

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
 Mr R Sugden – representing Mr Creugnet, although without recent instructions; and offering
 assistance to the Committee.

Decision: 18 September 2018

Complaint by J-C Creugnet against Mr JW Timakata

A. Introduction

1. The complaint was made on 28 November 2014. The complaint really comes down to 2 matters, namely that Mr Timakata:
 - Procured the commission of a criminal offence, namely the inappropriate removal from the Lands Records Office of 79 deeds of lease by aiding, counselling or procuring Mr J. Ligo, the Director-General of the Ministry of Lands, Geology, Mines, Energy and Rural Water Supply, to so act contrary to section 109(2)(b) of the Land Leases Act [Cap 163]. This was done, so it is alleged, to force La Société Immobilière des Iles du Nord Limited ("the Society") to pay Mr Timakata's "grossly inflated and out of proportion" VT 8 million fee. Mr Timakata is alleged by such conduct to have acted unethically and unprofessionally; and
 - Acted unethically and unprofessionally in dealing with Mr Creugnet directly when negotiating a VT 2 million settlement to the dispute regarding legal fees - rather than dealing with Mr Creugnet's duly appointed counsel who, Mr Timakata knew, had conduct of the matter.

B. Chronological Sequence of Events

2. The history of the matter helps to set the scene:

- The Society owned a lease over certain lands in Santo, next to Pekoa Airport at Luganville. It entered into a Sale and Purchase Agreement ("S&P Ag/mt") in respect of that land with the Vanuatu National Provident Fund ("VNPF") on **16 October 2013**. As part of the agreement, the Society was to sub-divide the land, and obtain and transfer to VNPF 79 separate lease titles - all within a year.
 - The land was sub-divided and the relevant lease documents were prepared and filed with the Minister of Lands to obtain the necessary consents and sign-off on **3 January 2014**. There is some dispute as to who did that – I will come to that later.
 - In **May 2014** – the 79 leases were sent to the Minister of Lands for his sign-off, having been earlier approved by the Solicitor General.
 - On **1 August 2014**, Mr L. Carlot met with Mr Timakata. The meeting related to instructing Mr Timakata to intercede on behalf of the Society to urgently get the Minister to sign off on the 79 leases, so that the S&P Ag/mt could be settled on time and without additional costs/fees being incurred. Mr Timakata indicated to Mr Carlot he would make preliminary enquiries to see if what was wanted was even possible; and he indicated that due to the urgency and magnitude of the task he would not charge at his usual VT 20,000 per hour rate, but charge a flat fee of VT 8 million for his services.
 - On **6 August 2014**, Mr Timakata wrote a letter to the Minister of Lands, copied to Mr Ligo, asking him to expedite matters.
 - On **7 August 2014**, Mr Timakata and Mr Carlot had a second meeting. Mr Carlot accepted Mr Timakata's assertion that he could achieve the desired result and instructed Mr Timakata to go ahead. Mr Carlot signed a fee agreement, ostensibly on behalf of Mr Creugnet, agreeing to the flat fee of VT 8 million.
 - On **8 August 2014**, a letter was sent by Mr Ligo to the Minister for Lands, exhorting him to "...immediately" sign to enable completion.
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- On **27 August 2014**, the Minister signed-off on the 79 leases and returned the completed documents to the Director-General of the Land Records Office, for him to return them to the person who had lodged them. The process then is for the lodging person to get stamp duty assessed and paid, and to then return the deeds with the relevant fees to the Land Records Office for registration to be completed. The Minister told Mr de Montgolfier he had signed-off; and Mr de Montgolfier then told Mr Phung and Ms Jones.
 - On **27 August 2014**, Mr Carlot and Mr Timakata went to the Land Records Office and uplifted the 79 leases. Mr Timakata retained custody of the 79 lease deeds. [*The criminal offence alleged.*]

- On **28 August 2014**, Mr Timakata issued a bill to the Society for his legal services of VT 8 million.
- On **28 August 2014**, Mr Kuautonga went and asked Mr Ligo for the lease documents. He was told that Mr Timakata had them. When he asked: "Why is that?" Mr Ligo responded: "There are some fees to be paid."
- On **29 August 2014**, Mr Creugnet went to see Mr Timakata, in the company of Mr Phung, to ask for release of the lease deeds. Mr Timakata made it plain that he would only release the deeds once his invoice had been met; and he eventually asked them to leave his office. Mr de Montgolfier also received a copy of the bill, and later heard about the meeting.
- On **4 September 2014**, Mr de Montgolfier advised the Minister what had occurred in respect of the uplifting of the leases.
- On **5 September 2014**, the Minister wrote an email to Mr Ligo, having heard of this from Mr de Montgolfier, asking how Mr Ligo was going to address the problem of having wrongly given the files to Mr Timakata, and suggesting that if all else failed Mr Ligo ought to get the police involved. Mr Ligo responded to the effect that he was going to meet with Mr Timakata and pointing out that Mr Timakata was entitled to his outstanding fees. He then warned the Minister to not "...complicate this further or I will look for other options to ENFORCE my Minister's Constitutional Right to Refusal to grant consent."
- On **8 September 2014**, the Director of Lands Survey and Records, issued and served a summons on Mr Timakata to attend his Office and return the lease deeds earlier uplifted. At 5pm that day, Mr Timakata attended but refused to return the lease documents, claiming a lien in respect of his fees. *[The alleged criminal offence repeated.]*
- On **12 September 2014**, Mr Sugden was instructed by Mr Creugnet to act for the Society, in completing the sale, and to resolve the legal fees issue. He promptly commenced Civil Case No. 14/283 involving the Society and the Republic of Vanuatu as Claimants against Mr Ligo and Mr Timakata. Mr Timakata filed a counter-claim in response.
- On **19 September 2014**, by consent, the lease deeds were released to Mr Sugden once VT 8 million had been paid by the Society to the Registrar of the Supreme Court – to be held in trust pending the final outcome of the case.
- On **14 October 2014**, there was a judicial conference in relation to Civil Case No. 14/283 , with certain time-tabling orders made. At the conclusion of the Conference, Mr Timakata told Mr Sugden in the presence of the judge that he would contact Mr Sugden the next day to make an offer of settlement in relation to his outstanding fees.
- On **15 October 2014**, Mr Creugnet was at the VNPF offices on other business. A meeting was arranged with Mr Timakata. There was then a negotiation, in the absence and without the

knowledge of Mr Sugden, directly conducted between Mr Creugnet and Mr Timakata. Eventually a figure of VT 2 million was agreed on; and immediately paid over by Mr Creugnet. In return, Mr Timakata indicated he would no longer pursue his counter-claim. [*The unethical and unprofessional conduct allegation.*]

- On **21 October 2014**, Mr Sugden wrote to Mr Timakata. By then Mr Sugden had learnt of the settlement negotiations which had taken place without him, which he strongly objected to, and he demanded that the "settlement" be unwound.
- On **17 December 2014**, the Supreme Court released the VT 8 million paid into Court to Mr Sugden.

C. Discussion

3. The obvious fact that pressure was building as the completion date for the contract neared without any obvious progress being made, is well illustrated by Ms John who pointed out that even after the Minister had finally signed off on the leases on 27 August 2014, the leases all still had to be stamped by 27 September 2014 or the duty payable would double, which would cost the Society an additional VT 2.37 million. Further, the documents still also had to be registered by 27 November 2014 or the registration costs would double, costing the Society an additional VT 5.925million. Mr Timakata claiming a lien over the documents, in those circumstances, was a significant development.
4. As indicated, there is a dispute as to who lodged the 79 leases with the Minister. This is pertinent as Mr Timakata explained that he went to uplift the leases with Mr Carlot, at Mr Carlot's behest and on his instructions. That claim is consistent with what Mr Carlot has stated in his sworn statement. Indeed, he goes to great lengths to explain a large of number of steps he took with the lease documents prior to their being filed for the purpose intended. Included in that explanation is the suggestion that he picked up the lease documents from Ms John and subsequently only lodged them on 30 January 2014 after taking them to Santo for more signatures.
5. The evidence against this comes from the following statements:
 - Mr J-M Pierre, the Director of Lands, Survey and Records – he confirmed the documents were lodged by Ms John
 - Mr P de Montgolfier, a Director of the company which was the Society's secretary – he instructed Ms John to do the work after accepting her quotation, and he stated that she lodged the documents on 3 January 2014. He also advised her once the leases were ready for collection
 - Mr Phung is the proprietor of CTF, the company employed by the Society to prepare the subdivision and leases. He duly did so, and he passed them onto Ms John for further processing

- Ms A John stated that she was instructed to do the work, and that she took the leases from CTF to the Department for Land Records on 3 January 2014. She produced a copy of her delivery book, which records the leases and the delivery date – it is also signed by Pauline, who is said to be the receptionist
 - Mr S Kuautonga stated that he worked for CTF, at that he took the lease documents from his office next door to Ms John's office so that she could lodge them.
6. The Committee prefers, on this point, the large volume of evidence described above to that of Mr Carlot. It seems unlikely that Ms John could lodge the documents, have a signed acknowledgement of that, but still somehow later hand them over to Mr Carlot. The Committee is of the view that Mr Carlot's explanation is designed to wrongly enable him to say that as he lodged the documents he was entitled to retrieve them with Mr Timakata. We also see no point in Mr Timakata being present, were that the true position. In fact, the overall picture presented is that Mr Timakata and Mr Ligo were working very closely together, to not only get the desired result, but also to get Mr Timakata's fees paid.
 7. There is uncertainty about how the meeting between Mr Creugnet and Mr Timakata eventuated on 15 October 2014. Mr Timakata says he did not know that Mr Creugnet would also be there, and there is nothing to suggest otherwise. Mr Sugden, very fairly in our view, accepted that was likely to be correct and that VNPF staff were actively involving themselves in trying to get the S&P Ag/mt to completion. The Committee accepts that Mr Timakata did not arrange the meeting, or deliberately put himself in a position where he would be dealing directly with Mr Creugnet.
 8. However, Mr Timakata was well aware that Mr Sugden was acting for the Society and/or Mr Creugnet. He could, and should, have avoided any discussions with Mr Creugnet as being improper. It was his responsibility to extract himself from the situation in which he found himself. He failed to do that.
 9. There is a conflict between what Mr Carlot said occurred in relation to employing Mr Timakata, and the version of events provided by Mr Creugnet. Mr Creugnet stated that he agreed for Mr Carlot to find a lawyer to intercede on behalf of the Society; and he expected Mr Carlot to come back to him with a suitable candidate. Instead, he says Mr Carlot went ahead and signed Mr Timakata's fee agreement without the Society or Mr Creugnet's authority. Mr Carlot is adamant that he consulted with Mr Creugnet, who agreed the flat fee proposed, so long as the intervention succeeded – he did not agree to pay otherwise. The Committee is not able to reconcile the disparity between the two versions, and fortunately it does need to do so.
 10. Mr Carlot held himself out to Mr Timakata as being from the Society with the authority to act on it's behalf; and there is nothing before us to show that Mr Timakata should have done anything but accept Mr Carlot's statements at face value. Mr Carlot has explained his involvement with the Society, and the contract in question, as extensively set out in his sworn statement. The Committee does not question that.

11. Mr Creugnet has additionally alleged that, during the 15 October 2014 meeting at VNPF, Mr Timakata said to him "...that he could still stop the registration". Mr Creugnet went on to say that as only half of the leases had by then been registered, he felt additional pressure arising from Mr Timakata's statement which compelled him to settle the matter at a higher figure than he wished - but he felt he had little choice. The Committee considered this in light of two other pieces of evidence: Mr de Montgolfier, who was present, makes no mention of this in his 2 sworn statements; and the notes produced of the meeting also make no mention of any such statement. The Committee has determined to put this allegation to one side, as being unsubstantiated.

D. Decisions

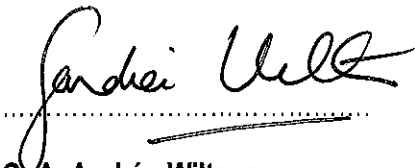
12. Mr Timakata frankly acknowledged that he had wrongly uplifted the leases – his explanation for that was that "...maybe, I wanted to get final resolution and to be paid".
13. He acknowledged further that he should not have spoken with/negotiated with Mr Creugnet on 15 October 2014 without Mr Sugden being present or even knowing of the meeting.
14. Given the factual findings explained earlier and the unchallenged evidence of the chronological occurrences, coupled with Mr Timakata's full admissions, both complaints are accordingly upheld.

E. Sanctions

15. The Committee takes a very dim view of a senior practitioner involving himself in matters where the criminal law may well have application. As the complaint alleged, Mr Timakata could face prosecution under section 109(2)(b) of the Land Leases Act. He could also face prosecution, together with Mr Carlot and/or Mr Ligo under section 30 of the Penal Code [Cap 135].
16. The obligation on practitioners to act with probity completely prohibits Mr Timakata's meeting and negotiating with Mr Creugnet in the absence of Mr Sugden. While Mr Timakata did not deliberately put himself in that position, he quite improperly took advantage of the situation.
17. In respect of each of the two complaints, the Committee unanimously fines him VT 150,000. The total amount of VT 300,000 is to be paid within 21 days.
18. Further, the Committee gave serious consideration to striking Mr Timakata off the rolls of practising members of the profession. His previous good character, coupled with the delay between complaint and result, has persuaded the Committee to not so act on this occasion, but to suspend him from practice for a period of 3 months, as from the date of this decision. This type of conduct requires a response of a deterrent kind. The Committee considers the 3-month term to be least possible time for suspension.

F. Other

19. The Committee refers to the Public Prosecutor, for his examination and consideration of, the conduct of Mr Ligo. In our view, his threatening of the Minister was quite reprehensible and unbecoming a senior and high-ranking civil servant. However, we ask the Public Prosecutor to consider whether or not Mr Ligo should be criminally charged for his conduct, which the Committee apprehends must be contrary to his terms of employment, in improperly releasing the 79 leases, seemingly to assist Mr Timakata to collect his fees.
20. Lastly, we officially note our thanks to Mr Sugden for his helpful assistance to the Committee in considering this matter.

A handwritten signature in black ink, appearing to read 'G. A. Andrée Wiltens', written over a horizontal dotted line.

G. A. Andrée Wiltens

Chair, Disciplinary Committee