

FONG (DAVID) APPLICATION: LAW PRACTITIONERS ACT 1976

Supreme Court Apia
Callander CJ
8 April 1983

BARRISTER & SOLICITOR - application for restoration of name to the roll.

LEGISLATION:

- Law Practitioners Act 1976, Section 10

H T Retzlaff for Applicant
R Drake for and on behalf of the Western Samoa Law Society

This is an application for restoration of the applicant to the roll of Barristers and Solicitors of the Supreme Court of Western Samoa. The basic facts are not in dispute. He was disbarred by the Western Samoa Law Society on the 13th of June 1978 and he made subsequent application to this court for restoration in 1981 and that application was declined. The reason for the application then being declined was that the applicant foolishly tried to mislead the Chief Justice at that hearing.

He now seeks to be admitted on a limited basis and has amended his motion so as to ensure that he does not have the right to practice as a solicitor on his own account or as a principal in partnership. The court must determine whether, on the affidavit evidence before it, Mr Fong is now a fit and proper person to practice as a barrister and solicitor of this court. He has supported his notice of motion with a number of affidavits from leading members of the community, all of whom commended him in one way or another as being honest and hard working and as someone who has learned his lesson in life. These citizens have to some extent put their heads on the line and I accordingly give those affidavits considerable weight.

The Law Society has filed an affidavit which sets out a decision of the Law Society to not support the application because the Law Society was not satisfied that he has sufficiently reformed to be restored to the roll. The Society has elected, however, not to actively oppose the application today. That is of course a valued judgment as indeed the affidavits are value judgments and to some extent the decision of this court is a value judgment.

I want to say this to the applicant - that any barrister or solicitor of this Court must at all times, whether in his direct

professional relationship with clients or whether in some quasi-legal relationship or business dealing, be at all times totally honest. The moment a member of the legal profession is tainted by dishonesty then such a cancer must be excised. That is what happened to you. The legal profession is not different from any other profession. Men of lesser morals bring odium on their honest brothers. You were dealt with properly by the Law Society. You were in my view chastised by the Chief Justice two years ago quite properly. I am disturbed at an attitude evident now in this country not only in your application but in many other criminal proceedings before this court, where there is almost a shrugging of the shoulders at dishonest behaviour. There is in this city an increasing tendency to dishonesty which does not show in other parts of Western Samoa and which may of course be emerging because of certain social problems caused by economic factors. That attitude must, of course, in the eyes of the law never be allowed to emerge because once there is the dishonesty, in professional society or in government, then there begins a rot which continues eating into the fabric of society in a sometimes fatal or damaging way.

The Law Society is one of the crucial foundations for the preservation of the Rule of Law and of the maintaining of the legal system. Without lawyers who are prepared not only to stand up and courageously defend legal principles but who are also honest, then this country will suffer.

You have paid a certain price for your dishonesty. You were not prosecuted for a criminal offence when, reading the papers, that may well have happened. I must give weight to the affidavits of the many notable and respected citizens who say that you are now a suitable fit and proper person to be restored to the rolls. I am going to grant the limited application and you will be restored to the rolls on that basis. I want to make it quite clear to you however, that if you should at any future stage perform any dishonesty, no matter how little, and that came to the attention of your Law Society, you would be removed from the rolls for life, and I want you to remind yourself of these words. These deponents as I have said, put their reputation on the line for you - some of them actually have said that you are an honest person and that is fairly bold for any human being to say of another. You are a man of talent and ambition and your society needs qualified people with your important skills. Not being able to practice in private or in partnership is one thing, but of course a dishonest lawyer working as a civil servant can act, may cause even more damage than a solicitor in private practice and I am aware of that fact as I restore your name to the rolls. My decision now will be typed and put in the file for future reference. I will grant the application as I do believe you are entitled to a second chance and I think you deserve a fresh start. You must now take the oath of admission.