

Present: Mr G.A. Andrée Wiltens, Chair

Ms S. Shah, Member

Mr D. Russet, Member

Ms V.M. Trief, Secretary

Mr A.E. Bal

Decision: 8 May 2019

Complaint by the Court of Appeal against Mr A.E. Bal

A. Introduction

1. In 2018, Mr Bal acted for a client criminally charged with reckless driving causing death, with an alternative lesser charge of unintentional harm causing death. Mr Bal advised his client to plead guilty to the alternative charge, which she duly did, and she was subsequently sentenced.
2. The case subsequently came before the Court of Appeal as an appeal against conviction and sentence. However, given the serious challenges to the prosecution case that were not pursued at first instance, the Court of Appeal granted an application to set aside the conviction and remitted the file to the Supreme Court for retrial. In doing so, the Court made several disparaging comments regarding Mr Bal's conduct – they are the basis for the complaint.
3. A different counsel acted for the client at the retrial, and she was ultimately found not guilty.

B. Background

4. The thrust of the prosecution case was that the client had been drinking alcohol and was drunk at the relevant time. It was alleged that in that state she had resumed driving a bus in the early hours of the morning. It was alleged that she had proceeded around a round-a-about on the wrong side of the road, in the course of which her bus had struck and killed a pedestrian. It was further alleged the client had then driven away from the scene.
5. Mr Bal's instructions included statements to the effect that his client was not drunk at the material time; and that she had not driven on the wrong side of the road. Mr Bal advised that he had told the prosecutor of these disputed facts, but he did not tell the Court. Mr Bal assumed the prosecutor would arrange for the necessary witnesses to be called at a "Newton hearing" (also known as a

disputed facts hearing), but when that did not eventuate Mr Bal did nothing about that and allowed his client to be sentenced on a factually incorrect and unaccepted basis.

### C. Complaint

6. The Court of Appeal considered Mr Bal's conduct in his handling of the case and made the following relevant points:
  - Mr Bal was "...guilty of serious material omissions" in the presentation of his client's case;
  - Mr Bal did not bring his instructions to the attention of the Court;
  - Mr Bal took no steps to pursue a Newton hearing; and
  - Mr Bal's omissions "...constitute a serious professional error amounting to incompetence".

### D. Discussion

7. Mr Bal accepted the Court of Appeal's comments. He did not challenge any of the statements made nor the underlying facts.
8. The Committee's role is to examine professional misconduct and unprofessional conduct. We are guided in that by the requirements set out in the Legal Practitioner's Act [Cap 119] Rules of Etiquette and Conduct of Legal Practitioners. Of particular relevance to this complaint, we note:
  - Rule 87: **Duties of a defence lawyer**
    - (1) A defence lawyer must protect his or her client so far as is possible from being convicted (except upon admissible evidence sufficient to support a conviction for the offence with which the client is charged) and in doing so must:
      - (a) Put the prosecution to proof in obtaining a conviction regardless of any personal belief or opinion of the lawyer as to his or her client's guilt or innocence; and
      - (b) Put before the court any proper defence in accordance with his or her client's instructions, but must not mislead the court in any way.
9. The Committee agreed unanimously that the complaint had been made out. Mr Bal had a clear obligation to point out to the Court that his client did not accept being drunk at the time and did not accept she had driven on the wrong side of the road. Both those matters would have significantly affected the issue of guilt or otherwise and the appropriate end sentence to be imposed.



E. Decision

10. The complaint is made out. The Committee considered that Mr Bal's acts and omissions in this instance are properly characterised as professional misconduct, rather than the less serious unprofessional conduct.

F. Sanctions

11. Mr Bal sought to persuade the Committee to reprimand him. However, when the more serious aspects of his conduct were discussed, he accepted something more severe was warranted and he requested we settle on a fine.
12. The Committee saw little merit in either suspending or striking Mr Bal off the roll of legal practitioners. We considered the aspect of publicity to be important and to have a salutary effect on Mr Bal. Mr Ball's standing as a practitioner of some 11 years' experience, without previous blemishes on his reputation, was a significant factor we took into account in determining the appropriate sanction. We also noted with approval Mr Bal's statement to the effect he is no longer dealing with criminal cases.
13. The Committee unanimously determined to fine Mr Ball VT 100,000. We further considered that he should pay compensation to his former client of VT 100,000. We also order him to pay VT 50,000 for the costs of the hearing, which will go to his former client.
14. The total sum of VT 250,000 is to be paid to the Committee's Secretary – she will then ensure on-payment. Payment is to be made within 21 days, failing which Mr Ball will be suspended from practise for such period as until the full amount is paid.
15. Unfortunately there is no possibility of the Committee ordering Mr Bal to undertake what we consider to be highly desirable further education. However, we determined that this decision be provided to Mr Bal's current principal with our recommendation that close supervision of his handling of the firm's work be undertaken by his principal personally.
16. Mr Ball has 15 days in which to appeal, if he so wishes, from the date of receipt of this decision.



G. A. Andrée Wiltens

Chair, Disciplinary Committee