Tempura attorney disbarred

By Staff - December 11, 2009

**Martin Polaine advised on judge's arrest**

Martin Polaine, the UK attorney who advised Operation Tempura officers on the arrest of Justice Alexander Henderson last year, was disbarred after a disciplinary hearing on Wednesday.

The hearing was conducted by a five-person tribunal of the UK Bar Standards Board. Mr. Polaine admitted all charges against him. The decision is open to appeal.

The board decision described Mr. Polaine as a barrister who was called to the Bar in 1988. Being disbarred means being expelled from the practice of law.

Earlier this year Mr. Polaine sent a letter to Justice Henderson apologising unreservedly for the role he played in Operation Tempura, which led to the judge's arrest and search of his home and office in September 2008 (Caymanian Compass, 30 August).

After a judicial review, Sir Peter Cresswell determined that the search warrants were not valid. The Crown later agreed the arrest was unlawful. Attorneys for Justice Henderson settled for $1.275 million in damages.

Justice Henderson subsequently filed a complaint with the UK Bar Standards Board about the advice and conduct of Mr. Polaine over the course of Operation Tempura.

Tempura, which started as an investigation into possible corruption in the Royal Cayman Islands Police Service, was conducted by an undercover team of officers from UK Metropolitan Police on island since September 2007. Team members, led by Martin Bridger, were sworn in as special constables.

The board found that Mr. Polaine supplied legal services in the Cayman Islands and allowed himself to be held out as a barrister even though he was not qualified to practise in Cayman, nor did he have expert knowledge of Cayman law.

The course of his behaviour ran from September 2008 and 21 March, 2009.

During that time, Mr. Polaine advised Cayman authorities that there was reasonable suspicion that Justice Henderson had committed the offence of misconduct in public office. In fact, there was no such reasonable suspicion.

He also advised there was reasonable suspicion that material necessary to the investigation into misconduct was in the judge's home and chambers. In fact, there was no such reasonable suspicion.

It was Mr. Polaine who advised that an application for search warrants could be made to a lay Justice of the Peace rather than a judge of the Grand Court. He then failed to advise on the necessary obligations to disclose information to the JP.

As a result, the Operation Tempura officers who applied for the search warrants failed to put important facts before the JP, Carson Ebanks, and misrepresented other facts, the board summarised.

It found that Mr. Polaine 'engaged in conduct, which was prejudicial to the administration of justice, in that he allowed himself to be introduced as a lawyer' to Mr. Ebanks. By doing so, he was 'creating the misleading impression that the application for the search warrants was made on the advice of a lawyer who was qualified to practise in the Cayman Islands.'
The board said Mr. Polaine later engaged in 'conduct likely to diminish public confidence in the legal profession or the administration of justice' by telling the media his advice had been correct and inferring that Justice Cresswell's judgment was wrong.

Finally, the board found that Mr. Polaine supplied legal services in Cayman when neither he nor his employer, Amicus Legal Consultants Ltd., was covered by insurance against claims for professional negligence.