

**IN THE SUPREME COURT OF SEYCHELLES**

**Civil Side: 108/2016**

**[2016] SCSC 621**

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**In the matter of William Herminie (Attorney-at-Law Disciplinary Measures)**

**William Herminie**

**Respondent**

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Heard: 28<sup>th</sup> July 2016

Counsel: Anthony Derjacques for the Respondent

Delivered: 5<sup>th</sup> September 2016

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**JUDGMENT**

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**M. TWOMEY, CJ**

[1] Mr. William Herminie (the Respondent) was enrolled and licenced to practise in Seychelles as an attorney-at-law on 7<sup>th</sup> January 2004 and as a notary on 25<sup>th</sup> March 2004.

[2] Since 2008, the Office of the Chief Justice became seized with numerous conduct complaints against the Respondent concerning non-payment of goods and services, and professional misconduct.

[3] The nature of these complaints were inter alia :

1. Refusal to pay clients all or part of their share proceeds from successful litigation (Hetimier, Vital, Hubert/Webb, Leon).

2. Refusal to pay clients all or part of their share of proceeds from the sale of property, including instances where he undertook to the client to make payment (Ferley, Delcy, Monnaie, Joseph).
  3. Failing to appear in Court on behalf of the client to the client's detriment (Coushene, Anandan, William (first case), William (second case)).
  4. Taking fees or deposits from clients and not acting on their instructions (Moutou, Rosalie, Carbognin, William (first case)).
  5. Evading and being uncontactable by clients (Moutou, Monnaie, Joseph, Hubert/Webb, Ozola).
  6. Undertaking to the Chief Justice, clients or other attorneys to make a payment, reply to a letter, or to perform an act and failing or refusing to carry out such undertakings (Hetimier, Delcy, Monnaie, Hubert/Webb, Carbognin, Ozola).
  7. Withholding money as fees in the absence of a taxed bill of costs or written fee agreement (Hubert/Webb, William, Carbognin, Ozola).
  8. Pursuing an intimate relationship with the client (Ozola).
- [4]** Over the years the Chief Justice Egonda-N'tende and Acting Chief Justice Karunakaran threatened to institute formal misconduct proceedings against the Respondent. However, in each case the Respondent was granted leniency to amend his way of practicing and to improve his professional conduct.
- [5]** In March 2015, the Respondent failed to make payment for a Legal Practitioner's Licence but continued practicing without a licence in flagrant disregard of the Legal Practitioner's Act (LPA) and despite warnings and extensions to comply with the LPA being given in March and September 2015.
- [6]** Further complaints against the Respondent in 2015, caused the Chief Justice to investigate his professional conduct file in its entirety and in November 2015 a Committee of Inquiry was set up under section 18(1) and 18(10) of the LPA to inquire

into whether the Respondent was a fit and proper person to practice law and whether all professional complaints in relation to him had been resolved to the satisfaction of the individual clients involved and of the LPA.

- [7] The Committee appointed consisted of three members namely the Chair, learned Judge Samia Govinden; a representative from the Attorney General's Chambers, Andy Asba, State Counsel; and a senior member of the Seychelles Bar Association, Mr. Kieran Shah.
- [8] The Committee granted an extension of time for the Respondent's response on two separate occasions which culminated in a final response from the Respondent's Counsel on 27<sup>th</sup> January 2016.
- [9] With consent of Counsel for the Respondent, the Committee agreed to inquire into all complaints and court cases referred to it to ascertain their status and the professional conduct of the Respondent. In this regard, sixteen professional complaints were submitted for the scrutiny of the Committee namely:
1. Professional conduct complaint by the late Mrs Marie Hetimier of Anse La Blague, Praslin (acting through her de facto son in law Stephan Germain and surviving spouse Mr. Joseph Hetimier) for a claim relating to proceeds from an out of court settlement paid by State Assurance Company of Seychelles to the Respondent on his client's behalf in the sum of SR.220, 000. (Complaint lodged with the office of the Chief Justice on the 10th day of June 2008).
  2. Professional conduct complaint by Jacqueline Ferley of Union Vale, English River (acting for an on behalf of heirs Mr. Ah- Thion and Mrs. Estrale in the capacity of Executrix) for a claim in the sum of SR. 88,000 relating to proceeds of sale of property entrusted to the Respondent. (Complaint lodged with the Office of the Chief Justice on the 22nd day of September 2009).
  3. Professional conduct complaint of Mr. John Moutou of Cascade, Mahe, for the failure by the Respondent to file a civil claim before Court albeit after payment of

legal by the complainant to the Respondent. (Complaint lodged with the Office of the Chief Justice on the 25th day of November 2009).

4. Professional conduct complaint of Evans Delcy, Lina Delcy and Nancy Monnaie of La Digue and Roche Caiman Mahé relating to a claim for a share in the proceeds of sale of their late mother's property namely Mrs. Helene Marina Delcy née Monnaie each in the sum of SR 125,000. (Complaint lodged to the Office of the Chief Justice in July 2010).
5. Professional conduct complaint of Georges Monnaie of Anse Severe, La Digue relating to a claim of share of proceeds of sale of his late mother's property namely Mrs. Helene Marina Delcy nee Monnaie in the sum of SR 125,000. (Complaint lodged to the Office of the Chief Justice on the 26th day of July 2010).
6. Professional conduct complaint of Mr. Philip Vital of La Louise, Mahé relating to a claim for payment of a judgment debt arising out of a Court of Appeal judgment by consent). (Complaint lodged to the Office on the 13th day of September 2011).
7. Professional conduct complaint of Mr. Robin Joseph of La Retraite, Mahé relating to a claim for payment of his share from the proceeds of sale of matrimonial property in the sum of SR 250,000 (Complaint lodged to the Office of the Chief Justice on the 10th day of September 2010).
8. Professional conduct complaint of Mrs. Meca Rosalie of Roche Caiman Mahe for the failure of the Respondent to provide assistance and advice to an Executor following the demise of the Respondent's client. (Complaint lodged to the Office on the 13<sup>th</sup> day of September 2011).
9. Professional conduct complaint of Mrs. Nydya Webb represented by Magdalena Hubert of Victoria Mahé relating to a claim of client's money in the sum of SR.10,000 arising from a judgment debt. (Complaint lodged to the Office of the Chief Justice on the 8<sup>th</sup> day of March 2013).

- 10.** Professional conduct complaint of Mr. RoselinCoushene of Grand Anse, Praslin relating the Respondent's failure to provide diligent legal services, inter alia, hisfailure to keep the complainant informed of the progress of his case, to promptly respond to the complainant's calls or keep appointments with the complainant and for failing to appear before Court to represent the complainant to the prejudice of the complainant. (Complaint lodged in the Office of the Chief Justice on the 18<sup>th</sup>day of March 2013);
- 11.** Professional conduct complaint of Mrs. Mary Carbognin of Glacis, Mahé relating to the Respondent's failure to provide diligent legal services to the complainant, namely his failure to keep the complainant informed of the progress of her case, failing to promptly respond to the complainant's calls or keep appointments with the complainant, failing to promptly provide a statement of accounts to the complainant. (Complaint lodged to the Office of the Chief Justice on the 2<sup>nd</sup> day of September 2013).
- 12.** Professional conduct complaint of Mr. K. Anandan Pillay of P.O. Box 2034, Victoria relating to the Respondent's failure to provide diligent legal services to the complainant inter alia failing to keep the complainant informed on the progress of his case, failing to promptly respond to the complainant's calls or keep appointments with the complainant, failing to appear before Court to appear and represent the complainant before Court to the prejudice of the complainant. (Complaint lodged to the Office of the Chief Justice on the November 2013).
- 13.** Professional conduct complaint of Mrs. Huda Williams of Grand-Anse, Mahé. Her first complaint related to a matter before the Magistrates Court and failure of the Respondent to provide diligent legal services to her inter alia, failure to keep her informed of the progress of her case, failure to promptly respond to her calls or keep appointments with her, failure to promptly appear before the Court to the prejudice of the complainant. (Complaint lodged to the Office of the Chief Justice on the 13<sup>th</sup>day of January 2014);

14. Professional conduct complaint of Mr. Antoine Leon of Copolia, Mahé in relation to a court matter and more specifically for the Respondent's failure and delay to pay client's money arising out of a judgment debt, a 'conflict of interest' issue and the non-payment of a loan borrowed from the client in the course of a lawyer/client relationship. (Complaint lodged to the Office of the Chief Justice on the 3rd day of March 2015).
15. Professional conduct complaint of Ms. Zane Ozola of Au Cap Mahe in relation to an Employment Tribunal and court matter and more specifically for the Respondent's failure to provide diligent legal service to the complainant, inter alia his failure to keep the complainant informed of the progress of her case, failure to promptly respond to the complainant's calls or keep appointments with the complainant, failure to explain the manner in which the Respondent would charge for services, failure to explain to the complainant payments required to be made and attempting to pursue an intimate relationship with the complainant. (Complaint lodged to the Office of the Chief Justice on the 8th day of August 2013).
16. Professional conduct complaint of Mrs. Huda Williams of Grand-Anse Mahé. This second complaint related to a matter before the Supreme Court and more specifically the Respondent's failure to provide diligent legal services to the complainant, inter alia failing to promptly appear and represent the complainant before the Court to the prejudice of the complainant - Complaint lodged to the Office of the Chief Justice on the 5th day of October 2015).

**[10]** The Committee was asked to further inquire into eight civil proceedings filed between the years 2011 and 2015 against the Respondent involving non-payment of goods and services and professional misconduct. However, in view of the fact that three of these proceedings (*Zaccari v Herminie* MC 156/2013, *Seychelles Pension Fund v Herminie* RB 41/2014 and *Public Utilities Corporation v William Herminie* SC 45/2015) were either pending appeal or hearing and were therefore sub judice, the Committee decided not to take them into consideration. The following civil proceedings were considered:

1. *Robin Louis Joseph v/s William Herminie* SC CS 214/2011 which case concerned a claim of share of proceeds of sale of 'matrimonial property' in the sum of SR 250,000. This civil suit was in furtherance to an unresolved Complaint lodged to the Office of the Chief Justice on the 10th day of September 2010.
2. *Hervé Nourrice v/s Herminie* MC CS 16/2014 which case concerned the lease by the Respondent of the Plaintiff's property for the period January 2011 to March 2013 and vacated without notice leaving outstanding accumulated electricity bills of SR 7474.85, three months' rent arrears in the sum of S.R.30,000, and missing or broken several household goods .
3. *Union Vale Car Hire v/s Herminie* MC CS 105/2014 which case concerned outstanding hiring charges of a car by the Respondent in the sum of S.R.95,805.00 from the months of February to October 2010..
4. *Raoul Maria v/s Herminie* RB CS 3/2015 which case concerned the non-payment of rent in the sum of SR54, 000 for three months during May and December 2014 and January 2015.
5. *Regional Trading Pty Ltd v/s Herminie* MC CS 190/2015 which case concerned the purchase of a sofa set in the year 2013 by the Respondent in the sum of SR 29,000 which was paid by way of cheque and which cheque was dishonoured due to insufficient funds.

**[11]** The Respondent submitted on several occasions that the complaints should not be entertained as they preceded the taking of office of the present Chief Justice. The Committee disagreed with this submission and reiterated on several occasions that the complaints remained in the large unresolved to date and that promises of settlement by the Respondent did not seem to have been met and as mandated by the Supreme Court under section 18 of the LPA it would inquire into the complaints to acquit itself of its duties.

**[12]** The Committee held hearings over a period of two months and ensured as far as procedure was concerned and as stated in their report the observance of rules of natural justice and to

take into account the Respondent's constitutional rights, inter alia, his rights to a fair hearing and equal protection before the law although they were neither a court of law nor a tribunal per se.

- [13] As far as practicable, complainants were called in person before the Committee and deponed on oath or otherwise depending on the special circumstances of each case and in certain instances telephone conferences were conducted especially in the case of complainants residing on La Digue and Praslin. In some instances some reliance was put on e-mails. In all the instances, the Respondent and his Counsel were allowed to question and or cross-examine and or provide comments and consent to the procedures adopted.
- [14] The Committee submitted their report to the Office of the Chief Justice on 7th June 2016 pursuant to section 18(6) of the Act. Their main findings, which I cite *in extenso*, in response to the questions put to the Committee, are namely:

A. *Whether Mr. Herminie is a "fit and proper person" to practice law?...*

*As regards, the complaint of Mrs Hetimier, it is beyond doubt and as admitted by Counsel in the stage of statement of defence that Counsel clearly breached the provisions of section 9 (1) (c) and (d) of the LPA during and after the demise of Mrs Hetimier (whom it should be noted did not benefit from the settlement money paid on her behalf during her lifetime due to the professional misconduct of counsel) and Counsel clearly miserably failed despite repeated warnings from the Chief Justice and Acting Chief Justice contrary to the provisions of section 7 (1) of the LPA and repeated promises on his part to the Chief Justice and Acting Chief Justice and also to lawyer Frank Ally (latter acting for and on behalf of Mrs Hetimier) to pay the remainder of the settlement money of Mrs Hetimier...*

*Secondly, whether Mr. Herminie has on any particular occasion, or through a pattern of behaviour violated the provisions of the LPA, including the Professional Conduct Rules or any other Act? The Committee notes in that respect that Counsel violated the following legislation as illustrated herewith: -*



**The Notaries Act (Cap 149):** [1] At its section 35 (1) as read with sub-section (3) of the Notaries Act it is provided thus: Fees Section 35 (1): “The fee for drawing up a deed or for any legal service rendered by a notary shall, subject to section 36, be those prescribed under this Act. Section 35 (3): “Subject to section 36, a notary shall not claim any fee which is in excess of the appropriate prescribed fee.” For the purpose of transfers, the Schedule to the Notaries Act provides clearly the maximum permitted fee percentage for a transfer which is 2% of the consideration subject to a minimum fee of S.R. 500/-.

[2] The Committee finds that Counsel breached the above provision of the Notaries Act in the considered professional conduct complaint of Mr. Robin Joseph, whereby Counsel charged a sum of S.R. 28,030 instead of the amount of S.R. 16,000/- which latter fee would have been in line with the consideration declared on the executed deed of transfer namely the sum of S.R. 800,000/-.

[3] Further the Committee also finds that Counsel overcharged for fees in breach of the above provisions of the Notaries Act in that he charged a total of S.R. 90,000/- from the share of Mr. Evans Delcy, Nancy Monnaie, Lina Delcy and Georges Monnaie instead of S.R. 20,000 as prescribed by the Notaries Act hence justifying the conclusion of the Committee that the said amount is deducted from the S. R. 500,000/- accruing to Mr. Emmanuel Delcy which was directly dealing with counsel as client and return of the sum of S.R. 90,000/- to the above-mentioned heirs.

**The Stamp Duty Act (Cap 226):** It is also the finding of the Committee that Counsel breached the provisions of section 41 (1) (d) of the Stamp Duty Act in the complaint of Mr. Robin Joseph for as per the evidence led it is clear that the amount of S.R. 800,000/- was declared as official consideration for the purpose of evading stamp duty.

**The Legal Practitioner’s Act (Cap 111):** [1] Section 9 (1) (c) and (d) of the LPA (supra) - It is the opinion of the Committee that Counsel breached both of the above-mentioned provisions with regards to the complaint of Mrs Hetimier in that he withheld without authorization the compensation sum of S.R. 220,000/- and even

*offered to pay interest thereon on outstanding sums. This money should have been available to be paid to the client forthwith if kept in a properly administered client's account which was not proved to the satisfaction of the Committee by Counsel.*

*Further, the Committee considers that Counsel additionally failed in his legal duty to pay clients promptly their dues either from proceeds of sale and or successful litigation namely in relation to the complaints of Mr. Philip Vital, Mrs. Ferley, Mr. Evans Delcy and Ors, Mr. Georges Monnaie, Mr. Emmanuel Delcy and Mr. Robin Joseph.*

*[2] Section 8 (b) and (c) of the LPA -Acts which an attorney-at-law may perform Section 8: Subject to section 5(4), (5) and (6) and section 6, an attorney-at-law is entitled to(b): appear, plead or represent a person in every court, tribunal or other institution established by law for the administration of justice where the person has a right to be heard and be represented by legal practitioner; or (c): appear and represent a person who has the right to be heard and be represented by legal practitioner before any other person or tribunal exercising quasi-judicial functions". The Committee considers on the evidence as led before the Committee as per illustrated in the Report that counsel was in breach of the above-stated provisions of the LPA in that he failed to appear before the Court with the result that the case was dismissed for nonappearance and without a valid excuse for his non-appearance. The lapses of counsel resulted in his clients being seriously prejudiced as transpired in evidence. The said breach was evident in regards to the complaints of Mr. Anandan Pillay and Mrs Huda Williams (both first and second complaints).*

*[3] Section 6A (6) (a) and 7 of the LPA Section 6A (6) provides that an attorney-at-law contravenes the LPA or any regulations made thereunder or any directions issued by the Registrar or the Supreme Court. Section 7 of the LPA further provides that an attorney-at-law is an officer of the Court and is subject to the jurisdiction and supervision of the Supreme Court/Chief Justice. It is considered by the Committee that Counsel contravened directives issued to him by the Supreme Court in regards to the complaints of Mrs. Hetimier, Mr. Georges Monnaie and Ms. Ozola.*

***The Professional Conduct Rules July 2013 [1] Rules 5 (3), 8 (1)***

*[1] Relationship with clients Rule 5 (3) provides that: “A legal practitioner shall conduct all business on behalf of clients with due diligence and not unreasonably delay in replying to correspondence or carrying out instructions received from his or her clients”. Personal Responsibility for appearing and acting on behalf of clients. Rule 8 (1) provides that: “In contentious matters, a legal practitioner shall appear in court personally or brief a partner or another legal practitioner employed by his or her chambers to appear on behalf of his or her client. The Committee finds that Counsel breached the above-said provision of the Rules in that he did not act upon instructions of client to appear before Court albeit being duly paid and he further failed to secure appearance of an alternative Counsel to stand in for him in line with the Rules and in the case of Rule 8 (1) as read together with the provisions of sub-Rules (2) (a) (b) and (3) (a) and (b) cumulatively.*

*[2] Rules 11 (1) and (3) Avoiding conflict of interest Rule 11 (1) provides that: “A legal practitioner has a continuing responsibility to avoid conflicts of interest with or between his or her clients and shall ensure that all potential conflicts of interest with or between his or her clients and shall ensure that all potential conflicts of interest are promptly identified, disclosed and addressed.” Sub-Rule (3) further provides that: “In any with a client, a legal practitioner shall not allow his or her own interest or an interest of his or her close personal or personal associate to conflict with the client’s interest.” The Committee is of the opinion that in the complaint of Mr. Antoine Leon, counsel was representing the latter hence Counsel’s client and at the same time borrowed/took a loan from him even if payments of Judgment debt due to client was still outstanding from Counsel and the same fate followed the borrowed loan leading to a clear conflict of interest.*

*[3] Rule 12 (1) (a) and (b) Dealing with client money and other property Rule 12 (1) provides that: “A legal practitioner shall promptly release all money, securities, to other property received from or on behalf of a client except where(a) The money, securities, or other property is held in accordance with the client’s express*

*instructions; or (b) The legal practitioner withholds any amount owing under a taxed bill of costs or an authenticated fee agreement.” The Committee further considers that in the complaint of Ms. Ozola, counsel breached the provisions of Rule 12 (1) (a) and (b) of the Professional Conduct Rules by withholding S.R. 2000/- being money received from a client without a taxed bill of cost or an authentic fee agreement in respect of the said S.R. 2000/-. [4] Rule 11 (4) (Heading referred to above) Rule 11 (4) provides that: “A legal practitioner shall not enter into an intimate personal relationship with a client where this would be inconsistent with the trust and confidence placed in him or her by the client.”*

*In regards to Rule 11 (4), the Committee is of the view that the evidence as transpired before the Committee with regards to Ms. Ozola’s complaint concerning the attempts of counsel to pursue an ‘intimate’ relationship with her has been substantiated through the text messages adduced as evidence and admitted by counsel albeit indicating that the complainant encouraged him. The answer of Counsel to the Committee that the complainant’s hands were ‘soft’ and that the ‘sexual advancement was not just on his part but was some form of developing a relationship’ and that in stating that ‘it was a mistake on his part to perhaps encourage her’ acknowledging however that he was fully aware that initiating any form of intimate personal relationship with a client would result in the breach of the Code of Conduct, clearly proves to the breach of the said Rule without any ambiguity whatsoever.*

***Whether Mr. Herminie has on any particular occasion, or through a pattern of behaviour violated the provisions of the LPA, including the Professional Conduct Rules?***

*The Committee in the above regards is of the view that in the Resolved and Pending Complaints as treated by the Committee in this Report, there is a clear pattern of counsel withholding client’s money without justification, disregarding undertakings given to the Chief Justices, clients and legal representatives of clients, and not respecting his undertakings given to Chief Justices and clients.*

***Whether Mr. Herminie's conduct is such that his continued admission to the Bar is a likely to bring the legal profession into disrepute?***

*The Committee's answer to the above question is in the affirmative having regards to the withholding of clients' money and not respecting his undertakings and clear admission to mismanagement and incompetence by Counsel. Additionally, it is also the view of the Committee noting the various civil cases filed against Counsel before the courts for unpaid debts and brought to the Committee's attention by the Chief Justice at her own motion in line with the LPA that this reflects very badly on the profession. (In that respect, the Committee notes that Senior Counsel/member of the Committee Mr. K. Shah did not participate in expressing any view on the civil cases in view of the fact that his Chambers represented Union Vale Car Hire against Herminie albeit Counsel not objecting to him participating).*

***Whether were it not for his professional immunity under the LPA any of the acts of Mr. Herminie over the past years would have given rise to criminal or civil claims against Mr. Herminie?***

*Criminal claims: During our inquiries, we did refer Counsel to a possible breach of the Stamp Duty Act as above-referred in that he intentionally for the purpose of evading stamp duty under declared the true consideration of the purchase price of the property sold in the complaint of Mr. Robin Joseph. In that regards, the Committee finds that there could be a strong possibility of a criminal claim.*

*Civil claims: The Committee believes that civil claims could have been raised for withholding payments due to clients for which there was no justified reasons for withholding payments and to excuse the delay in payments by offering interests.*

***Conclusion on Mandate termed A:*** *The Committee has got some serious concerns as to whether Counsel is a fit and proper person to continue to practice as an attorney-at-law and Notary Public in the light of the considered malpractice and misconduct and possible criminal and civil claims against Counsel under the relevant cited provisions of the relevant law.*

***B. Whether all professional conduct complaints against Mr. Herminie have been resolved to the satisfaction of the individual clients involved.***

*In answering this question, the Committee has not considered the “Closed Complaints” but rather considered the stance of all complainants in the “Resolved and Pending Complaints” and “Pending Court Cases” as illustrated in detail (at pages 138 to 152 of the Report) and outlined below for sake of clarity.*

*Resolved Complaints Cases [1] Professional Conduct Complaint No. 2 of Jacqueline Ferley of Union Vale, English River: Mrs. Jacqueline Ferley albeit expressing frustration with the manner and mode by which Counsel conducted himself vis-à-vis entrusted client’s money, was generally satisfied with the outcome of the complaint as reproduced verbatim in the following words, “..I really trusted him I did not expect such things to happen. What is important to me, in peace he has deposited the money and I have managed to give those persons their money. This was my biggest problem, because it really troubled me a lot. I just kept thinking where am I going to get the money to give those two different persons.”*

*[2] Professional Conduct Complaint No. 7 of Mr. Philip Vital of La Louise, Mahe Mr. Vital albeit managing to obtain a sum of S.R. 14,000/- from Counsel as part payment of his Judgment debt (which was to be of a total sum of S.R. 23,000/-), was extremely frustrated at the manner in which counsel conducted his case before the Court of Appeal more particularly as expressed in the final Judgment of the Court of Appeal and also as to the manner in which Counsel conducted himself towards him as a client prior to obtaining part of his money more particularly undue delay in payment due to frivolous excuses unsupported by conclusive evidence and further in losing further his judgment debt by having to recruit a new Counsel namely Mr. Vidot to secure other unpaid portion of his judgment debt. Mr and Mrs Vital’s frustrations can be wrapped up as follows: Mrs Vital had to following to tell the Committee in the presence of counsel regarding this matter: “I believe, I pray a lot. I am a Christian, I believe in a person having second chance and I believe that a person should work to earn a living. This is my principle as a Christian, but I don’t believe that someone can*

*make your life miserable when you have paid him to be your lawyer. Can you stop someone from sleeping? Phillip stopped sleeping every night, I am a high blood pressure person, he is just thinking of his money. He has heart problem, he had a blocked artery. I don't know about other people, but we have suffered a lot, really a lot. If you see my daughter who works at planning came in the office there to make noise with him in front of all these people at lunch break.” - Asking Mr. Vital as to how this incident affected him he said: “It affected me. Every day I have been thinking of my money that we were supposed to get. The court had already given judgment against Mr. Chetty and I was not getting that money, it really affected me a lot and a lot.” Upon being cross-examined by Counsel as to the amount of damages claimed before the Court of Appeal Mrs. Vital answered: “When you called us outside, I said Mr. Herminie put S.R. 5,000, you said you are going to put for three months damages. I said put for S.R. 5000 he will at least get S.R. 15,000 for all the suffering that he had gone through. You said no have put only S.R.3000 and we got only S.R. 9,000. Do you think this is a compensation for someone who has lost all his tools”.*

*[3] Professional Conduct Complaint No. 7 of Mrs. Mary Carbognin of Glacis, Mahe Luckily, for Mrs Carbognin, she was refunded in full all her legal fees deposited and as well as remaining filing fees (which was kept by counsel) without her authorization in the total sum of S.R. 29,062/- and this the Committee notes was upon very ‘stern warnings from the Chief Justice of the 2nd day of October 2013 and 24th day of January 2014 respectively’. Mrs. Carbognin in her own words stated the following as answer to her stance vis-à-vis the outcome of her complaint: “I have to be satisfied, because I work and I don't have time to bring people in Court, like this, like that, so I prefer it's being done, given me back my money. We will talk about the money pending in court for a waiver, but I am satisfied.”*

*[4] Professional conduct complaint of Mr. Antoine Leon No. of Copolia, Mahe. The records clearly indicate that the issues subject matter of the complaint of Mr. Leon was in respect of non-payment of a judgment debt and a ‘personal loan’ taken by Counsel from his client Mr Leon. According to evidence led by Mr Leon albeit tardive*

*and by instalments, he was paid all outstanding sums of money as claimed in his complaints in November 2015. In his own words this is what he had to say expressing his position with respect to the complaint's outcome: "When I wrote to the Chief Justice, I never got an answer telling me what happened. I thought that they had not done anything more than that. Mr Herminie called me and told me that he will resolve that problem, I did not know if he had been written a letter.... I had an agreement. I am satisfied and he gave me back my money."*

*[5] Professional conduct complaint of late Mrs. Marie Hetimier of Anse La Blague, Praslin The basis of consideration of the pending stage of this complaint is clearly illustrated at pages 142 to 143 of the Report and in this case Mr. J. Hetimier clearly expressed his dissatisfaction as to the attitude of Counsel à l'égard to his requests and those of his lawyer Mr. Ally and the fact that he was still waiting for a fruitful outcome of his complaint in the following words: "I am still waiting how things will go" Indicative in the opinion of the Committee the hope of Mr. Hetimier that his complaint will be favourably considered for there is still an unresolved complaint pending.*

*[6] Professional conduct complaint of Mr. Evans Delcy and Ors/Emmanuel Delcy and Georges Monnaie (all inclusive). As transpired at pages 143 to 146 of the Report, the complaints of all complainants have been proved as against counsel to the satisfaction of the Committee. Now as far as to the stances of the complainants in respect of their respective complaints thus far, Mr. Evans Delcy testified on behalf of her sisters in a gist that they tried to approach counsel and that they made several attempts but they never met up with him for he is very good at hiding and they were still hopeful that they would recover their share of the property as claimed. Mr. Emmanuel Delcy also expressed that same wishes as his children above-referred and clearly voiced out his frustrations as against counsel's attitude towards the handling of client's money without due regard to the interest of his clients in testifying inter alia that: "I have approached him on several instances. But I never got to meet him. Each time he tells me to come, I would sit in the office from 12 noon to 1 p.m. and then at 1 p.m. I have to leave, and he never appears." Mr. Georges Monnaie expected*



*a favourable outcome to his complaint and expressed his frustration at Counsel's conduct in the way he handled his case as clearly transpired and illustrated at pages 58 to 62 of the Report. Mr. Georges Monnaie was apparently still angry at to the whole series of unpleasant events leading to his payment of only S.R. 115,000/-out of S.R. 125,000/- and simply stated as such: "If he thinks he is stealing from us only God knows."*

*[7] Professional conduct complaint of Mrs Nydya Webb represented by Mrs Magdalena Hubert. A careful examination of exhibits reveal the pending nature of the complaint in that no proof of payment of S.R. 10,000/- has been forthcoming from counsel either during the hearing of the Inquiry and or after the hearing albeit notice to counsel to produce same. As it is evident from the Records of proceedings before the Committee, Mrs Hubert did not appear in person but the inference drawn by the Committee from her several correspondences to the Chief Justice as regards her complaint is that she was really frustrated at counsel's unprofessional conduct towards the handling of her sister's money which resulted in the Chief Justice threatening "disciplinary proceedings against counsel on two different occasions".*

*[8] Professional conduct complaint of Mr. K. Anandan Pillay of Victoria As would transpire from proceedings before the Committee in regards to Mr. Pillay's complaint grave prejudice has been caused to him in view of non-appearance of counsel and Mr. Pillay as would also transpire from the records still awaits for counsel to assume full responsibility for his negligent behavior towards him as his client. In that respect, the Committee wishes to state that Attorney Derjacques remarks as reflected at page 112 of the Report in that: "I think that this is one client we would not enjoy having any of us. He keeps disappearing for years" was uncalled for in all the circumstances of this case for not only did Mr. Pillay follow his case but also ensured that counsel was notified of all the happenings but sadly enough Counsel did not appreciate the due diligence of this client by simply not appearing or causing him to be represented in Court at the relevant times causing him unduly severe prejudice as a result (as explained above).*

*[9] Professional conduct complaints (two in all) of Mrs. Huda Williams of Grand Anse, Mahe. Now, as would be reflected at pages 150 and 151 of the Report, both complaints of Mrs. Williams are being considered as pending in view of their nature and implications. Mrs Williams expressed her disappointment at counsel's ill-advised steps and non-appearance before both the Magistrates and Supreme Court leading to not only the case proceeding and judgment delivered ex-parte against her before the Magistrates Court but also her subsequent appeal being dismissed before the Supreme Court due to lame excuses of counsel. As to her stance regarding the status of her complaints she sought from counsel an explanation 'who would sustain all the negligence that had happened.' This is one of the complaints whereby there is in fact no evidence adduced by counsel to prove that at least he tried to have the judgment vacated before the Magistrates Court and or even the case before the Supreme Court recalled or 'reinstated' again to the detriment of his client.*

*[10] Professional conduct complaint of Ms. Zane Ozola of Au Cap, Mahe. Ms. Ozola was unfortunately out of Jurisdiction at the hearing hence agreed reliance on the complaints and evidence forming part of the documentation pack. (It is however, crucial to note that Ms. Ozola did contact the Committee to seek the status of her complaint after completion of the hearing informing that she was in the jurisdiction). From the above-said records and as amply illustrated at pages 121 to 124 of the Report, it is evident that Ms. Ozola was a very upset client especially in her "pregnant state" at the time of the complaints. She was not satisfied with the replies of counsel and was still awaiting the payment of her outstanding legal fees of S.R. 2000/- (kept in the absence of an authenticated fee agreement) and also a favourable outcome vis-a vis the sexual advancement complaint as against counsel (which in the Committee's opinion was well corroborated by evidence supporting her latter complaint and responses of counsel which was very unbecoming in all the circumstances of the case).*

**[15]** The Committees' conclusions and recommendations were the following:

...[4]“Now, the Committee bearing in mind the wise words of Gary Crooke QC that: “a truly ethical environment at the Bar is one where unacceptable conduct should not be tolerated and the unworthy will be spurned” and the urgency to think “squarely before we decide to do nothing about it”, the Committee as per the findings as above illustrated, finds that it has been substantiated against counsel unbefitting conduct in relation to the Court, in relation to legal practice and profession, in relation to clients and in relation to persons other than clients and additionally in relation to breaches of the Notaries Act and the Stamp Duty Act.

[5] In the light of the above-stated findings, it is the Committee’s considered view that the following sanctions and reparations be considered by the Supreme Court against Counsel:

(a) Counsel may be suspended from practice for a period to be determined by the Supreme Court.

(b) Counsel may be removed from the Roll as an attorney-at-law by the Supreme Court.

(c) Counsel is to be ordered to pay all his outstanding debts/reparations as transpired in the Report as hereunder specified with interest at legal rate from their respective due dates until completion of all payments thereof in full, together with any other Orders of the Supreme Court made in pursuance to the Conclusions at sub- paragraphs (a) or (b) above.

**Outstanding debts/Reparations of Counsel:** In respect of complaints pending:

(1) Professional Conduct complaint of Late Mrs Marie Hetimier: S.R.70,000/-(with interest at 4% (legal rate) accruing on the outstanding amount);

(2) Professional Conduct complaint of Evans Delcy, Lina Delcy and Nancy Monnaie: S.R. 75,000/- (with interest at 4% legal rate on the remaining balance) (S.R. 25,000/- to be paid to each of the mentioned heirs);

- (3) *Professional Conduct Complaint of Emmanuel Delcy: S.R. 330,000/- (with interest at 4% legal rate on the remaining balance);*
- (4) *Professional Conduct Complaint of Georges Monnaie: S.R. 15,000/- (with interest at 4% legal rate on the remaining balance);*
- (5) *Professional Conduct Complaint and court case of Robin Joseph: S.R. 200,000/- plus S.R. 18,030 (being refund of over charged legal fees as treated in the Findings);*
- (6) *Professional complaint Mrs Ndyia Webb: S.R. 10,000/- (with interest above-referred);*
- (7) *Professional complaint Ms. Zane Ozola: S.R. 2000/- (with interest as above-referred);*
- (8) *Court case Mr. Herve Nourrice: S.R. 44,000/-(with interest at 10% per annum as per Judgment by Consent);*
- (9) *Court case Union Vale Car Hire: S.R. 95,805.04 plus S.R.989/- as cost with interest on the original debt as per Judgment by consent at 4% legal rate;*
- (10) *Court case Raoul Maria: S.R. 8000/- (with interest at 4% accruing on the outstanding amount);*
- (11) *Court case Regional Trading: S.R. 29,000/- plus cost as per Judgment of the Court.*
- (12) *We believe that counsel may be removed from the Office of Notary for breaching section 14 (2) in keeping client's money and under section 35 (3) for charging fees in excess of the prescribed fees and also having regard to his statement before us that he did not know how to administer clients' money.*
- (13) *The Sureties who guaranteed Counsel's conduct as attorney-at-law and Notary Public may be called upon to pay the guaranteed sums which would go towards partial payment for the unpaid clients as above illustrated.*

### **General comments**

*The Committee wishes to comment further as stated earlier, that Counsel was appointed as an attorney-at-law by the former Chief Justice V. Allear when he had not served the required period of pupillage. Subsequent Chief Justices implored him to pay his debts instead of taking disciplinary action against him when clients' money were not being returned despite his promises to pay. It is suggested that once all clients have been repaid in full Counsel may be considered back to the legal profession but only serving a proper pupillage in an approved Chamber and convincing the Chief Justice that he is fit and proper to be admitted as an attorney-at-law and should thereafter be closely monitored by the Auditor General and the Registrar General in relation to the management of his Client's Accounts in accordance with the provisions of the Control and Protection of Clients' Accounts Act (Cap 44) and strict conditions should be imposed by the Supreme Court by way of supervision of counsel in as far as the administration of his Chambers is concerned inter alia in the recruitment of qualified personnel to administer and manage all legal fee agreements in accordance with the professional conduct Rules and management of all client's files and communication in general."*

- [16] Subsequent to the Report, an affidavit was filed by Joelle Barnes, the Executive Legal Assistant to the Chief Justice who had been mandated by the Chair of the Committee to ascertain whether one of the complainants, namely Mrs. Hubert had received payment from Mr. Herminie in settlement of her complaint. This was confirmed by Mrs. Hubert on 28<sup>th</sup> May 2016 and a statement to this effect is contained in Ms.Barnes' affidavit. There have been no other settlements of outstanding debts.
- [17] On the 15<sup>th</sup> June 2016, the Chief Justice wrote to the Respondent forwarding a copy of the Committee's Report to him and stating that:

*The report and the index of proceedings forwarded to you are to be treated by you as documents containing the substance of the allegation made against you pursuant to Rule 3 of the Legal Practitioners (Disciplinary Measures and Reinstatement) Rules.*

*In terms of Rule 4 (1) you have twenty-one days from service of these documents to lodge to the Registrar a statement in writing dealing with the allegations, a list and copies of documents in support of the statement and an affidavit supporting the statement.*

**[18]** On 8<sup>th</sup> July 2016, the Respondent answered and addressed the substantive findings of the Committee as follows:

1. **Poor management of legal practices/accounting and handling of client's accounts:** *I concede that the running of my chambers was not well organised particularly on the accounting side, more specifically the management of client's account. This was an issue that was raised with me by the former Chief Justice Entende (sic). I heeded his advice and had started to take the necessary steps to institute the organisational set-up up to strengthen my Chambers. I was in the process of recruiting a qualified personal (sic) with accounting background to manage financial transactions of my office. This would have distanced me directly from all accounting affairs. However this was put on hold pending the outcome of my practioner's licence.*
2. **Breach of notarial duties:** *The breach of notarial duties referred to by the Committee of Inquiry relates to overcharging of two clients namely Mr. Robin Joseph and Heirs Delcy. In all these cases the amounts were charged with the consent of the clients concerned. In the case of Mr. Joseph, the fees did not only relate to notarial services but for court work which spanned over a two year period. Whereas in the case of Heirs Delcy, on the instructions of Emanuel Delcy (executor) I was also responsible tonegotiate the sale of the heirs' property at La Gogue. It would be most unfair to be sanctioned for work that was done in good faith with the full approval of the client.*
3. **Overcharging of clients/retention of client's money:** *Regarding the issue of overcharging, I have already explained above under item 2. Whereas with regards to retention of client's money, I concede that there has been instances of undue delays in making payments. These cases have subsequently been addressed.*

*As for the case of Ms.Ozola, the sum agreed was SR7, 000. She must have misunderstood me when I indicated that the fee would amount to SR7, 000 whereby she would pay SR5000 upfront followed by a sum of SR 2000 later. Bearing in mind that Ms.Ozola was a Russian national and had a problem with the Englishlanguage, she may genuinely have misunderstood me.*

4. **Poor legal advice:** *In its report the Committee of Inquiry indicated that there were instances of delivering poor legal advice. However, the Committee, failed to articulate and specify further. According to my recollection, I have never received any complaint that the advice given to clients was poor in nature or unprofessional...I was under the impression that most of the money had been settled... As the inquiry revealed that I still owe the balance of SR70, 000, I undertake to make good the said amount.*

*Evans Delcy- The sum of SR330, 000 is an amount concocted by Mr. Emmanuel Delcy which sadly the Committee of inquiry has accepted. Whist there is evidence that the payment in the sum of SR150, 000 was paid to Emmanuel, the Committee failed to take into consideration the said settlement. Please refer to copy of the attached cheque 7/9/2010 which was cleared by the bank .I therefore owe Mr. Emmanuel the sum of SR 180,00 only.*

*Nydia Weber- The alleged sumof SR10, 000 owed to Mrs. Weber was paid in full to her other sister Mrs. Hubert who acted under a power of attorney on Mrs. Weber's behalf. It would be unfair to pay her twice. I was advised by Mrs. Hubert that she had sent an e-mail to Joelle Barnes, your Legal Executive to confirm that I had already settled the amount owed to Mrs. Weber in full.*

*Zane Ozolla- I do not agree with the claim of overcharge with respect to Ms.Ozolla. However, in order to bring closure to this matter, I undertake to settle in the sum of SR 2000 as recommended by the Committee of Inquiry...*

- [19] At the public hearing in the Supreme Court on 28<sup>th</sup> July 2016, the Respondent was invited to present further evidence other than that already submitted. Counsel for the Respondent,

Mr. Derjacques stated, “No we do not have further evidence we only have what we could term a plea in mitigation.”

- [20] Mr. Herminie testified and explained that after graduation from the University of East London and being called to the bar of the Middle Temple he served with the Attorney General’s Chambers for a year, after which he was appointed Minister. He remained as Minister for fifteen years. He then joined the legal profession and was attached to the Chambers of Mr. France Bonté. After being there for three months he was exempted from serving the statutory period of two years pupillage by Alleear CJ and admitted as an Attorney to practice in Seychelles.
- [21] He stated that he had three dependent children and would not get a ministerial pension for another four years. His only asset was his house at Mont Signal which he intended to sell and settle all his debts and start again. He stated that he had suffered enough and that he had apologised to those he had wronged. He submitted that he had become wiser and that his office if granted a licence would be open to scrutiny and would not handle issues of money.
- [22] I have taken great care in examining the transcripts of evidence for the Tribunal of Inquiry which is over four hundred pages, together with the documentation and exhibits numbering over five hundred pages. I have been struck by the diligence and meticulousness of the Committee and their assiduous documentation and respect for the rules of natural justice and fair procedure in the conduct of their inquiry. I have every confidence that the Report submitted was honest, reasoned and made after due consideration of all the facts and evidence of the complainants and the Respondent. I therefore have no reason to doubt the veracity of their findings and the logic of their reasoning.
- [23] They have proposed the suspension of the Respondent from the roll either permanently or for a period of time and that he is ordered to pay all his outstanding debts.
- [24] The Supreme Court is not deaf to the pleas of Mr. Herminie. He appeared as a broken man and the Court takes no pleasure in observing his fall from grace. The Court also



appreciates that he is a family man needing to support his children. The Court is however perturbed by his statement that most of the complaints made against him have been settled and his insistence that cases taken against him in his personal capacity should have no impact on proceedings taken under the LPA. Further, he also stated that although people have suffered he has also suffered.

[25] The Court finds it difficult to understand some of these submissions. Although the Respondent has suffered, his clients continue to suffer inasmuch as they have been robbed of their dignity and their rights to the fruits of judgments and /or settlements in their favour. They have been put to great distress and anxiety.

[26] The most striking and damning example which has occupied my mind has been the case of Mrs. Hetimier, a paraplegic as a result of an accident. The State Assurance of Seychelles settled her accident claim in 2006. The money was pocketed by the Respondent. Mrs. Hetimier's step son writes in 2008 to Chief Justice Perera: "Sir he ignores letters. I ask you to help us. We are very poor and need the money that is ours." Several other letters, some heart wrenching, from her husband ensued to Chief Justice Egonda-Ntende. Payment was made in dribs and drabs and always after threats of disciplinary proceedings being taken against the Respondent. Marie Hetimier died on 10th January 2013. Her quality of life would no doubt have been improved had she received her money. Her dignity would also have been preserved. Her estate, is still owed SR70, 000 with interest at the legal rate of 4% accruing since 2006.

[27] Insofar as the court cases taken against Mr. Herminie in his personal capacity for which judgment debts have been entered and remain unpaid, the Court has every right to take these into consideration in disciplinary proceedings given the provision of section 20(1) of the Legal Practitioners (Professional Conduct) Rules, 2013 which states in relevant part:

*"A legal practitioner shall have due regard to the importance of maintaining public confidence in the administration of justice in all aspects of his or her public conduct, both personal and professional."*

- [28] In this regard being pursued in courts and having judgments for unpaid goods and services entered against a person who is also an attorney is neither edifying nor inspiring of the legal profession as a whole. It damages the image of lawyers and destroys public confidence in the profession.
- [29] I find, in view of the Committee of Inquiry's Report, which findings are clearly supported by the evidence adduced, that the Respondent has breached several provisions of the LPA, notably sections 4, 5, 8, 9, 11, 12, 13 and 20. He has also breached section 35(3) and section 36 of the Notaries Act and section 41(d) of the Stamp Duty Act. His explanations are not sufficient to dispel the substance of the complaints which I find proved.
- [30] I have taken into account the pleas of 'mitigation' by the Respondent and have given anxious thought to suspending him from the roll for a period of time. I have also reminded myself that the legal profession is already suffering from a lack of public confidence. I have also directed my mind to the fact that an attorney-at-law who breaches section 9(1) of the LPA is guilty of an offence and liable to a fine of SR25, 000 or to imprisonment for five years.
- [31] I am also concerned about the public image of lawyers in Seychelles. The majority of legal practitioners in our country work hard, diligently and honestly and protect the interests of their clients. Unfortunately others are failing in their duties and my Office receives complaints almost every day. The Respondent has failed miserably to honour our noble profession. A line must be drawn in the sand. I am struck by my predecessors' stance; they have threatened and cajoled the Respondent to no avail. The Bar Association has no power to sanction the acts of their own misbehaving members.
- [32] Hence, despite the Respondent's pleas I am not satisfied that he is capable of being entrusted with the responsibilities and duties required of an attorney-at-law or a notary.
- [33] It is with a heavy heart that I therefore remove the Respondent, Mr. William Herminie from the roll as he is unfit to practice as an attorney at-law or a notary. I so Order.

**[34]** I am, however, cognisant of the implications this finding will have on the Respondent's ability to work as an attorney or notary in this country or elsewhere. In this regard, pursuant to section 11 of the LPA, the Respondent may apply for reinstatement to the roll once he has undergone a period of rehabilitation which is to include the repayment of all outstanding debts, a pupillage of two years with an approved chambers and a demonstration of his ability to operate a chambers that meets the requirements of the LPA. Were he ever to set up chambers again he must also provide for independent assessment and scrutiny of his clients' accounts and he must be supervised by a Senior Counsel to the satisfaction of the Chief Justice.

**[35]** Pursuant to my findings that breaches of the LPA, Notaries Act and Stamp Duty Act have occurred and debts remain unpaid to numerous third parties but also exercising the equitable powers of the Supreme Court, I also order that the Respondent pay all outstanding debts, namely:

1. SR70,000 with interest at 4% legal rate accruing on the outstanding amount to the estate of Marie Hetimier;
2. SR.25,000 to Evans Delcy, Lina Delcy and Nancy Monnaie each with interest at 4% legal rate.
3. SR 330,000 to Emmanuel Delcy with interest at 4% legal rate.
4. SR 15,000 to Georges Monnaie with interest at 4% legal rate.
5. SR 200,000 and SR 18,030 to Robin Joseph with interest at 4% legal rate.
6. SR 2000 to Ms. Zane Ozolawith interest at 4% legal rate.
7. SR 44,000 with interest at 10% per annum as per Judgment by Consent to Mr. Herve Nourrice:
8. SR 95,805.04 plus SR989 as cost with interest on the original debt as per Judgment by consent at 4% legal rate to Union Vale Car Hire;

9. SR 8000 with interest at 4% legal rate to Raoul Maria:

10. SR 29,000plus cost as per judgment of the Court to Regional Trading Pty Ltd.

[36] Should the Respondent fail to pay his outstanding debts on or before the 5th September 2017 I regrettably call in the sureties of France Gonsalves Bonté and Patrick Mathew Herminie who have bound themselves on 7<sup>th</sup> January 2004 to make good their bond of fifty thousand rupees each. These amounts will have to be paid into the Registry of the Court on the date specified above in the eventuality of the Respondent's default. The money paid is towards the repayment of the Respondent's outstanding debts to the complainants and to be distributed in an equitable manner.

[37] I order the Registrar to serve notice of these Orders on all parties mentioned above.

Signed, dated and delivered at Ile du Port on

**M. TWOMEY**  
Chief Justice