the reputation of the profession.