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## LEGAL PRACTITIONERS DISCIPLINARY TRIBUNAL

BETWEEN:

**LAW SOCIETY NORTHERN TERRITORY**

Complainant

AND

**THONG SUM LEE**

Respondent

### **REASONS FOR DECISION**

On 1 July 2011 the Disciplinary Tribunal found Thong Sum Lee guilty of professional misconduct. A charge of unsatisfactory professional misconduct was dismissed. A question arises as to the payment of costs.

Section 529(1) of the Legal Profession Act provides that the Tribunal must make an order requiring a practitioner whom it has found guilty of unsatisfactory professional conduct or professional misconduct to pay costs unless it is satisfied that exceptional circumstances exist.

It was submitted on behalf of the practitioner that he pleaded guilty at the earliest opportunity, admitted the factual allegations against him and the matter proceeded by way of agreed facts. This is not entirely correct because the issue as to whether or not he was guilty of professional misconduct was disputed at the hearing.

It was also submitted that the practitioner was put to the expense of an unsuccessful application to vary the Disciplinary Application to include an allegation of breach of trust and that the Law Society should not be allowed the costs of this unsuccessful application.

However, there is nothing exceptional in these circumstances, and the Tribunal is not otherwise satisfied that exceptional circumstances exist. It follows that the practitioner must be ordered to pay costs.

The fact that the practitioner was successful in relation to Count 2 is also relevant, although this was a relatively minor part of the case against him. Section 529 (3) provides for costs against the Law Society where the practitioner is found not guilty, but only if the Tribunal considers that special circumstances warrant the making of the order. There appear to be no such circumstances. In their absence, there is no basis for an order of costs in favour of the practitioner.

Section 529(5) provides that an order for costs may be for a specified amount, or for an unspecified amount, if the basis on which the amount is to be determined is specified. The extent of the order remains at the discretion of the Tribunal, which is subject to the usual considerations that apply in the exercise of the discretion.

The parties have filed details of the costs incurred. Those of the Law Society, including counsel's fees, total \$21,685 including GST. This does not include any counsel's fees relating to the application to vary the Disciplinary Application. Mr. Lee's costs total \$24,750 including GST, of which \$4,840 relates to the application to vary the Disciplinary Application.

It would be possible to order that the costs of the Law Society be taxed under O.63 of the Supreme Court Rules, in which case it would be appropriate to order such costs to be taxed on the standard basis. In general, the costs charged appear to be reasonable, but it may be expected that on taxation on the standard basis the amount would be reduced to some extent. In addition, this application did not proceed as efficiently or economically as it might have had time and costs not been wasted on the unsuccessful application to vary the Disciplinary Application. Allowance for this should be made in favour of Mr. Lee.

In the circumstances, to save additional time and expense, the Tribunal will make an order for costs in a specified amount. It is not possible to reflect the factors in a precise calculation, but, taking into account the matters mentioned, it would be fair to order Mr. Lee to pay the Law Society's costs in the sum of \$15,000 including GST.

Dated : ..... 29 July 2011 .....

..... J. Lee .....  
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