L P 2/2017

IN THE MATTER of the Law Practitioners Act 1993-94

AND
IN THE MATTER of a complaint against **ANTHONY M MANARANGI** of Rarotonga, Barrister and Solicitor
by **DAVID R JAMES**, Solicitor-General, Rarotonga

Counsel: Mr D R James, Solicitor-General as complainant
Mr M Mitchell for and with Mr A M Manarangi as practitioner complained about

Date of Inquiry: 19 July 2018

Date of Decision: 1 October 2018

DECISION OF HUGH WILLIAMS, CJ

For the reasons set out in the decision, the complaint is dismissed.

Procedural

[1] On 3 April 2017 the Solicitor-General lodged a complaint with the Chief Justice pursuant to the Law Practitioners' Act 1993-4 s 15(2)(a)(b)(c) against a Cook Islands' lawyer, Mr Anthony Manarangi, alleging he had been guilty of misconduct, conduct unbecoming a barrister and solicitor or had been negligent or incompetent to such a degree or of such a frequency as to reflect on his fitness to practice and being such as would tend to bring the legal profession into disrepute.

[2] The complaint centred around Mr Manarangi acting for a former Minister of the Crown, a Mr Bishop, in matters which ultimately lead to Mr Bishop being convicted of criminal offences by a jury in the High Court. The conviction was upheld by the Court of Appeal. The broadly phrased complaint was largely based on passages and documents in the formal Case on Appeal and paragraphs in the Court of Appeal's judgment.

[3] To the extent the complaint was particularised, it asserted that the misconduct alleged was based on:

> "(a) the findings recorded in *T Bishop v. the Crown*, CA No. 2/16… at [8] to [19], [136] to [138], assisted by the record of evidence, oral and documentary, from the trial held in Rarotonga commencing 4 July 2016 particularly the practitioner's advising the convicted party that the tainted transaction was legally proper; and
>
> (b) the conduct being, among other things, a contravention of the Crimes Act 1961 s 280A(2)(c); assisting or counselling the disguising of an illegal disposition of property (the borrowing of purchased moneys, "the benefit") derived from a corrupt practice so that his client, the convicted party, could avoid detection as one of the true recipients of the benefit."

[4] For reasons not presently material, delays occurred in the Solicitor-General's complaint being referred to Mr Manarangi but, on 1 February 2018, Mr Manarangi filed a detailed 15 page response to the complaint. That drew a 9 page response dated 23 March 2018 from the Solicitor-General with annexes.

[5] That, in its turn, led the Chief Justice, acting under ss 15(3), 16 and 19 of the Act, to appoint the Hon. Justice Dame Judith Potter to conduct an independent investigation into the complaint during the sessions of the Court over which she presided between 12-23 March 2018. That hearing, unfortunately, was unable to proceed because insufficient notice had been given to Mr Manarangi.

[6] The matter was adjourned to be heard by the Chief Justice during the sessions of the Court commencing on 21 May 2018 but that fixture, too, was unable to proceed as Mr Manarangi had, at short notice, accepted instructions to appear as junior counsel in a Cook Islands matter before the Privy Council earlier in May amongst other matters to which he attended during that trip.

[7] The matter was again adjourned and the inquiry was conducted by the Chief Justice on 19 July 2018 during brief supplementary sessions in Rarotonga. The Law Practitioners' Act 1993-4 giving little guidance as to the method to be adopted in conducting such inquiries – bar what appears in s 16(2) – the inquiry was conducted inquisitorially: in private, with Mr Mitchell appeared as counsel for Mr Manarangi,

Mr Manarangi giving evidence and being available for cross-examination and with both counsel making submissions.

[8] Section 15(4) requiring complaints of professional misconduct to be enquired into "as soon as practicable", the delays which have occurred since this complaint was made are regretted, as is the fact that, since the inquiry, other matters have had to be accorded priority to the processing and delivery of this decision.

Facts

[9] The facts concerning this complaint can be sufficiently taken from the Judgment of the Court of Appeal dismissing Mr Bishop's appeal. The relevant portions of the Judgment[1] read:

> [20] The Crown charged the appellant [Teina Bishop] with corruptly accepting or obtaining a bribe, namely US$256,745, from Century Finance Co Ltd, a subsidiary of the Luen Thai Group of companies, contrary to s 113(1) of the Crimes Act 1969. The prosecution case was that the appellant had corruptly accepted or obtained a bribe in the form of a benefit for himself or Mr Koteka in respect of acts previously done by him in his capacity as Minister, namely the issue of 18 foreign fishing vessel licences to the Luen Thai Group.
>
> **The facts**
>
> [2] The appellant was the Minister of Marine Resources in the Cook Islands Government. In that capacity he issued foreign fishing licences to offshore fishing companies. His powers were derived from s 35(1) of the Marine Resources Act 2005.
>
> [3] A Chinese group of companies collectively referred to here as "Luen Thai" has fishing and seafood subsidiaries operating throughout the Asia-Pacific region. One of its subsidiaries, referred to here as "Huanan", operated in the territorial waters of the Cook Islands. In his role as Minister the appellant issued 18 foreign fishing vessel licences to Huanan. In the process the appellant came to know Luen Thai's Chief Operating Officer, Mr San Chou.

[1] *Bishop v The Crown*, CA 2/16, 6 December 2016.

[4] The appellant and his family ("the Bishops") wished to combine with a friend, Mr Thomas Koteka, to purchase Samade Resort on the island of Aitutaki for NZ$1 million. Mr Tony Manarangi was the solicitor for the joint venture and each of its participants. They later incorporated a company, Aitutaki Villages Limited, to effect the purchase.

[5] The appellant and Mr Koteka faced two challenges. The first was that a New Zealand couple, Mr and Mrs Worden, had already agreed to buy the resort. That couple's purchase was subject to approval by the Business, Tourism and Investment Board ("BTIB"). The BTIB would give preference to a Cook Islands purchaser if one could be found. The appellant and Mr Worden made representations to the BTIB. The BTIB's decision of 22 March 2013 was as follows:

> 1. Teina Bishop is given 30 days from Monday 25 March 2013 to proceed and finalise sale and purchase of the property.
> 2. The Board will review the matter at its next meeting on 25 April 2013.
> 3. If the purchase by Teina Bishop cannot happen by the 25th of April then the Worden's will have the opportunity to settle the purchase.

[6] The appellant and Mr Koteka therefore had until 25 April (later extended to 26 April due to a public holiday) to finalise the purchase. If they could not meet that deadline the opportunity to buy would revert to Mr and Mrs Worden.

[7] The second challenge was to find the money. The plan was to borrow most of the funds from one of the major banks. The Bishops could offer their home and other assets as security. This would cover the principal finance. But a bank could not be expected to fund the whole purchase. There had to be a cash contribution from the proprietors. The appellant could raise only NZ$50,000 in cash and Mr Koteka none at all. The rest would have to come from secondary finance from someone prepared lend to either or both of the shareholders.

[8] For the secondary finance, the appellant approached various sources without success. He also asked Mr Chou of Luen Thai. Luen Thai agreed to advance the money in principle.

[9] For the principal finance, the appellant and Mr Manarangi initially approached ANZ bank. Mr Manarangi explained to the ANZ representative, Mr Dennis, that the secondary finance was likely to come from Luen Thai and would take the form of a loan to Mr Koteka. Mr Dennis saw two difficulties. One was that ANZ would require a more substantial cash equity from the proprietors. The other was that the bank had a policy that it would not to lend where the customer might have a conflict of interest. In his evidence Mr Manarangi conceded that he took this to be a reference to a conflict between the appellant's role as a Minister granting licences to Luen Thai and his interest in purchasing the resort using Luen Thai funds.

[10] Walking back from the ANZ bank, the appellant asked Mr Manarangi whether Mr Manarangi thought that he was breaking the law. Mr Manarangi replied that given that the loan would be to Mr Koteka, and would have to be on commercial terms, he did not see anything illegal about it.

[11] After the unpromising response from ANZ, the appellant and Mr Manarangi approached Westpac. Westpac was more accommodating. On 22 April 2013 it agreed to provide the principal finance at 11%, the loan being secured over the Bishop family home and their other assets.

[12] The appellant and Mr Koteka were still short of the funds required to complete the purchase. Other possible sources were exhausted. The appellant went back to Mr Chou of Luen Thai. While Luen Thai had supported the loan in principle, it needed time to discuss the details and obtain a commitment from the relevant board of directors. On 24 April 2013, two days before the BTIB deadline was due to expire, the appellant signed renewals for three of the HuaNan fishing licences.

[13] By 25 April 2013 the appellant was concerned that time was running out. He called Mr Chou by Skype. The exchange included the following:

> Mr Chou: "I still have a conference call meeting with my board and our lawyer. They are very worry [sic] about opposition can cause this incident to attack you and HuaNan in the future. I'll try my best to convince them and will advise the outcome later."
>
> Mr Bishop: "That is why the loan is for Thomas [Thomas Koteka] even though it is the strength of our business that will secure and pay for it. It is also why we only want now $300,000 instead of half a million. We have already spread the word that the bank is giving us 60 per cent of the funding and Ann and I through our saving is putting up $100,000 cash and Thomas is to put in $100,000…"

[14] On the day of the deadline, 26 April 2016, Mr Chou emailed the appellant to confirm the loan, stating:

> After long discussion finally able to receive board's approval. But legal advisor do suggest NOT use HuaNan's name to loan the money to you.

[15] As those exchanges noted, neither the appellant nor HuaNan were to be named as parties to the advance. In the transaction that followed, Luen Thai used another of its subsidiaries, Century Finance Ltd, as the lender and the borrower was shown as Mr Koteka. We accept that the appellant always intended that the borrower would be Mr Koteka alone.

[16] Although Luen Thai was prepared to advance US$300,000, only US$256,000 was called for and advanced. Century Finance made the payment to Mr Manarangi on 10 May 2013. Mr Manarangi credited it to his trust account in the name of Mr Koteka. It is common ground that that was the date of the loan advance. At that date there was still no loan agreement or security in existence.

[17] The purchase of the Samade Resort was settled on 10 July 2013. The final sources of the NZ$1 million purchase price were NZ$700,000 from Westpac, NZ$250,000 from Century Finance and NZ$50,000 from the Bishops. The excess in the Century Finance advance was later repaid to Century Finance.

[18] On 7 August 2013 the police executed a search warrant at the Ministry of Marine Resources. On 28 August 2013 the police asked Mr Manarangi to provide documents to assist in the investigation. At that stage there was still no loan agreement for the Century Finance advance.

[19] On 14 November 2013 a lawyer acting for Century Finance sent Mr Manarangi a draft loan agreement for execution. It showed Mr Koteka and the appellant as borrowers. Mr Manarangi asked that the appellant's name be deleted in the various places where it appeared in the draft. This was agreed to and all references to the appellant were deleted. Mr Koteka signed the final loan agreement on 23 November 2013. It provided for interest at 7.56% and security by way of first mortgage over what was thought to be Mr Koteka's leasehold property on the island of Atui. In the event it turned out that Mr Koteka did not have the required leasehold interest and no security was ever provided.

[136] Above all, there is a factor which makes this case a very unusual one. In accepting the benefit (the loan to Mr Kotuku which made the Samade purchase possible) the appellant was acting on legal advice. We accept Mr Harrison's submission that the appellant had not withheld from Mr Manarangi any facts that were material to the legality of the transaction. Whether he had previously spoken to a Luen Thai representative once or many times matters little. Mr Manarangi knew perfectly well that in his role as Minister the appellant had granted fishing licences to Luen Thai, that by one means or another the appellant had obtained Luen Thai's agreement to advance a loan which would make the Samade purchase possible; and that the appellant stood to benefit if the purchase proceeded. With that knowledge Mr Manarangi told the appellant that, given that the loan would be to Mr Koteka, and would have to be on commercial terms, he did not see anything illegal about it. We find it surprising that that advice was given. However the fact is that the appellant received it and acted accordingly.

[10] More specifically, in an affidavit sworn in opposition to the Crown's application for leave to prosecute Mr Bishop, Mr Manarangi said[2]:

> "53. Immediately following the meeting with Mr Dennis [of Westpac], Mr Bishop asked for my opinion on whether borrowing from Huanan/CSF [China Southern Fishery (Shenzhen) Co Limited] was illegal. I advised Mr Bishop that the borrowing would be by Mr Koteka and that it would be on

[2] At [53].

> commercial terms and in those circumstances it was my opinion that such a loan would not be unlawful even if TMN Ltd [Mr Bishop's company] were to provide a guarantee for the borrowing. However, there would likely be political criticism given his position as Minister of Marine Resources and that fishing vessels from the Chinese lenders had received foreign fishing licences to fish the Cook Islands EEZ."

[11] Then, in his response to the complaint, Mr Manarangi said of his advice to Mr Bishop:

> "5.2 At the time I believe that the answer I gave was correct. Mr Bishop and I had finished a meeting at the ANZ Bank and were walking back to my office. It was a casual conversation and not in the context of a formal consultation. I did not make a file note of the conversation. In giving that advice I was aware that the criminal law specified an offence of bribery. However, I was not familiar with the precise wording of s 113 and (perhaps more importantly), was not aware of the interpretation given by the Supreme Court of New Zealand to the New Zealand equivalent of s 133 in Field v R [2012] 3 NZLR 1, being the interpretation ultimately adopted by the Court of Appeal in Mr Bishop's appeal against conviction. Had I been aware of these matters, I would have given further and anxious consideration whether in the circumstances there could have existed:
>
> (i) a direct or indirect benefit to Mr Bishop from the Century Finance loan to Mr Koteka capable of amounting to a contravention of s 113; and
>
> (ii) a benefit to "another" (Mr Koteka) also capable of amounting to a contravention of s 113.
>
> 5.3 I am aware of the following statement in the judgment of the Court of Appeal that "We find it surprising that that advice was given" [136]. I must now accept that the advice I gave was wrong and do so without reservation. With the benefit of hindsight, it is plain to me that I should not have given Mr Bishop as my client the advice which I gave him on that occasion. Had I known at the time the detail of the law relating to the bribery offence which I am now aware of, I would have advised Mr Bishop differently in relation to the course of conduct he and Mr Koteka were proposing to embark on.
>
> 5.4 I deeply regret having given wrong advice and the consequences that followed for Mr Bishop and others.
>
> 5.5 However, I say that the advice was honestly given, but without sufficient consideration being given by me to the legal position and the potential risks for Mr Bishop as my client.

> 5.6 Furthermore, the wrongful advice which I gave involved a single, isolated incident in relation to an area of law and factual matters of significant complexity."

[12] In evidence during the inquisitorial inquiry Mr Manarangi repeated those concessions and added that "at no stage was the loan from Century Finance Company in any way altered, disguised or used as a device to not show Mr Bishop" and said he "didn't do a very good job if Mr Koteka was the borrower because he was another person coming within the bribery provision which would have been sufficient to found a conviction".

Legal issues

[13] Complaints of professional misconduct are foundered on s 15(2) of the Act which relevantly reads:

> 15. Complaints of professional misconduct –
> (2) Where the Chief Justice receives such a complaint or has reasonable cause to suspect that a practitioner who is or was a member of the Society has in his professional capacity been -
>
> (a) guilty of misconduct; or
>
> (b) guilty of conduct unbecoming a barrister and solicitor or a barrister; or
>
> (c) negligent or incompetent, and that the negligence or incompetence has been of such a degree or so frequent as to reflect on his fitness to practise as a barrister and solicitor or barrister only, as will tend to bring the profession into disrepute; or
>
> (d) convicted of an offence punishable by imprisonment for a term exceeding one year, and is of the opinion that the conviction reflects on his fitness to practise as a barrister and solicitor or barrister only, or tends to bring the profession into disrepute,
>
> the Chief Justice shall, unless he is of the opinion on reasonable grounds that the complaint is frivolous or vexatious, require from the practitioner such written explanation, within such time as the Chief Justice thinks fit.

[14] It is trite law that a main purpose of disciplinary proceedings against lawyers is to protect members of the public from misconduct by the former with a subsidiary

purpose being to maintain proper standards in the legal profession and to set an example to other lawyers[3].

[15] The common law defines professional misconduct as "behaviour that would reasonably be regarded as disgraceful or dishonourable by the lawyer's professional brethren of good repute and competence"[4]. Amongst the refinements of the common law test are:

(a) That the "requirement that the conduct be disgraceful or dishonourable excludes 'mere negligence' from professional misconduct"[5];

(b) "Misconduct marks the threshold below which a practitioner's actions must not fall. It reflects actions that are not appropriate for a practitioner to engage in and will be disapproved of by other right-minded practitioners. This highlights a central feature of the common law concept of misconduct – it is based on other practitioners' perception of the acceptable standards of conduct[6].

[16] Section 15 – especially s 15(2) – is not entirely easy to interpret.

[17] The heading to s 15, "complaints of professional misconduct", must have been intended to comprehend within its scope all four grounds in s 15(2), even though s 15(1) only speaks of complaints about "conduct", not "misconduct" or "professional conduct" or "misconduct in a lawyer's (or employee's) professional capacity". The phrase "professional misconduct" in the heading must therefore be intended to restrict the ambit of complaints to conduct of current or former members of the Cook Islands Law Society in their "professional capacity". That approach is

---

[3] Dal Pont "Lawyers Professional Responsibility", 6th Ed 2017, para [23.20] p751-752 and authorities there cited.

[4] *Allinson v General Counsel of Medical Education and Registration* [1894] 1QB750 Dal Pont op cit para [23.85] p762 New Zealand has defined "misconduct" in similar terms; Lawyers and Conveyancers Act 2006 s 7(1)(a) but the definition may be inapplicable in the Cook Islands as New Zealand has divided "misconduct" from "unsatisfactory conduct".

[5] *Myers v Elman* [1940] AC 282-288/9 per Viscount Maugham, Dal Pont op cit para [23.85] p762.

[6] Webb Dalziel and Cook Ethics, Professional Responsibility and the Lawyer, 3rd Ed 2016 para [4.3.4] p106.

compatible with the opinion which must be held before a qualifying conviction under s 15(2)(d) can amount to professional misconduct.

[18] Noting that all four sub-clauses of s 15(2) are disjunctively phrased, in this case – s 15(2)(d) clearly being inapplicable – a question arises as to whether the same action or inaction on the part of a lawyer can amount to a breach of more than one of the sub-clauses in s 15(2)(a)-(c) that is to say whether, say, negligence or incompetence which meets the criteria in s 15(2)(c) can also amount to misconduct or conduct unbecoming (or both) and thus amount also to a breach of s 15(2)(a) or (b).

[19] In Mr Manarangi's case, although the Solicitor-General's complaint also invoked s 15(2)(a) and (b), it was common ground that the complaint primarily centred around whether Mr Manarangi's conduct breached s 15(2)(c).

[20] Section 15(2)(c) is, however, also not without its difficulties.

[21] Accepting that the phrase "barrister and solicitor or barrister only" is intended to cover both modes of legal practice[7] the subsection applies to two aspects of legal practice - negligence and incompetence - two ways in which those aspects may be manifested – degree or frequency – but with both being required to reflect on a lawyer's fitness to practice and, in the case of either, with the misconduct being such as will "tend to bring the profession into disrepute". So the components of a complaint under s 15(2)(c) can be of negligence of a frequency which reflects on fitness to practice and tends to bring the profession into disrepute, or negligence of a degree which meets those requirements, or the same two avenues of complaint but substituting incompetence for negligence. So, it follows that s 15(2)(c) creates a right of complaint on any one or more of the four grounds within it, and each must, additionally, satisfy the fitness to practice and tendency requirements.

[22] What is also clear is that, because findings of professional misconduct, and the penalties which may follow, can be so severe for lawyers, they are entitled to

[7] See also s 15(2)(b).

know what is alleged against them with specificity. Complaints should therefore be particularised. Generalised, "scattergun" complaints should not be accepted

[23] Overlaying those components of professional misconduct is the non-statutory definitional requirement that the misconduct be such as would be "regarded as disgraceful or dishonourable by the lawyers' professional brethren of good repute and competency". As *Webb, Dalziel and Cook* observes, that adds an intra-professional judgment to the external criterion, namely whether the actions or inactions in contest have a tendency to bring the legal profession into disrepute when, as has been remarked elsewhere[8] the general public does not have a high opinion of the legal profession.

Submissions and additional evidence

[24] Because Mr Manarangi's detailed response to to the Solicitor-General's complaint preceded the latter's response it is convenient to review those documents in that order.

[25] Mr Manarangi's broad reply to the complaint was earlier cited although, in relation to Mr Manarangi's acceptance that his advice to Mr Bishop was incorrect but, he asserted, honestly given, the Solicitor-General drew attention to the Privy Council decision in *Barlow Clowes International Limited v Eurotrust International Limited*[9] where their Lordships, dealing with liability for dishonest assistance and considering whether that concept required a dishonest state of mind on the part of the person assisting in a breach of trust, observed that "although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards".

[26] Mr Manarangi, unsurprisingly, contended that his actions did not amount to misconduct in any of the ways set out in the complaint.

---

[8] In re G Judgment, 9 January 2017, paras [38]-[42].
[9] [2005] UKPC37, 10 October 2005, at 10.

[27] As to the complaint that his conduct contravened s 280A(2)(c) of the Crimes Act 1961, Mr Manarangi, whilst accepting that s 280A(2)(c) makes it money laundering if a person "conceals or disguises the true nature, origin, location, disposition, movement, or ownership of the property derived directly or indirectly from those acts or omissions," sought to rebut the complaint by detailed reference to the facts. In part, his contention was summarised in the citation from his response set out previously but he made the point that, were the allegation that the "property" was the loan and its being borrowed was illegal, with the concealment or disguise being putting a loan in Mr Koteka's name – an action by which Mr Manarangi was claimed to have assisted or counselled to disguise Mr Bishop's involvement – the complaint was contrary to the evidence given at Mr Bishop's trial, including the evidence from Mr Koteka and Mr Manarangi. The Court of Appeal held that the sole question was whether Mr Bishop received a benefit, and the answer was that the benefit he received was the ability to purchase the Samade Resort for which the CFC loan was required. Mr Manarangi said at no time did he attempt to conceal or disguise the true nature of the CFC loan. And at no time did he advise either Messrs Bishop or Koteka to conceal or disguise the loan's true nature. He pointed in particular to the Court of Appeal's comment[10] that Mr Bishop "always intended that the borrower would be Mr Koteka alone"[11]. Mr Manarangi never saw the Skype exchanges attached to the complaint until after the investigation into Mr Bishop's actions commenced. He noted the Court of Appeal recognised the prosecution would also have been successful had the Crown alleged there was a benefit to "another", namely Mr Koteka. But if Mr Manarangi had an intention to disguise or conceal Mr Bishop's proposed offending, Mr Koteka was the last name that would have been used as this would clearly have been a benefit to Mr Koteka and this, in terms of the section, would still have left Mr Bishop liable.

[28] There was no basis, Mr Manarangi contended, for the complainant to assert he advised Mr Bishop to avoid using his own name on the loan documents, an issue he supported with detailed reference to the trial evidence and his affidavit, including the circumstances in which he made the statement to Mr Bishop and the efforts made to secure financing and security for the resort purchase which followed over the next

---

[10] At 15.
[11] *Sed vide*, para 103, summarising Doherty J's sentencing remarks.

approximately seven months. He strongly refuted the complainant's interpretation of the revised loan agreement and correspondence annexed to the complaint, saying it was erroneous to suggest that the deletion of the words "the borrower and Teina Bishop on behalf of", and the corrections in those documents, were an attempt to conceal the true nature of the loan and that Mr Bishop was in fact the borrower and not Mr Koteka. Mr Manarangi pointed to aspects of the trial evidence to say that the amendments were simply to cover the possibility that the purchasing company would not be incorporated in time.

[29] Mr Manarangi's reply concluded by expressing the view that the evidence and statements by the Court of Appeal on which the complaint was founded were not binding on him or evidence against him since he was not a party to the prosecution and appeal, he was not facing allegations of misconduct when he gave evidence and it was never put to him in cross-examination that he had given negligent advice, far less that he acted deceptively or engaged in money laundering.

[30] He also asserted that the allegation he had committed the serious criminal offence of money laundering was an abuse of the complaints procedure under the Act: the Act should not be "utilised as a back door substitute for criminal prosecution". He said:

> "I have never been investigated or interviewed far less prosecuted for the alleged offence of money laundering; and should not now be "tried" before [the Chief Justice] on the basis of evidence and judicial utterance derived from a trial against a third party (Mr Bishop) for a completely different offence."

[31] In response, the complainant drew detailed attention to some 28 references from the trial transcript[12]. He submitted that the seriousness of the complaint was "identified by observing the prohibition of the conduct complained of and legislation enacted to prevent criminal conduct" but that "it is not intended to advance a criminal prosecution"[13]. All that need to be advanced was to show the "existence of the acts that might have fallen within the money laundering offence"[14].

---

[12] At paras 9 and 26.
[13] S-G's Response para 10.
[14] Ibid.

[32] He said the questions were, how serious was the wrong advice; was it wrong when it was given; what does Mr Manarangi mean in saying that the "loan transaction was of itself not illegal"; after the wrong advice was given was the conduct of Mr Manarangi designed to disguise a disposition of the property; and was Mr Manarangi's conduct instrumental in exposing Mr Bishop to prosecution with the serious consequences which flowed from that.

[33] Relying on, amongst other sources, the UN Convention against Corruption, the Solicitor-General said, in relation to Mr Manarangi's comment about *Field* that it was plain that Mr Bishop's acceptance of a personal benefit when a Minister was inherently corrupt[15].

[34] He submitted the remark the "loan transaction was of itself not illegal" was meaningless and pointed to the incorrect advice being given immediately after the bank's concerns about the transaction had been expressed. Mr Manarangi "at that point knew everything he needed to know about the corrupt element of the loan"[16] and that the Crown's position, including as regards the Proceeds of Crime Act 2003 proceedings against Mr Bishop, was that the corrupt borrowing amounted to a benefit and that Mr Manarangi's suggestion that putting Mr Koteka as the borrower protected Mr Bishop overlooked the statutory inclusion in "benefit" of one accruing to another person. He submitted that Mr Manarangi's conduct in advising Mr Bishop that "concealing his name could make the loan legal" was enough to involve him in acts of money laundering or facilitating or counselling money laundering. And, under s 280A(2), Mr Manarangi was dealing with property which he had reason to believe was derived from a serious offence and transferred the loan with the aim of "disguising its illicit origin or to assist Mr Bishop to evade the legal consequences of the corrupt borrowing"[17] or concealed the true disposition to Mr Bishop with the property derived, namely the loan. Alternatively, Mr Manarangi rendered aid in respect of any of those matters.

[35] All that, the Solicitor-General submitted, undermined Mr Manarangi's assertion that he had no reason to believe the loan was derived from a serious

---

[15] Court of Appeal decision at 62.
[16] Submissions at 18.
[17] S-G Response para 22(c).

offence or, at best, had the effect of reducing the complaint from one of misconduct to one of negligence or incompetence.

Discussion and decision

[36] As far as the first ground of complaint is concerned, the key element is that, in the informal, though critical, conversation with Mr Bishop following the bank meeting, Mr Manarangi gave advice which he honestly thought was correct but which proved disastrously wrong for Mr Bishop, and he never thought to caveat his advice, give it conditionally or check its correctness until the investigation of Mr Bishop's conduct had begun. Clearly, with the advantage of hindsight, Mr Manarangi accepts the advice he gave was incorrect as a matter of law and that it might have been more prudent for him to hedge what he said in response to Mr Bishop's query or, on such an important issue, check and correct the advice as soon as he was able.

[37] But, crucially, Mr Manarangi was unaware his advice was wrong and, until the Bishop investigation began, he had no cause to think it wrong, so while a more cautious practitioner might have adopted the extra measures just mentioned, was there any reason or lack of adherence to proper professional standards for him not so to do?

[38] This, as Mr Manarangi acknowledged was a single piece of advice given on a single occasion, so, of the components of s 15 (2)(c), frequency is not an issue,

[39] That said, of the remaining components, clearly, in the circumstances, the advice was negligent or incompetent or both and clearly again, seen with the advantage of hindsight, its effect on Mr Bishop was such that it must be held that the effect of the negligence or incompetence was considerable, even disastrous. But the magnitude of the consequences for Mr Bishop is not the issue here[18]. What is central to this complaint is whether Mr Manarangi's negligence or incompetence or both are shown to have breached s 15 (2)(c) And, in that regard, the accepted honesty of his error weighs heavily. When he did not know his advice was wrong, and had no

[18] Except, perhaps, in relation to the tendency component.

inkling of that, there was nothing to lead to his taking the further measures earlier mentioned. What was there about the giving of a piece of legal advice in informal circumstances in the midst of what was, in essence, a complicated conveyancing transaction, to cause Mr Manarangi to, as it were, "second guess" himself?

[40] Of course, an especially cautious lawyer might have conditioned the reply to an "out of the blue" footpath query from the client and might have researched the point thoroughly afterwards and corrected the answer, but would "lawyers of good repute and competency" have done that when they had no idea their earlier advice was incorrect? Was the negligence or incompetence such that it would have been regarded as "disgraceful or dishonourable by the lawyer's professional brethren of good repute and competency" or was it "mere negligence"? Imposing the former as a standard would seem to be imposing a requirement approaching perfection rather than practicality on the profession

[41] There is always more that can be argued as something that should be done and, here, what occurred would clearly have been reprehended by other lawyers of good repute and competency who knew, when they replied to the client's query, of the terms of the relevant statutes and the details of *Field* – then a comparatively recently reported decision – but all professional people, including lawyers, make mistakes from time to time during their professional lives and their professional brethren understand that.

[42] As regards the "good repute" criterion, Mr Mitchell, for Mr Manarangi, submitted that this is the first occasion in a lengthy practising career when Mr Manarangi's professional standards and competence have been impugned. That, coupled with the fact that he saw no need to check his advice because nothing about the complicated transaction in which he was involved brought that desirability to his attention, lead, he submitted, to the conclusion that the giving of the advice fell on the side of "mere negligence" as opposed to negligence or incompetence of such a degree as to reflect on Mr Manarangi's fitness to practice as a lawyer.

[43] Then there is the matter of Mr Manarangi asserting that his advice, though erroneous, was honestly given, in assessing which the Privy Council's dicta in

Barlow Clowes are of assistance. However, all that need be said is that the test is objective, and, taking the above matters into account, the conclusion is that the correctness of Mr Manarangi's assertion of honesty has not been displaced.

[44] Turning to what, for shorthand purposes, has been called the tendency criterion, if there is one thing members of the public are entitled to expect of their lawyers it is that they will give them correct legal advice. If they knew the advice was erroneous and therefore negligent and incompetent, members of the public who were ignorant of the detail, but were so minded, might think less of the legal profession as a result, but, once they were apprised of the detail and became aware of Mr Manarangi's long complaint-free practising life, might well take a more benign view.

[45] For all those reasons, the conclusion on this ground of the complaint is that, despite the advice being erroneous and therefore negligent, possibly incompetent, lawyers of good competency, knowing all the circumstances, would conclude that Mr Manarangi's honest error fell into the category of "mere negligence" rather than "disgraceful or dishonourable" conduct. Accordingly it did not amount to professional misconduct and .that ground of complaint accordingly fails.

[46] It remains to deal with the Solicitor-General's complaint that the circumstances of this matter amounted to Mr Manarangi assisting or counselling the disguising of an illegal disposition of property – the loan – derived from a corrupt practice to enable Mr Bishop to avoid detection as one of the recipients, that being said to be in contravention of the Crimes Act 1961, s 280A(2)(c).

[47] Section 280A(2)(c) provides that a person commits the offence of money laundering if they "conceal or disguise the true nature, origin, location, disposition, movement or ownership of property derived directly or indirectly" from acts or omissions that are either an offence against the law of the Cook Islands punishable by imprisonment for not less than 12 months or a fine of more than $5000 or an act or omission which is an offence against the law of another country which, had the act or omission occurred in the Cook Islands, would have constituted an offence in this country punishable to the same extent.

[48] It needs only the recital of those elements to show that s 280A(2)(c) is inapplicable in Mr Manarangi's case, at least in the present circumstances, since, on his evidence, he had no reason to believe the loan to Mr Koteka was derived from a serious offence because he was then of the view that the way in which the loan was sourced, documented and dealt with did not amount to a serious offence even though, as matters later transpired, his view was erroneous. In that regard what needs to be kept in mind is that, despite the complainant repeatedly referring to the loan as "illicit", the loan to Mr Koteka was not illicit. What made it illegal was that, as the Court of Appeal acknowledged[19], the loan was the catalyst which enabled Messrs Bishop's and Koteka's resort purchase to proceed to their benefit when Minister Bishop had granted fishing licences to a member of the lender's corporate group.

[49] Further, when he gave the erroneous advice to Mr Bishop and dealt with the other aspects of the conveyancing transaction in which Messrs Bishop and Koteka were involved, it is not shown that Mr Manarangi dealt with the loan with the aim of disguising its illicit origin or assisting Mr Bishop to evade the consequences of the advance to Mr Koteka to fund his share of the purchase by the joint venture company of the resort with the original references to Mr Bishop being deleted. While the loan conferred a benefit directly on Mr Koteka, and, by that means, indirectly on Mr Bishop, and thus may have satisfied the definition of "benefit" in the Proceeds of Crime Act 2003, that does not mean that Mr Manarangi's actions in connection with the loan were undertaken with the aim of disguising its illegal origin or assisting Mr Bishop to evade the consequences or conceal what the Crown alleged was the true disposition of the loan, namely to Mr Bishop.

[50] It may perhaps be possible to reach the view that by acting for the joint venture partners and their company in the manner in which he did, Mr Manarangi may have rendered assistance to them for the purposes described in s 280A, but, because of Mr Manarangi's incorrect understanding of the law at the time, that does not lead, in a disciplinary context, to the conclusion that a charge of money laundering could be successfully brought against him.

---

[19] At [3] & [9].

[51] In that regard, there is force in the position taken by Mr Manarangi that his various statements – in his affidavits, in his evidence and in his response to the complaint – should not be construed against him as being the only evidence available on the topic. As Mr Manarangi says, his actions in relation to this transaction have never been formally investigated or, until now, enquired into, and considerable caution needs to be exercised in assuming that the evidence he has previously given in relation to proceedings of which he was far from the primary object, should now be construed and reinterpreted against him.

[52] While the Solicitor-General's submissions may indicate ways in which Mr Manarangi's statements might be questioned and while it is conceptually possible – however unusual – for a professional person to be the subject of a complaint of criminal conduct when no charge has been preferred, there is nonetheless force in the submissions made on Mr Manarangi's behalf that if one of the Law Officers of the Crown has available information which may disclose the commission of a serious offence, the appropriate first course is to charge the person or practitioner with the offence and only if a conviction ensues, lay a complaint of professional misconduct.

[53] That view gains added force in the circumstances, first because, as has been noted, the purpose of disciplinary proceedings against professionals is to protect the public not to punish the individual[20], but also because s 280A(3) says that "knowledge, intent or purpose required as an element of the abovementioned activities may be inferred from objective factual circumstances". That strongly suggests that any conclusions to be drawn from those "objective factual circumstances" should be arrived at in the context of a charge of money laundering, and not in a complaint alleging professional misconduct, a proceeding the aim of which is to protect the public, not punish the individual practitioner, and which follows a procedure far removed from a criminal trial, and without its safeguards such as the burden and standard of proof and the privilege against self-incrimination[21].

[20] a matter of penalty if the misconduct is held to be made out.
[21] See s 16(2) and Commissions of Inquiry Act 1966 ss 6B-6D.

[54] In all those circumstances, the appropriate view to be taken is that the alternative ground for the complaint of professional misconduct has also not been made out.

[55] Neither of the grounds alleged in the Solicitor-General's complaint of professional misconduct against Mr Manarangi having been made out, the complaint is accordingly wholly dismissed.

Hugh Williams, CJ