

Present: Mr G.A. Andrée Wiltens
Mr F.J. Gilu
Ms S. Shah
Mr D. Russet

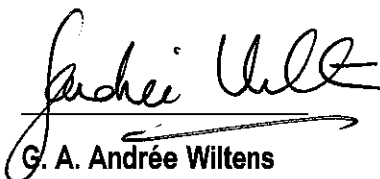
Decision: 2 August 2018

Complaint by Mr R McDonald against Mr Robert Sugden

1. This complaint was made on 11 November 2013, and it involved 2 separate allegations, namely that Mr Sugden:
 - (i) had accused a fellow legal practitioner of having lied; and
 - (ii) used contemptible language against a Supreme Court Judge.
2. Mr McDonald confirmed at the hearing that his complaints were limited to those two matters. He was allowed to explain his complaints, and he was questioned by Mr Sugden and Committee members. Mr Sugden put forward an explanation in respect of both matters.
3. Mr McDonald accepted Mr Sugden's explanation in relation to the first aspect, once he became aware of matters he had previously not known. The Committee agreed to permit Mr McDonald to withdraw his complaint. Mr Sugden tendered to the Committee a copy of an unconditional offer of settlement, which the legal practitioner later sought to go behind on the basis of alleged oral discussions with Mr Sugden. Mr Sugden has consistently refuted any such oral discussions – and in any event, if conditions were part of the settlement offer one would ordinarily expect such to be included in the written document setting out the offer. Mr Sugden was obviously frustrated at the change of position adopted by the legal practitioner; and, in the course of explaining to his client why settlement had not been achieved, he expressed his candid view that the legal practitioner had lied. Mr Sugden was reporting to his client – not disseminating his views widely. He did so as he was concerned to ensure his client fully understood what had occurred. Whilst Mr Sugden could have expressed himself differently, the Committee and Mr McDonald could understand why he reported the situation as he did. This complaint was accordingly withdrawn.
4. The second aspect of the complaint was Mr Sugden expressing the view that "*...this judge will take every opportunity available to him to delay*". This opinion must be seen in context. Mr Sugden and Mr McDonald were frustrated at what was seen as procrastination by the other side

of the dispute – the legal practitioner involved and his client were both seen to be adopting delaying tactics. ~~Mr McDonald wanted to progress his claim and wanted Mr Sugden to get the Judge to make a final binding ruling.~~ Mr Sugden explained the difficulties involved with that. In the course of that explanation Mr Sugden wrote, pointing out the benefits of a negotiated settlement: *"Forcing this judge to make a ruling on the merits is likely in my view to result in you obtaining a final decision in 3 or 4 years time, or possibly never. I am already awaiting decisions from him from other cases in some instances for over a year and these are cases in which he has not been needlessly forced to make a decision".*

5. The opinion complained of, which was expressed later in time than the above-quote, was described by Mr Sugden as understandable in the context of his other correspondence to his client. He considered it was "...not a proper comment regarding the judge", but it was expressed as a frank opinion to his client so that his client would feel able to trust him and allow Mr Sugden to do what he considered best for his client. Mr Sugden pointed out that client professional privilege exists so that clients are able to be candid with their legal advisors, and he thought the corollary also applied.
6. The Committee agree the comment regarding the judge was improper. Even though it might be understandable, and even though the opinion was solely expressed to one client, the Committee was of the view that it had the potential to bring the judiciary as a whole into disrepute. The Committee took into account that Mr Sugden is an experienced counsel of good standing in the community. In a way that exacerbated the conduct.
7. The Committee considered this second aspect of the complaint was clearly established as improper conduct by a legal practitioner. The complaint was accordingly upheld.
8. The Committee accepted there were no previous issues which could impact on the appropriate response to the misconduct. Further, given the lapse of time since the event complained of, a reduction in the appropriate level of fine was warranted.
9. To mark the Committee's disapproval of Mr Sugden's misconduct Mr Sugden is fined VT50,000. Had there been no significant lapse of time, we would have imposed a fine of VT75,000. Mr Sugden is also to pay costs of VT25,000.
10. Mr Sugden has 7 days to comment on these findings before the decision of the Committee is disseminated. He has 21 days to pay the fine and costs.



G. A. Andrée Wiltens

Chair, Disciplinary Committee.