

**Present:**       **GA Andrée Wiltens, Chair**  
**Ms S Shah, Member**  
**Mr D Russet, Member and**  
**Ms VM Trief, Secretary**  
**Mr JW Timakata – on his own behalf**  
**Ms Nabila Bibi Buxoo and Mr Edmond Toka**

**Decision:**       28 June 2019

**Complaint by NB Buxoo against Mr JW Timakata**

A. Introduction

1. The complaint was made on 7 January 2019. Ms Buxoo alleges that she had instructed Mr Timakata to act for her in relation to certain criminal matters, which instructions he accepted while suspended from practice.
2. Mr Timakata denied the allegation. He contended that all legal services provided were carried out by other members of the firm. He called as witnesses Ms Matariki (Mrs Timakata) and Mr Willie, who largely confirmed the denial.

B. Facts

3. The Disciplinary Committee, in a written decision of the same date, suspended Mr Timakata from practice for 3 months on 12 September 2018. The reasons for this suspension are not relevant to this complaint, but are set out in the Committee's decision, which has been published on [pacific.org.vu](http://pacific.org.vu).
4. Ms Buxoo and her husband, Mr Somon Sekdar, sought a lawyer to represent them in late October 2018. They were advised, by an immigration official, Mr Fred Kaluat, to instruct Mr William Timakata. Ms Buxoo stated that she went to the offices of Timakata and Associates, but was told to return in a few days as Mr Timakata was then on another island. She says she did so, and eventually after paying VT 500,000 to cover legal fees, she had a one-hour long meeting with Mr Timakata and others, during which they discussed a Search Warrant which had been executed on her home and

also some (presumably draft) criminal charges relating to slavery, trafficking in narcotics and trafficking in persons which had been laid against Mr Sekdar.

5. Ms Buxoo stated that a search warrant dated 16 November 2018 was executed on her home on 20 November 2018, and she said she had received legal advice in relation to that from Mr Timakata. Ms Buxoo was arrested that day, and she told the Committee that Mr Timakata came to the Police Station with his wife to represent her that evening and seek police bail. This was not granted, and she was remanded overnight in the Police Station.
6. Bail was further refused in the Magistrate's Court the next day, and again subsequently in the Supreme Court. While she was remanded in custody Mr Timakata visited her and gave further legal advice.
7. Ms Buxoo subsequently saw an article in the Vanuatu Post relating to Mr Timakata's suspension from practising, but this was the first she knew of such suspension – neither Mr Timakata nor anyone else at his office had told her about that. The article explained why Mrs Timakata had appeared in the Magistrate's Court and Supreme Court bail applications. Ms Buxoo had asked about that at the time, but the explanations given did not include the fact that Mr Timakata was not permitted to practise.
8. Mr Timakata was adamant that he had only attended to "managerial matters" while suspended. He had attended the office, as he had other business interests to deal with to, but the legal practice was run, in his absence, by his wife and Mr Willie and other staff. Mr Timakata insisted that he had not provided Ms Buxoo with any legal advice at any time.
9. Mr Timakata told the Committee he had gone to the Police Station on the evening Ms Buxoo had been arrested. He explained that he had driven his wife there, so that she could attempt to get police bail for Ms Buxoo. He agreed also that he had not waited in the car, but had entered the Police Station. He said he did not visit the cells, but remained in the public area while his wife attended to what was required.
10. Mr Timakata agreed that he had been present when Ms Buxoo was first interviewed – he said this was done by his wife and Mr Willie. He was physically present in the same room at the time, but took no active part in the interview. He maintained he was there to assist Ms Buxoo with non-legal matters, such as matters to do with her children and the retrieval from her home of clothing and other items she needed.
11. He further agreed that he had been to the Female Correctional Centre, again when driving his wife, to see Ms Buxoo. He went into the Centre but did not give Ms Buxoo any legal advice.
12. Mrs Timakata supported her husband. However, the Committee considered that she was not entirely truthful, felt her answers to be repetitive and that she was unwilling to address the questions put. When inconsistencies were pointed out to her she would become unable to remember not only what had happened but also what she had earlier described to the Committee. She told the Committee

that Mr Timakata had said he would not go into the police station as he was suspended, but that she persuaded him to go with her. He himself had not said that to the Committee. Further, her statement failed to satisfactorily explain why he had gone into the Female Correctional Centre without any apparent misgivings. When tasked about this Mrs Timakata simply back-tracked, repeated her mantra that Mr Timakata had not given any legal advice or practised, and resorted to “I can’t really remember”. This avoidance of answering the questions put badly undermined her credibility.

13. Mrs Timakata was of the view that the firm had been instructed, not the principal of the firm Mr Timakata. She could not however explain that if this was so why Ms Buxoo was asked to return after several days by which time her husband would have returned from the islands. It was her position that there was no need for Ms Buxoo to be told that Mr Timakata was suspended from practice because it was the firm that had been instructed and was doing the work.
14. Mrs Timakata confirmed that her husband drove her to the correctional centre and the Police Station. She confirmed he had entered both establishments. She confirmed also that her husband had sat through interviews with Ms Buxoo, but stated that he did not take any part in the interviews or offer legal advice. She maintained that Ms Buxoo had not asked why Mr Timakata was not applying for bail on her behalf. Her evidence was to the effect that Timakata and Associates had been instructed, and that she and Mr Willie had done all the legal work.
15. Mr Willie was obviously pressured to toe the party line, which he tried to do. However, he too was inconsistent with his answers. For example he agreed that Mr Timakata had gone to the Police Station, but he said that Mr Timakata had then stayed in the car – which was contrary to what both Mrs and Mrs Timakata and Ms Buxoo had stated to the Committee. Mr Willie accepted that Mr Timakata was present at the interviews with Ms Buxoo without participating in any way; but said that did not ever occur with other clients. The available inference from that fact was telling. He also confirmed that the firm had a driver in its employ.

### C. Discussion

16. Neither Mr Timakata, Mrs Timakata, or Mr Willie could give the Committee any explanation for Ms Buxoo wanting to lie about this matter, or what she might stand to gain by inventing a story about Mr Timakata. There was no onus on them to do so, but the Committee did search for possible reasons as to why Ms Buxoo’s story should not be accepted. The witnesses suggesting she was not telling the truth were unable to point the Committee to anything to support that contention.
17. The Committee considered Ms Buxoo was a credible witness whose account could be relied upon. We saw no inconsistency within her account, which appeared inherently plausible. Not only that, but her account dove-tailed with several other pieces of the evidence.
18. Neither Mr Timakata, Mrs Timakata, or Mr Willie could satisfactorily explain why Mr Timakata was at the Office, why he was needed to drive Mrs Timakata to the Police Station and the Female Correctional Centre, why he entered both those establishments, and most significantly, why he sat in on the one-hour interview with a client ostensibly as a wall-flower. In the Committee’s view the

reality was that Mr Timakata should have been at home, relaxing and remotely attending to whatever other business matters he was required to deal with. He should not have been anywhere near the Office, near a Police Station or a correctional centre, and he should not have been regularly seeing his client Ms Buxoo.

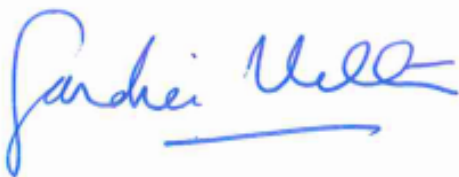
19. Mr Timakata's explanations, supported by his wife and Mr Willie, are inherently implausible; and they are not credible. There was no need for Mr Timakata to go with his wife to the Police Station or the correctional centre – the office had a paid driver. There was no need for Mr Timakata to sit in on the client interview – for one whole hour, without participating in any way. Surely being suspended he should have been otherwise occupied? The Committee does not accept that he did not participate in that interview. The Committee does not accept that he was innocently at the Police Station and the correctional centre. It does not accept he entered both establishments simply to accompany his wife – she is an experienced and unconditionally registered practitioner and she did not require such support.
20. The evidence from Mr Timakata of undertaking only “managerial” tasks is not accepted.
21. Ms Buxoo ought to have been told, from the outset when she asked for Mr Timakata, that he was unable to act for her due to his suspension, but that others in the firm could represent her. She would then have been put in the position of deciding whether she wanted the firm or the principal to represent her. Instead, she was left believing the principal was acting, when patently he was unable to do that. Ms Buxoo should have been told this a second time when she made the inquiry as to why Mrs Timakata was making the bail applications and not the principal she believed she had employed. The Committee accepts Ms Buxoo's evidence in relation to this.

#### D. Decisions

22. The Committee urged Mr Timakata to consider the impression formed by the Committee and to convince us otherwise. He agreed that, from his perspective, the picture was bleak. He was unable to do more than repeat the mantra that he had not given Ms Buxoo legal advice.
23. The Committee disagrees with Mr Timakata's view. Every indication points to Mr Timakata being heavily involved with Ms Buxoo's case. It is true he did not make her bail applications. But we considered it well established that he had been instructed to act for Ms Buxoo and had not advised her that he was not permitted to do so. His presence at the Police Station and the correctional centre are much more than “...looking after her non-legal matters” as he stated. His presence at her client interview was plainly much more than others conducting the interview while Mr Timakata observed disinterestedly – all logic says so.
24. Mr Timakata was invited to make representations about what the appropriate sanction for his conduct should be. He apologised and asked for another chance. He said he should not have put himself in the position where others might have thought he was ignoring the suspension.

E. Sanctions

25. The Committee considered striking Mr Timakata off the Register of Registered Legal Practitioners of the profession. His previous conduct had resulted in 3-month suspension and this conduct is more serious.
26. It was difficult to see any alternative. That is especially so, when the Committee unanimously agreed that the evidence presented was deliberately orchestrated to attempt to deceive. Even if driven by fear to respond in such a fashion, it remains an aggravating circumstance.
27. However, the Committee considers that Mr Timakata perhaps did not fully comprehend the previous sanction of his suspension; perhaps he did not grasp the necessity of fully ceasing anything to do with the legal practice for 3 months, even of a “managerial” nature. Giving Mr Timakata the benefit of the doubt, we do not consider his conduct to be deliberately flouting the previous suspension. The Committee sees it more as a misunderstanding and/or incomprehension of what the suspension actually entailed.
28. In those circumstances, we are loathe to end Mr Timakata’s legal career. However the sanction for Mr Timakata’s conduct must be suitably stern. Therefore we suspend Mr Timakata from the practice of law for 12 months as from the date of this decision.
29. To avoid further confusion, we advise Mr Timakata he should abstain from going to the office, going anywhere near a Police Station or any correctional centres. He should not meet with clients in any capacity. He should clearly display advice, in a prominent position at his office, that he cannot practise law for 12 months. In that way prospective clients can make informed decisions about legal representation.
30. Mr Timakata is to also pay the costs of the hearing, in the amount of VT125,000, to the Committee Secretary within 21 days.



**G. A. Andrée Wiltens**

**Chair, Disciplinary Committee**