

Disciplinary Committee Hearing

13 March 2019

Present: Mr G.A. Andrée Wiltens, Chair

Ms S. Shah, Member

Mr F. Gilu, Member

Mr D. Russet, Member

Ms V.M. Trief, Secretary

Mr J-M Pierre, as a witness

Decision: 29 April 2019

Complaint by JM Pierre against Mr ST Joel

A. Introduction

1. This complaint was made on 23 March 2018. Mr Pierre alleges that in 2010 he was defamed. He subsequently instructed Mr Joel to sue those he felt responsible for defamation, which Mr Joel duly did. The Claim was subsequently struck out for want of prosecution in 2014. Mr Pierre complains of having received poor service and inadequate attention to his claim.
2. Mr Pierre paid VT 110,000 in legal fees for services that he alleges were not rendered professionally, and in circumstances where what he was being told as to progress of his claim by Mr Joel and his staff, in particular Mrs Joel, was simply untrue.
3. Mr Joel did not attend the hearing, but he had filed a sworn statement dated 28 November 2018 as his response to the allegations. He does not dispute the majority of the facts alleged. He conceded a breakdown of the client/lawyer relationship, but attributed that largely due to Mr Pierre writing a letter to him dated 24 August 2013 which was highly critical, and which made continuing to represent Mr Pierre difficult. He relies on a letter in response he sent to Mr Pierre dated 13 September 2013, inviting Mr Pierre to collect his file – which letter was not acted upon by Mr Pierre.
4. Mr Joel pointed out that he was incapacitated due to poor health from late March 2014 through until August 2014, and he provided the Committee with a medical certificate in support. While so incapacitated, Mr Joel was unable to attend to Mr Pierre's case, and that was the reason Mr Pierre's claim was struck out. Mr Joel offered to refund all Mr Pierre's money paid by way of legal fees.

5. Mr Pierre appeared at the hearing. He added little to his written complaint; but he was asked to respond to some matters Mr Joel had put before the Committee. He accepted Mr Joel's offer of full repayment of the VT 110,000 fees; but wanted the Committee to go on to consider the complaint as he remained dissatisfied at level of legal service he received. He still maintains he had a good case for defamation, but all prospects of holding those responsible accountable for that has evaporated. He remains aggrieved.

#### B. Background

6. In November 2010, the Independent newspaper reported on a Lands case in a manner which Mr Pierre considered to be defamatory of him. He subsequently instructed Mr Joel to sue the newspaper and the author of the allegedly offending article.
7. On 20 August 2012, the Claim for damages based on the alleged defamation was filed in the Supreme Court.
8. On 24 January 2013, the Supreme Court gave Mr Joel Notice, under Rule 5.3, that as no proof of service had been provided, the Claim was of no effect.
9. On 10 September 2013, Mr Joel wrote to the Supreme Court advising that service of the Claim on the defendants had indeed been effected in time, and that a proof of service would be filed shortly.
10. On 17 September 2013 proof of service was filed.
11. On 4 October 2013 a Defence was filed.
12. On 22 April 2014 the Supreme Court called a First Conference to be held on 2 May 2014.
13. On 2 May 2014, there was no appearance by Mr Joel. The Court noted that there was also no sworn statement filed in support of the Claim. The Conference was adjourned to 23 May 2014.
14. On 23 May 2014, there was no appearance by Mr Joel. The Conference was further adjourned to 12 June 2014, with a direction for Mr Joel to attend and explain why the matter should not be struck out.
15. On 12 June 2014, there was no appearance by Mr Joel or his client. There was also still no sworn statement filed in support of the Claim. The Claim was struck out.

#### C. Discussion

16. Mr Joel's response to the complaint of 28 November 2018 did not directly address the issue of delay and/or disinterest in his dealing with Mr Pierre's Claim.

17. To support the Claim, a sworn statement by Mr Pierre was required. There was no attempt to undertake this necessary step, at any stage, in Mr Joel's handling of Mr Pierre's defamation case. Without that, the Claim simply could not proceed beyond the very preliminary stages. Between August 2012 and June 2014, this vital piece of work remained uncompleted.
18. There is no explanation why, given that service had been effected in time, no proof of service was filed at Court – a step required to set in motion the filing of a defence and the scheduling of a first conference. Between January and September 2013, nothing appears to have been done to progress the Claim. After 4 October 2013 when the Defence was filed, Mr Joel did not request the Court to schedule a first conference – he simply waited for the Court to act of its own motion.
19. Thereafter Mr Joel did not attend Court, as required, on 2 May 2014, 23 May 2014 and 12 June 2014. His explanation for that is that he was medically incapacitated. In his response to the Committee Mr Joel stated he was unable to sleep, was under stress and in a state of panic. He stated that his left arm had to be kept at shoulder level or above at all times. He was distracted from his work and the resultant lack of attention to Mr Pierre's Claim was unintended and regretted.
20. The medical certificate provided does not adequately support Mr Joel's statements. It records that Mr Joel was given a week's course of pain killers in March 2014; and it records that when Mr Joel was seen again, on 28 November 2018, that his recovery had been slow, over many months. At that time, namely in November 2018, there was noticeable residual congestion in the left hand and wrist.
21. Even if Mr Joel was unable to attend Court due to medical issues, that does not excuse his lack of action in pursuing Mr Pierre's defamation claim prior to March 2014. Further, even if Mr Joel was unable to attend Court, that is no adequate response to the complaint. It is common to instruct an agent to attend on one's behalf, either to seek an adjournment or to progress the case to the next stage. Mr Joel did not do this – and he has not explained why he did not adopt that course of action.
22. Mr Joel's response to the Committee does not in any way address Mr Pierre's complaint that Mr and Mrs Joel lied to him on several occasions when he asked what was happening with his claim. He was assured, repeatedly, that all was well and that his case was progressing through the Court process. The only reason Mr Pierre discovered his case had been struck out was because he took the time and trouble to make his own enquiries from the Court Registry.
23. Mr Joel has explained in his response to the Committee that the client/lawyer relationship was seriously undermined due to Mr Pierre's letter to him of 24 August 2013. The letter was critical of Mr Joel – in the Committee's view for very good reason. Mr Pierre's letter did not undermine the client/lawyer relationship – that had already occurred by Mr Joel's inaction and his and his staff's inaccurate reporting of the status of the case to their client. The letter appears to the Committee to be no more than an accurate representation of what had occurred, and why that was inappropriate from Mr Pierre's perspective.

24. Mr Joel's response to that letter appears to be conciliatory and admitting of the fact that Mr Joel and his staff had not "...performed up to the standard required." The letter reports that Mr Pierre's case will shortly be listed for a conference. That only occurred 6.5 months later, and at the behest of the Court – it should have occurred much sooner, and Mr Joel should have requested that.

25. The Committee's role is to examine professional misconduct and unprofessional conduct. We are guided in that by the requirements set out in the Legal Practitioner's Act [Cap 119] Rules of Etiquette and Conduct of Legal Practitioners. Several of the provisions therein prescribed are of relevance to this particular complaint, including the following:

- Rule 2: **Conduct for which lawyer may be disciplined**

The types of conduct, including criminal offences, for which a lawyer or former lawyer may be disciplined are as follows:

- (a) Misconduct; or
- (b) Unsatisfactory conduct; or
- (c) Negligence or incompetence in a lawyer's professional capacity of such a degree or so frequent as to reflect on the lawyer's fitness to practise, or as to bring the legal profession into disrepute; or
- (d) ...[not relevant].

- Rule 3: **Provision of information**

Any information that a lawyer is required to provide to a client under these rules must be provided in a manner that is clear and not misleading given the identity and capabilities of the client and the nature of the information.

- Rule 14: **Respect and courtesy**

- (2) A lawyer must respond to inquiries from the client in a timely manner.
- (3) A lawyer must inform the client if there are material and unexpected delays in a matter.

- Rule 39: **Claims against a lawyer**

- (1) When a lawyer becomes aware that a client has or may have a claim against him or her, the lawyer must immediately do the following:
  - (a) Advise the client to seek independent advice; and
  - (b) Inform the client that he or she may no longer act unless the client, after receiving independent advice, gives informed consent.

- Rule 43: **Disclosure and communication of information**

- (2) A lawyer must promptly answer requests for information or other inquiries from the client.

- Rule 59: **Professionalism**

A lawyer must promote and maintain proper standards of professionalism in the lawyer's dealings.

- Rule 66: **Proper practice**

A lawyer's practice must be administered in a manner that ensures that the duties to the court and existing, prospective, and former clients are adhered to, and that the reputation of the legal profession is preserved.

- Rule 67: **Misleading and deceptive conduct**

A lawyer must not engage in conduct that is misleading or deceptive or likely to mislead or deceive anyone on any aspect of the lawyer's practice.

- Rule 69: **Supervision and management**

A lawyer in practice on his or her own account must ensure that the conduct of the practice (including separate places of business) and the conduct of employees is at all times competently supervised and managed by a lawyer who is qualified to practice on his or her own account.

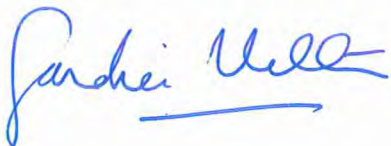
26. The Committee considers Mr Joel to have breached each of those provisions in his handling of Mr Pierre's case.

D. Decision

27. The complaint is made out. The Committee was unanimous that Mr Joel's acts and omissions in this instance are properly characterised as unprofessional conduct, rather than the more serious professional misconduct.

E. Sanctions

28. Mr Joel's standing in the community as a senior practitioner without previous blemishes on his reputation was a significant factor in keeping the level of sanction below suspension. However, the appropriate level of the lesser alternative, a fine, needed to be set at a significant standard to achieve the goal of deterrence and to also be a punitive sanction.
29. The Committee unanimously determined to fine Mr Joel VT 150,000. We also considered that he should pay compensation to Mr Pierre of VT 150,000. We also order him to pay VT 25,000 for the costs of the hearing, which will go to Mr Pierre.
30. Mr Pierre accepts Mr Joel's offer to refund the entire amount of VT 110,000 legal fees he paid back in 2012.
31. The total sum of VT 435,000 is to be paid to the Committee's Secretary – she will then ensure on-payment to Mr Pierre. Payment is to be made within 21 days, failing which Mr Joel will be suspended from practise for such period as until the full amount is paid.
32. Mr Joel has 15 days in which to appeal, if he so wishes, from the date of receipt of this decision.



**G. A. Andrée Wiltens**

**Chair, Disciplinary Committee**