

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CRI 2007-092-18132**

**THE QUEEN**

v

**PHILLIP HANS FIELD**

Hearing: 6 October 2009

Counsel: SJ Moore SC, DG Johnstone and A Longdill for Crown  
PJ Davison QC and RC Woods for Prisoner

Judgment: 6 October 2009

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**SENTENCING NOTES OF RODNEY HANSEN J**

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Solicitors: Meredith Connell, P O Box 2213, Auckland for the Crown  
Mr PJ Davison QC, P O Box 105513, Auckland 1001 for the Prisoner

## **Introduction**

[1] Mr Field, you appear for sentence having been convicted of 11 of 12 counts of bribery as a Member of Parliament and 15 of 23 counts that you faced of attempting to pervert the course of justice. The maximum penalty for each offence is 7 years imprisonment.

[2] I take this opportunity to formally discharge you on the 9 counts of which you were acquitted [12, 13-16, 18, 23, 28 and 30].

[3] In the first part of my sentencing remarks I will set out the background facts as they emerged in evidence given at your trial. I will then consider the applicable sentencing principles in much the same way as counsel have in their submissions, addressing first the counts of bribery and corruption and then the charges of attempting to pervert the course of justice. I will then give consideration to mitigating factors and conclude by determining the final sentence.

## **Facts**

[4] At the time of the offending you were the Member of Parliament for the Mangere electorate. You had been the elected member since 1993 and you remained so until 2008. In 2003 you were appointed Associate Minister of Pacific Island Affairs, Associate Minister of Social Development and Employment and Associate Minister of Justice. You held those positions until after the 2005 elections.

[5] All bribery and corruption counts arose from work done by Thai trades people on houses you owned. All of them received advice and assistance from you in your capacity as an MP. By their verdicts the jury found that in return for that assistance, you accepted benefits in the form of work on properties owned by you. The jury must have accepted that you knew that was the basis on which the work was done.

[6] The offending took place over the period September 2003 to late 2006 but it is necessary to go back to late 2002 to put it in context. At that time you were approached for help by a Thai couple - Sompong Srikaew and Phisamai Phothisarn. They were Thai overstayers who were moving from house to house with their newly born baby, attempting to avoid apprehension by the immigration authorities. Ms Phothisarn had been served with a removal order. Mr Srikaew's permit to stay had been revoked. Their situation was desperate. They came to you as their electorate MP.

[7] You not only helped them with their immigration problems, you gave them refuge. A rental property you owned at 15 Prangley Avenue was vacant. They stayed there for a period of two or three weeks – perhaps longer. You did not charge them rent.

[8] Mr Srikaew did some plastering work off his own bat as a way of repaying your kindness. They refused your offer of payment, although you later gave them a cheque for \$200 to cover the cost of materials. Curiously, that was not presented until September 2003, though the cheque was dated 15 March of that year. With your assistance, both Sompong Srikaew and Phisamai Phothisarn in time obtained permanent residence.

[9] In March 2003 they went to Wellington with another Thai couple to get a passport for their child. You and your wife allowed them to stay in a house you owned at 57 Kinghorne Street in Wellington. You also entertained them and showed them around Wellington. They did some minor plastering work on your house. Although this was done to repay your hospitality, it seems that you made a cash payment to them. Bank records indicate it might have been as much as \$500.

[10] In August 2003 you and your daughter purchased the property at 42 Allen Street, Mangere, which is the subject of counts 1 and 2. You immediately set about arranging for its redecoration. You first approached Sompong Srikaew. He was unavailable and he introduced Somjit Kaewbabpha, another plasterer. He in turn introduced a painter, Phongphat Chaikhompol, also known as Ded. Coinciding with the time they began work on Allen Street, both sought your assistance with their

immigration problems. In time, through your intervention, Mr Kaewbabpha and his wife and Mr Chaikhompol obtained permanent residence in New Zealand.

[11] At 42 Allen Street they did a major redecorating job. You paid for materials but nothing for their labour which was estimated by expert building consultant, Anthony Deans, at trial as \$3,410 for plastering and almost \$10,000 for painting. His evidence was criticised at trial. Whatever arguments there might be with Mr Dean's approach, this was a major redecorating job. The house was repainted inside and out. The work done undoubtedly contributed to the profit of \$60,000 which was made when the house was sold a few months later.

[12] There was ample evidence to support a finding that, to your knowledge, the work was done because of, and in recognition of, the immigration assistance that you were providing to the two tradesmen. Mr Chaikhompol was adamant that, before work started and after it finished, he made it clear to you that he would not take your money because of what you were doing for him. He said you acknowledged this advice by saying, "*Thank you*". You suggested that there was room for misunderstanding because of Mr Chaikhompol's inadequate grasp of English. But I am satisfied, as the jury must have been also, that by their words and their conduct, both men made it clear that they would provide their labour free in return for the assistance you gave them.

[13] So began a pattern that was to be repeated in relation to three further properties in New Zealand over the next year or so. Before the next project got underway, however, there was another trip to Wellington by a contingent of ten Thai tradespeople, most of whom were assisted by you at some time or other. It was aptly described by Mr Moore in the course of the trial as in the nature of a working bee. Again they stayed at Kinghorne Street. In the space of four days, two bedrooms were redecorated, minor repairs to the house were carried out inside and out and there was a general cleanup of the grounds. Again, an *ex gratia* payment of \$500 was made and accepted.

[14] You later misled the Ingram inquiry as to the extent of the work done at the Wellington property. It was not revealed until the quantity of paint purchased

became apparent from documentary evidence produced in the course of the trial. A couple of months after the work was done, Kinghorne Street was sold for a profit of \$87,000. This work was not the subject of a charge but it is part of the narrative and continued the pattern of using Thai immigrants to provide labour on highly favourable terms.

[15] In May 2004 you bought 51 Church Street, Otahuhu, and in July of the same year, a house at 73 Blake Road, Mangere. Both required refurbishing. All of the work, except plastering and painting, was done by tradesmen employed and supervised by a member of your extended family. You took direct responsibility for arranging the plastering and painting carried out at both properties over the same general period.

[16] Most of the work at Blake Road was done by the same pair who had done the work at 42 Allen Street– the plastering by Somjit Kaewbabpha and the painting by Ded Chaikhompol. The plastering was a relatively minor job – the labour estimated by Mr Dean to be \$270 – and the materials were paid for. The painting work was, however, quite extensive - \$915 for materials and \$3,390 for labour. There is no evidence of any payment being made.

[17] At 51 Church Street the plastering was again done by Somjit Kaewbabpha. He was paid \$300 to cover the cost of materials. He received nothing for his labour – estimated by Mr Dean to be worth \$810. It seems that paint, to the value of at least \$1,000 was paid for but labour – mainly provided by Mr Chaikhompol again – was estimated by Mr Dean to be worth \$9,050.

[18] The Church Road house was immediately let to another Thai couple, Jinda Thaivichit and her husband, Bulakorn Ngaken, both plasterers. Ms Thaivichit was a New Zealand resident who spoke good English and was something of a leader in the Thai community. Mr Ngaken had immigration problems which, over subsequent months, you helped him to resolve. You and your wife became friendly with them and you came to rely on Ms Thaivichit to secure the services of Thai trades people and later to help you cover up what had gone on.

[19] You contacted Ms Thaivichit when you wanted painting and plastering work done on the fourth and remaining Auckland property at 2A Prangley Avenue. It was a rental unit adjoining your residence. You added two rooms at the end of 2004. The plastering was done by Jinda Thaivichit and her husband. The internal painting was done by another husband and wife team, Banleng Prachanan and Somboon Ngaosri. Both had also provided assistance at 51 Church Street and were assisted over the 2004/2005 period to eventually obtain permanent residence. Mr Chaikhompol, who had by this time obtained permanent residence, did the outside work. By this time he had already done a great deal of unpaid work and, understandably, expressed some unwillingness about undertaking the job.

[20] No payments were made for labour or materials at 2A Prangley Avenue. The evidence was that plastering, labour and materials were approximately \$2,730, although that figure appears to be inflated by the mistaken belief that the plasterers fixed the gib board. The total value of painting inside and out, including materials, was approximately \$2,500.

[21] The remaining counts of bribery and corruption concern work done on a large partly-built house at Afiamalu in Samoa which was purchased by you and your wife in 2004. It appears that construction had come to a halt before finishing work had commenced. You had retained the services of a builder, Fa'atasiga Sulusulu, to go to Samoa to supervise the completion of the house. It was to become your retirement home. Instead, it became the place where your dreams began to crumble.

[22] In February 2005 you met with Sunan Siriwan, a Thai tiler, and two friends of his, Jansri Cole, a Thai-speaking New Zealand resident, and Keith Williams, a builder with close links to the Thai community. Mr Siriwan had previously been to your electorate office. He returned with the advice that his wife, Aumporn Phannarn, had been served with a removal order. She and their New Zealand-born son had returned to Thailand. Because Mr Siriwan had previously had an application for refugee status declined, he could not apply for a New Zealand work permit without leaving the country. He did not wish to return to Thailand and you suggested that he travel instead to Samoa and make an application from there. You also mentioned to him that your retirement home in Samoa required tiling.

[23] A further meeting was arranged at your house, in the course of which it was agreed that Mr Williams and Mr Siriwan would travel to Samoa – Mr Williams for a short period to assist with the building of the house and Mr Siriwan to undertake the tiling work. At a breakfast meeting with Mr Sulusulu the following morning, you advised him that you had retained their services. He was left in no doubt that Mr Siriwan was to undertake the tiling on your property.

[24] Over the next few weeks, you made the necessary arrangements, including completing a draft application for a Samoan work permit and a supporting document in which you and your wife undertook sponsorship of Mr Siriwan. These documents explicitly recorded that Mr Siriwan would be undertaking the tiling work on your retirement home.

[25] You maintained in evidence that the account given by prosecution witnesses of these meetings was incorrect and that there had been no arrangement for Sunan Siriwan to undertake tiling on your house in Samoa before he left New Zealand. Your defence was that you had simply facilitated his travel to and entry into Samoa as a convenient destination from which to apply for a permit to return to New Zealand. You maintained there was no intention or plan that he would undertake the tiling work on your house and that he did so because events in Samoa moved in a way you could not have foreseen. It is not surprising, in my view, that your interpretation of events was rejected by the jury. It was at odds with the documentary evidence and with the patently truthful testimony of Mr Sulusulu in particular.

[26] In Samoa Mr Siriwan worked extremely hard. He laid \$14,000 worth of tiles over a period of several months. The value of his work was estimated by a Samoan building consultant to be between NZ\$4,000 and NZ\$7,000. The cost to you was an allowance of 150 – 200 tala or less than NZ \$100 per week. He and his wife and child ended up effectively marooned in Samoa when adverse publicity in New Zealand made it practically impossible for him to be given the New Zealand work permit that the Associate Minister of Immigration, at your request, had previously said would be granted. To be fair, members of your wife's family later provided him and his wife and child with accommodation and arranged work opportunities but

Mr Siriwan and Ms Phannarn became increasingly disillusioned. Ms Phannarn believed you virtually abandoned them. She said in evidence that when they had finished working on your property you, “*Just chased us away like dogs*”.

[27] While the tiling was being organised, you enlisted Jinda Thaivichit’s help to arrange plastering and painting. Because of other commitments, she was unable to go to Samoa, but her husband, who by that time had secured a New Zealand work permit, went with Somjit Kaewbabpha to do the plastering.

[28] Both were willing to go to Samoa and to work unpaid. The cost to you was one half of Mr Kaewbabpha’s airfare - \$367. Both had previously benefited from your intervention in their immigration problems. The jury rejected the defence contention that the arrangement was based on friendship, that it had no connection with the immigration services provided and that you had no reason to think that a bribe was involved. The value of the plastering work could not be determined but Mr Sulusulu’s evidence made it clear that the plasterers worked long hours during the 2 – 3 weeks they were in Samoa.

[29] Jinda Thaivichit also enlisted the painters who worked in Samoa - the husband and wife team of Banleng Prachanan and Somboon Ngaosri and another Thai painter named Wichian Phimpadcha. You had successfully intervened on Somboon Ngaosri’s behalf – indeed, she arrived back in New Zealand with a work permit the day before departing for Samoa. You had been advising Mr Phimpadcha (who had permanent residence) on arrangements to bring his two sons to New Zealand from Thailand. At Ms Thaivichit’s request, he had advised you on the purchase of paint for Samoa. The three painters painted the house inside and out over a period of three weeks. The estimated value of the work was \$12,000. The cost to you was half of the airfares of Ms Ngaosri and Mr Prachanan. Again, the jury rejected the proposition that the painters had done the work in the course of a holiday in Samoa and that there was no relationship with the immigration services you had provided to them.

[30] Excluding the cost of plastering work at Samoa, the total value of unpaid work was \$58,280. As I have said, the accuracy of the estimates was challenged, but by any standards a substantial benefit was conferred.

### **Attempting to pervert the course of justice**

[31] The remaining convictions are of attempting to obstruct or pervert the course of justice. They arose from your actions after September 2005 when allegations that you had engaged Thai nationals to work on your properties surfaced for the first time. The initial publicity was about Sunan Siriwan's tiling work in Samoa. The information emanated from Keith Williams who turned out to be a viper in your bosom. He was a troublesome presence in Samoa and was effectively run out of the country. Pursuing his personal grievances, he co-authored a letter to key government figures that was copied to the media.

[32] In response, on 21 September 2005, the then Prime Minister, the Right Honourable Helen Clark, announced an inquiry would be undertaken by Dr Noel Ingram QC. He had limited powers. He had no powers to compel the attendance of witnesses or require evidence to be given on oath. He interviewed you on three occasions – 29 September 2005, 18 January 2006 and 8 June 2006. He also interviewed a number of others, including some of the Thai workers in New Zealand and Mr Siriwan, Ms Phannarn and Mr Sulusulu in Samoa.

[33] By their verdicts, the jury found that you made false statements to the inquiry, procured others to make false statements and to falsify evidence which you presented to the inquiry. These led to your convictions on 11 of the 15 counts of attempting to pervert the course of justice, of which you were found guilty.

[34] Because the Ingram inquiry was not itself part of the course of justice, the jury must have accepted that you foresaw that Dr Ingram's findings could lead to a police investigation and criminal charges, and that you sought to avoid adverse findings that could lead to a prosecution. The following actions taken by you were found to be attempts to prevent the Ingram inquiry getting to the truth of what had happened.

- a) **Count 29:** The first was count 29. In the course of your first interview by the Ingram inquiry on 29 September 2005, you said that you did not arrange for Mr Siriwan to undertake tiling work in Samoa and you were not aware of his work permit application until after it had been issued. Both statements were false. As I have previously said, the jury rejected your evidence that you did not make plans for Mr Siriwan to do the tiling before he left New Zealand.
- b) **Count 19:** You persuaded Ms Thaivichit and, through her, Mr Chaikhompol to tell the Ingram inquiry that Ms Thaivichit arranged for Mr Chaikhompol to undertake the painting at 73 Blake Road and that he was paid \$750 for the work. As you yourself accepted in evidence, Ms Thaivichit had nothing to do with arrangements for the work at Blake Road and Mr Chaikhompol was not paid a cent for what he did.
- c) **Count 27:** You persuaded Mr Sulusulu to tell the Ingram inquiry in Samoa that he had not seen Thai people other than Sunan Siriwan working at the property in Afiamalu. That evidence was plainly false. Mr Sulusulu was on site throughout and had seen both the plasterers and the painters at work. In this Court Mr Sulusulu was a transparently honest witness, who was obviously torn between his personal and family loyalty to you and his Christian principles. He was prepared to lie to the Ingram inquiry to protect you but once the police became involved, it was a step too far and he told them the truth.
- d) **Count 26:** At your instigation, Mr Siriwan and Ms Phannarn were persuaded to tell the Ingram inquiry that you did not arrange for Mr Siriwan to travel to Samoa for the purpose of working on your house and that he had not seen other Thai people working at the property. These statements also were demonstrably false.

- e) **Counts 20 and 24:** At the second interview with Dr Ingram on 18 January 2006, you said that Ms Thaivichit had arranged the painting at 73 Blake Road and that she was paid \$300 cash for her work at 2A Prangley Avenue. As I have said earlier, it is common ground that Ms Thaivichit was not involved with the work at Blake Road. The jury obviously rejected your evidence that this was an honest mistake. The jury also must have accepted that she was paid nothing for the plastering work at 2A Prangley Avenue.
  
- f) **Counts 21 and 25:** In the course of the investigation, the Ingram inquiry remarked on the absence of documentation relating to work done by painters and plasterers on your properties. In response, you asked Jinda Thaivichit to prepare two false quotations relating to the work at 73 Blake Road and one false quotation relating to 2A Prangley Avenue. You presented these to the Ingram inquiry to support your earlier evidence that this work had been paid for.
  
- g) **Count 17:** At a later date you asked Ms Thaivichit to create a false invoice relating to the work done at 51 Church Street. She was reluctant to do so and was advised against it by her accountant. Eventually, she agreed to and was paid the invoice sum of \$440 in cash. Effectively, as the Crown said at trial, you “bought” the invoice to provide evidence to the Ingram inquiry that you had paid for the work.
  
- h) **Counts 22 and 31:** You were provided with an opportunity to comment on Dr Ingram’s draft report. In your written statement in response and at the interview on 8 June 2006 you again told Dr Ingram that Ms Thaivichit arranged the painting at 73 Blake Road and that you did not arrange for Mr Siriwan to undertake tiling work in Samoa.

### **Counts 33 and 34**

[35] Shortly after the police announced, on 31 August 2006, that an inquiry was being commenced into your conduct, you approached Sompong Srikaew and Phisamai Phothisarn and arranged for them to prepare false invoices relating to the work done at 15 Prangley Avenue and 42 Allen Street. As the Ingram inquiry had never become aware of work done on these properties, I infer that, anticipating that they would come to the attention of the police in the course of their enquiries, you wanted to obtain evidence that payments had been made. The way in which the invoices were created and the sums chosen bore no relation to reality. Based on a receipt written out by you, an invoice for \$1,300 was prepared for the work done at 15 Prangley Avenue and an invoice for \$700 for the work done at 42 Allen Street. The only payments you had in fact made in relation to 15 Prangley Avenue was \$200 for the ceiling roses and, of course, neither Mr Srikaew nor Ms Phothisarn had done the work at Allen Street. You paid them \$700 in cash to match the amount on the invoice.

[36] The originals of the invoices were never found and were never presented by you. The jury obviously accepted, however, that their preparation was a first step to providing misleading evidence to police investigators.

### **Count 35**

[37] In mid-September 2006, a meeting was held at your step-daughter's house in Henderson. All of the Thai tradespeople who had worked on your properties attended. The jury plainly accepted Jinda Thaivichit's evidence that in the course of that meeting you urged those present to confirm their previous false accounts to the Ingram inquiry.

## **Count 32**

[38] In October 2006 you travelled to Samoa where you met with Sunan Siriwan and Aumporn Phannarn. You told them the police investigation had commenced and, in the course of a car journey from your house in Afiamalu to Apia, you urged them to tell the police that they had not met with you in Samoa and that Mr Siriwan had not worked at the Afiamalu property. You disputed their evidence and maintained that you had been misunderstood; you claimed to have said that Mr Siriwan must do no more work at Afiamalu and they should not talk to you while the police investigation was underway. Again, the jury must have preferred the prosecution evidence.

### **Approach to sentence**

[39] I turn now to consider the approach to be taken to your sentence.

[40] I agree with counsel that the proper approach to sentencing is that there should be concurrent sentences for offences within each category but the sentences for each category should be cumulative. That is in accordance with s 84 of the Sentencing Act 2002 which provides that concurrent sentences are generally appropriate if the offences are of a similar kind and are a connected series of offences. Cumulative sentences are generally appropriate if the offences are different in kind. As Mr Moore has submitted, this approach is consistent with the case of *R v Uon* CA108 /05 27 June 2005, where an attempt to pervert the course of justice in order to avoid the consequences of earlier offending was the subject of a cumulative sentence.

[41] I must then ensure, in terms of s 85 of the Sentencing Act and the totality principle, that the aggregate of the cumulative sentences does not result in a total period of imprisonment wholly out of proportion to the gravity of the overall offending.

[42] Before I discuss the appropriate sentence for each category of offending, I will refer to those purposes of sentencing which have particular application. On this

issue I accept the Crown's submission that they are, first of all, to hold you accountable for the harm done to the community by his offending [s 7(1)(a)].

[43] Secondly, to promote in you a sense of responsibility and acknowledgement for the harm you have caused [s 7(1)(b)]. The Crown has said that you have wholly failed to accept responsibility while conceding that you were entitled to defend the charges. You told the probation officer, and Mr Davison has repeated in Court this morning, that you now accept the jury's verdict and feel remorse. On the other hand, you have not demonstrated an insight into and an acceptance of the offending which would entitle you, as Mr Davison properly conceded, to any allowance for genuine remorse.

[44] The third and important factor is to denounce your conduct [s 7(1)(e)]. This is a particularly important purpose in sentencing on both categories of offending. Bribery and corruption and attempts to pervert the course of justice threaten institutions that are at the foundation of our democracy. One is Parliament and the other is our system of justice. The public should be able to have complete trust and confidence in the integrity and proper functioning of these institutions. Any actions which tend to undermine them – particularly when they are perpetrated by those whose duty it is to uphold them – are deserving of particular condemnation.

[45] For much the same reasons, deterrence is a highly relevant goal in sentencing on these offences. I accept there is no risk of your reoffending but a high priority must be placed on the need for general deterrence and for issuing a message that conduct of this kind is intolerable in our society.

### **Bribery and corruption**

[46] I turn now to consider what is the appropriate sentence for the offences of bribery and corruption. As you have heard, there is no direct precedent to which I can turn for guidance as you are the first person in New Zealand to be prosecuted for this offence in your capacity as an MP. There is some guidance to be obtained from broadly analogous cases in New Zealand and some overseas cases also provide assistance.

[47] In the case of *R v Nua* [2001] 3 NZLR 483 (CA), as you have heard, over a 15-month period a senior Customs officer accepted bribes and other benefits totalling between \$150,000 and \$200,000 for allowing cars to be imported without odometer checks and payment of GST. A sentence of four years was upheld by the Court of Appeal. As Mr Nua had pleaded guilty at the earliest opportunity and cooperated fully with the authorities, a significantly higher starting must be assumed. The Court of Appeal observed that a deterrent sentence in excess of five years would have been justified as the starting point (at p 423). I agree with Mr Moore that, given the mitigating factors that would have applied in that case, it can reasonably be assumed that a starting point of six years would have been adopted.

[48] The other New Zealand case is that of *R v Palmer* CA332/03 31 March 2004. Mr Palmer was an official working for the Government Superannuation Fund who corruptly used official information to profit by \$215,000 by trading in futures contracts. The Court of Appeal found the starting point for sentence in that case should have been 3-4 years. It found Mr Palmer's culpability to be less than Mr Nua's primarily because his offending involved a single event within a 24-hour period, whereas Nua's involved not only corrupt use of official information but prolonged acquiescence in corrupt behaviour.

[49] Overseas cases referred to are *R v Bruneau* [1964] 1 C.C.C. 97, where the Ontario Court of Appeal imposed a sentence of five years imprisonment on a Member of Parliament for corruptly accepting a \$10,000 bribe to use his influence to have the government purchase a property. The maximum penalty in that case was 14 years.

[50] Then there is *R v Jackson and Hakim* (1988) 33 A Crim R 413, where a minister of New South Wales was sentenced on appeal to ten years imprisonment for accepting bribes to enable prisoners to be released before the expiration of their sentences. Both those overseas cases, *Bruneau* and *Jackson* are readily and obviously distinguishable and provide only the broadest guidance.

[51] The Crown submits that your offending is more serious than in *Nua* and argues for a starting point of between five and a half and six years. The defence

contends that you were less culpable than Mr Nua and that your offending was no more serious or culpable than the offending in *Palmer*.

[52] Mr Davison, as you will have heard, argues for a starting point of four years. He challenges the points of distinction relied on by the Crown. He submits that the period of offending in your case is somewhat less and the offending in *Nua* was more frequent and intense and involved unequivocal acts of bribery. He also points out that although Mr Nua's position was lower than yours in the political and administrative hierarchy, he was the decisionmaker.

[53] I accept that Mr Nua's offending was more serious generally, for the reasons put forward by Mr Davison, particularly having regard to the amounts involved, Mr Nua's position as a decision-maker and the elaborate nature of the scheme arising out of his position. There were also, as Mr Davison said, two discrete levels of offending – a matter to which I will return. Against that, I do not overlook Mr Moore's reminder that, although you were not the ultimate decision-maker, you had a special relationship with the Associate Minister that carried with it a special obligation to be frank and honest.

[54] In assessing culpability, I start with the fact that what you did involved multiple offending over a period of two years. Beginning with Allen Street and ending with the house at Afiamalu, you received benefits in the form of free labour on five properties from eight individuals.

[55] The benefits you received were substantial. You have taken issue with the value placed on the work at trial. You have challenged the methodology. You have questioned the quality of the workmanship. And you have said that, because of the way the work was done, you did not really appreciate its value.

[56] These matters do not materially affect my assessment of your culpability. The precise value of the work is, in my view, very much a secondary consideration. The reality is that what was done had significant benefits for you. Among other things, it helped you to sell three of the properties for healthy profits. You were complimentary about the quality of the work at the time and eager to have the same

tradespeople do more work – including work on your retirement home. The fact that much of the work was done after hours and did not deprive the tradesmen of regular income is neither here nor there, in my view. You saw the results. You must have known that their willing assistance was saving you tens of thousands of dollars.

[57] I accept that your offending is different in kind from those cases in which a sum of money or benefit is received in return for granting a favour or indulgence that is itself is an abuse of power – *Nua, Bruneau and Jackson* are all examples of that. Mr Davison referred me in his written submissions to the distinction made in American law between bribery and what are called illegal gratuities. Bribery requires an intent to influence; an illegal gratuity is in the nature of a reward. The punishment for bribery in that jurisdiction is significantly greater.

[58] Our law makes no distinction between the two. Both are encompassed by s 103 of the Crimes Act under which you are charged. But, in my view, that is no reason not to recognise the differing levels of culpability involved. You did not act improperly in response to opportunities for personal benefit. On the contrary, you acted as any conscientious Member of Parliament would in your position. Your wrong was to accept a reward for doing your job. That was wrong but it is not as serious, in my view, as accepting a bribe as an inducement for wrongful ends.

[59] I also accept in mitigation that you did not initiate the offending by offering or proposing to provide services in return for work or that you became involved in response to an explicit proposal. It is fair to acknowledge that the offending had its genesis in your act of kindness to Sompong Srikaew and Phisamai Phothisarn way back at the end of 2002. The work they did to show their gratitude was unsolicited and perfectly appropriate. But it was the top of a slippery slope for you. The potential benefits offered by the gratitude of Thai nationals was confirmed by the first trip to Wellington and was, in my view, instrumental in your inviting them to undertake the work at Allen Street.

[60] It is true that, particularly with the earlier projects, you asked those involved to give you an account and made offers to pay for the work. But, in my view, you were simply going through the motions. This was no more than window dressing.

You knew they would not charge because that is what they repeatedly said. By the time of the later jobs, it was taken for granted that you would pay no more than the cost of materials and, in the case of the work in Samoa, a contribution to the airfares of some.

[61] It was suggested in evidence – and repeated in some of the materials placed before me today – that cultural differences and misunderstandings may have explained or mitigated your offending. I do not accept that for one moment.

[62] The Thai people whom you helped expressed their gratitude to you in a way that was culturally appropriate to them. You were only too familiar with its Samoan equivalent – *lafo*. But that provided no justification for your accepting what was offered. You knew it was wrong. Indeed, you had installed systems at your electorate office to ensure that no one could benefit personally from unsolicited expressions of gratitude.

[63] So while Thai cultural practices created the conditions for your offending, in no way do they mitigate what you did. I regard it as an aggravating factor that you were prepared to exploit the gratitude and the vulnerability of the Thai nationals whom you helped. You gave them the opportunity for a new life in New Zealand. They revered you. They called you *poyia* or Big Dad. In my view, you quite cynically used their adulation of you for your private gain. This was not a question of culture. It was a question of character. It was actually a test of your character. It was a test which, in my view, you failed because when your public duty and your private interests came into conflict, your private interests prevailed.

[64] I accept that your offending was, in a sense, haphazard as Mr Davison has described it. On the other hand, I think Mr Moore was right to characterise it as becoming more audacious and extravagant as time went on. While, for the reasons I have given, it was not of the most serious kind, it involved repeated and blatant violations of your duty as a parliamentarian. In my view, a starting point for sentence on the charges of bribery and corruption of five years imprisonment is appropriate.

## **Attempting to pervert the course of justice**

[65] I turn now to consider sentence in relation to the charges of attempting to pervert the course of justice.

[66] There is only general guidance to be obtained from other cases for this category of offending also. The Crown submits a starting point of between five and five and a half years is justified, relying on *R v Goldberg* CA10/05 4 May 2006 and *R v Dewar* [2008] NZCA 344. In *Goldberg* a four-year starting point was approved where there were four separate incidents involving direct attempts to interfere with Court proceedings. In *Dewar*, where a starting point of six years was adopted, there were four counts, although that does not adequately convey the scale and seriousness of the offending. In that case, over a period of two and a half years, a senior police officer deliberately set out to obstruct an investigation into serious offending by fellow police officers. He caused two criminal trials to be aborted. When an internal police inquiry into his own conduct began, he manipulated witnesses and lied to avoid detection.

[67] I do not find the *Goldberg* case of any great assistance, confined as it is to its own particular facts and I accept that there are important distinctions between your conduct and that of Mr Dewar. The first is that your offending did not involve direct interference with the course of justice. It was directed to preventing a police investigation taking place or to the investigation uncovering the true facts.

[68] Secondly, I accept that interference with the course of justice was, by no means, your sole motivation – unlike Mr Dewar, for example, whose sole objective was to protect his associates and himself by preventing justice taking its course. When adverse publicity began in September 2005, you saw that your career and reputation were threatened. You came under intense pressure. Your family was under siege. You had other reasons for wanting to contain the investigation and to prevent Dr Ingram from getting to the truth.

[69] Thirdly, Mr Dewar was in a special position. His job was to pursue the ends of justice. He abused a special position of trust and power.

[70] The number of convictions as a measure of your culpability is, I accept, a little misleading. I agree that they arise, to some extent, from the way in which the Crown chose to frame its case. Arguably, there is a level of duplication in that you were convicted of telling the same lies on different occasions. Counts 22 and 31, for example, involved telling the same lies at the third interview as you told at earlier interviews and were covered by counts 29 and 20. That said, your offending reveals a scheme of deception, which became more elaborate as one lie followed another. As Mr Moore said, it was manipulative and adaptive. In a sense, it had to be in order to maintain the deceptions. It was very much the *“tangled web we weave, when once we practise to deceive”*.

[71] So it was that you not only lied yourself but procured others to lie as well and to create false documents. It is an aggravating factor, in my view, that you recruited your loyal Thai friends and Mr Sulusulu into your deception. You shamelessly traded on their friendship and loyalty. Ms Thaivichit, in particular, was used time and again to dissemble and deceive on your behalf and to encourage others to do so. Apart from the deceptions she was directly involved in, you enlisted her to incite Mr Siriwan and Ms Phangarn to lie to the Ingram inquiry. Then, of course, there are the further actions that you took when the police investigations began.

[72] Mr Davison had said that your offending was unsophisticated and there was no evidence of concealment of evidence. I do not agree. What you did was sophisticated enough to succeed in diverting the Ingram inquiry. While some incriminating documents were found in the course of police searches, many documents that would have helped to explain what occurred have never seen the light of day. I am not prepared to find that there has been no attempt to conceal evidence.

[73] This was not a direct assault on the course of justice, as occurred in cases such as *Dewar*, but it was, in my view, an elaborate and carefully planned attempt to try to ensure that the course of justice never got underway. Had it succeeded, serious criminal offending would have gone undetected. Relying on *R v Huata* DC AK CRI 2003-041-5606 30 September 2005, Mr Davison has submitted that the starting point I should adopt is one of three years. While the facts of *Huata* have some superficial

similarity, I do not find the case to be of great assistance. It was on a very different scale from your offending. In my view, the offending in your case warrants a significantly higher starting point. I consider four years imprisonment is warranted.

### **Mitigating factors**

[74] I turn to consider those matters which I can properly take into account in mitigating sentence. The Crown has submitted that your previous good character and record of public service can assist you only to a limited extent. It is accepted, rightly in my view, that your previous convictions are of no relevance. But, relying on *Jackson*, it is argued that you are not entitled to a discount to take account of your service as a Member of Parliament. In that case, it was said that those who offend in their capacity as a Member of Parliament and/or as a Minister, cannot have their office weighed in their favour on sentence.

[75] *Jackson* does not say that a man in your position is not entitled to an allowance for good character and public service. What it says is that the good character of a person holding high office who commits a crime relating to the performance of his office cannot form a basis for the **same mitigation of sentence** as is the case of an ordinary citizen committing a crime. And, as I understand the remarks in that case, it is the fact that the offender holds the office, that cannot be a mitigating factor. I do not understand the Court to be suggesting that by virtue of the office you had and the nature of your offending, no allowance can be made for your achievements on sentence.

[76] That is in line with New Zealand authorities which hold that those who have shown themselves to be law abiding citizens of good character are usually entitled to invoke their creditable record in mitigation, even when being sentenced for quite serious offences – *R v Howse* [1982] 1 NZLR 618 at 629. As the Court of Appeal said in *R v Findlay* [2007] NZCA 553, two considerations underpin this feature of mitigation – recognising a fall from grace is punishment in itself, and recognising the greater potential for rehabilitation where community involvement and good character bear witness to a reduced probability of reoffending at [91]. So, as the Court went on to say at [95] quoting *R v Webb* CA13/04 17 June 2004 at [71]:

Wherever character evidence is raised, it is along the lines that the offender, in respects other than the offending in question, is a person of good character.

[77] It follows, as Mr Davison submitted, that although service as an MP cannot mitigate offending in that capacity, the same reasoning does not apply when your office is irrelevant to the offending as is the case with the convictions for attempting to pervert the course of justice. And your good character, as demonstrated by your achievements outside your political career, may operate to mitigate all offending.

[78] I received, and have carefully read, no less than 89 testimonials. I have heard this morning two eloquent and moving tributes from Mr Maliletoa and Mr Saleopolu. The testimonials have come from people of all walks of life, from individual citizens to those occupying high office. They attest to a record of service to the community that goes back many years – to well before you entered Parliament – and extends to assistance you have given to individuals and groups that go well beyond your role as an MP and Minister.

[79] Among the interest groups who have spoken of your encouragement and support are those engaged in sport, housing, health, education and youth welfare. I have heard from numerous church and community groups. Virtually all nations of the Pacific have spoken in your support and other ethnic community groups as well. Over and over again they speak of your kindness, encouragement, support, service, the inspiration and the motivation you have provided and your dedication. They speak of you “working tirelessly”, of your “passionate advocacy”, and of their love, sympathy and gratitude for you. This morning I heard you referred to as a servant and a champion of the people who has raised the aspirations of Pacific peoples.

[80] The esteem in which you are held by many of those who have written is such that they are unable to accept that you have done wrong. Their trust, confidence and respect for you is unshaken.

[81] Others speak of the extent to which you have already been punished by the loss of mana and public humiliation – of the concept of *fa'ama*, the public shaming of a leader. Those comments again have been echoed in what I heard this morning.

[82] Many of those who have written speak of the particular challenges which confront a leader of Pacific nations such as yourself. One writes and I quote:

Being a leader amongst Pacific leaders, is an extremely challenging position, with stresses and overwhelming situations that non-Pacific people would find difficult to fathom or comprehend.

[83] Of those who speak of your achievements, the following is an example:

Taito was always altruistic and his motivations were always genuinely derived of concern for people. An admirable characteristic of his style of leadership was his insistence on adhering to culturally appropriate protocol. This was indicative of a leader who aspired to contextualise political ideals in order that the ordinary person mattered.

... He was always compassionate and sought to fight for social justice. A man of his word, Taito advocated for and championed the plight of the people. I have known him and his wife to give of their own time and resources to support various ethnic community endeavours. Numerous individuals sought his advice and assistance in many ways. He was never one to turn people away.

[84] And, finally, one colleague of many years standing, confirming what Mr Davison said about you getting your hands dirty, spoke of how you took leave from your job in the 1980s for six weeks to raise funds for the building of the Aotea Centre. As a result, Samoa is the only country with a room at the Aotea Centre. He speaks of you as *“a Samoan man dedicated to fulfilling his duties as a matai, as a Christian, and as a leader of our community”*.

[85] In the end, however, it is not possible for me to give undiminished weight to your previous good character and record of public service. As was said by John F Kennedy, a man who knew much about the ideals of public service, *“From those to whom much is given, much is required”*. You were given power and authority. With power and authority comes an obligation of trust. You betrayed that trust and, in the course of doing that, you undermined the very institutions that it was your duty to uphold. For that reason, as I have previously said, a condign sentence is required that fully reflects the need for denunciation and deterrence.

[86] That said, I propose to give you generous credit for your outstanding record of service to the community, for the disgrace and the humiliation which you have endured and will continue to endure and for the financial and other consequences to

you of what has happened. As I mentioned earlier, while you are genuinely regretful, as Mr Davison properly accepted, your remorse is not of a nature that would attract any weight for sentencing purposes.

### **Totality**

[87] I have said that the appropriate sentence for the charges of bribery and corruption is five years and for those of attempting to pervert the course of justice, four years. I consider, however, the sum of those sentences – nine years – would be excessive having regard to the overall gravity of your offending. Although the two categories of offending are distinct, they are closely linked. The attempts to pervert the course of justice were a direct consequence of the earlier offending. The derivative nature of that offending is relevant to the final assessment of culpability overall.

[88] I consider that a prison sentence of seven and a half years would adequately capture the totality of your offending. From that sentence I propose to deduct eighteen months as the allowance appropriate to reflect the mitigating factors I have referred to. The sentence you will serve is accordingly six years imprisonment.

### **Sentence**

[89] Mr Field, I sentence you on the eleven counts of bribery and corruption to concurrent sentences of four years imprisonment. On the fifteen counts of attempting to pervert the course of justice, I sentence you to concurrent terms of two years imprisonment, those sentences, however, to be cumulative on the sentence of four years. That makes a total sentence that you are required to serve of six years imprisonment. I emphasise, as I indicated in the course of argument, that the sentence of two years imprisonment imposed on the charges of attempting to pervert the course of justice is necessarily adjusted in order to ensure that the total sentence accords with the overall gravity of your offending. You may stand down.