

Disciplinary Committee Hearing:

9 April 2025

Present:

Ms V.M. Trief, Chairperson

Mr C. Mangawai, Member

Ms A. Samana, Member

Mr C. Tavoia, Member

Mrs F.W. Samuel, Secretary

Date of Decision:

22 May 2025

DISCIPLINARY COMMITTEE DECISION AS TO
APPLICATION BY CHRISTINA THYNA GESA FOR RESTORATION TO THE REGISTER
OF LEGAL PRACTITIONERS

A. Introduction

1. By decision dated 18 March 2022, the Disciplinary Committee (the 'Committee') determined unanimously that Mrs Christina Thyna Gesa (referred to in that decision as 'Mrs Thyna') be struck off the Register of Legal Practitioners (the 'Register') forthwith. This decision was made in relation to Mrs Samantha Clark's complaint against Mrs Thyna dated 17 June 2020, supported by an affidavit dated 19 June 2020 (the '*Clark decision*').
2. By decision dated 26 April 2022, the Committee determined unanimously that Mrs Gesa (again referred to in that decision as 'Mrs Thyna') be struck off the Register forthwith. This decision was in relation to Mr Iau James' complaint against Mrs Thyna dated 20 May 2020, accompanied by an affidavit by Mr James (the '*James decision*').
3. Mrs Thyna confirmed at the hearing that she received both decisions on 27 April 2022.
4. Mrs Thyna has appealed both decisions to the Supreme Court. Her appeal is pending in the Supreme Court.

5. By letter dated 10 July 2024 to Justice Trief, Mrs Thyna lodged her application dated 10 July 2024 for restoration to the Register and her sworn statement. She subsequently swore that statement on 9 April 2025. Mrs Thyna referred to herself as both Mrs Gesa and Mrs Thyna in the letter, application and sworn statement. We will use the same name, "Mrs Thyna", as the Committee previously.
6. Mrs Thyna stated in her letter that whilst her appeal is pending in the Supreme Court, she is pursuing her present application to the Committee pursuant to ss 11 and 11 of the *Legal Practitioners Act* [CAP. 191] (the 'Act') as she believes that she has strong grounds for reinstatement and the process is cheaper than having legal counsel argue the appeal on her behalf.
7. The grounds of the application were set out as follows at [9]:
 9. *I was totally ill prepared for my hearing before the DC and was not armed to argue on penalty which meant that the DC did not have the benefit of detailed submissions on penalty which may have swayed its decision and resulted in a lesser penalty which did not involve my permanent removal from the register. I humbly request that the DC consider my application for restoration and in doing so take into account matters I would have liked to put before the DC at my hearing if I was better prepared and appreciative of the serious consequences for me of the adverse finding arrived at. The matters I humbly request be considered for the purpose of my application for restoration include the following:*
 - (a) *I was educated in the French education system and am fully fluent in both written and spoken French. Apart from Mrs Patterson I am the only fluent French speaking lawyer in a country in which French is one of the three official languages. However, access to legal services in French for those whom French is their mother tongue or who have been educated in the French system is extremely limited. The availability of legal services in French does not reflect, at least in terms of numbers, the extent and importance of the use of French as an official language in Vanuatu.*
 - (b) *The allegations made against me which were the subject of the determination to remove me from the Register, related I would respectfully submit, to what might be seen as less than perfect practice on my part in terms of the communication with clients about their matters and the active handling of matters. I would respectfully submit that all lawyers could, at different times in their careers, be accused of less than perfect case management practice as well as being less than ideally communicative with their clients.*
 - (c) *I would urge the DC to consider more closely the conduct alleged against me. The conduct attributable to me in the complaints did not,*

I would suggest, amount to a level of dishonesty reflecting a knowing intent to deceive and profit from deception.

- (d) Whilst the findings of the DC relied heavily on findings of dishonesty on my part, when analysing the underlying factors and giving closer consideration of the conduct involved, I believe that the problems I encountered which became the subject of the complaints arose out of poor management practices on my part. However, notwithstanding those poor practices, I do not believe that I acted dishonestly. Rather, I was perhaps careless with a lack of attention to detail in respect to the charging of fees, which arose I would respectfully submit, out of a misunderstanding between me and a client and again this could have been down to less an ideal communication on my part.*
- (e) In neither case was I accused of “misappropriating” funds nor did the material before the DC established that any funds were misappropriated.*
- (f) I would respectfully submit that many lawyers starting out in private practice do so without sufficient understanding of how to run a practice. I acknowledge that I had no relevant mentoring around such matters and that I did not fully appreciate the expectations and standards required to set out as a sole practitioner. When I worked at Ridgway Blake Lawyers, I did not seek out nor did I receive any mentoring in respect to the conduct and management of legal practice. I tended to work as an assistant to the partners in the firm. I then moved to the State Law Office which does not prepare a lawyer for life in the private sector.*
- (g) Since being removed from the Register, I have had cause to give serious consideration to my future plans and to reflect on my past professional life.*
- (h) From the time I left school I wanted to be lawyer and I have throughout my legal career enjoyed both the intellectual challenge that lawyers face as well the personal satisfaction of providing a service to the public. It has been devastating to think that the opportunity to do that into the future has been taken away from me.*
- (i) I have taken some time talking to Mr Blake about the demands and responsibilities of a private practitioner and especially a sole practitioner. From speaking to him I believe I have a better understanding of my obligations in respect to servicing clients, the operation of trust accounts, the receipt of monies on account of work to be performed and the invoicing of clients for the work that is undertaken and charged for and ensuring that before I apply any monies held on trust, that I have the client’s permission to do so.*
- (j) My experiences with Ms Clark who brought a complaint against me have highlighted the improvement I need to make in the*

management of litigation that I am involved in as well as my communication with clients.

- (k) I believe that the experiences arising out of the lodgement of complaints against me and the reflection I have had since that time and the communication I have had with Mr Blake on the matter would make me a better lawyer that I was before I was removed.*
- (l) Removing me permanently or refusing an application for restoration to the Register would not only amount to an extremely severe punishment both psychologically and financially for me but it also impacts those in the community who seek out French speaking lawyers to better communicate their need for legal assistance.*
- (m) I have asked Mr Blake if he would act as a mentor for me if I were to be restored to the Register. He has agreed to act as a sounding board and source of advice and guidance in relation to the management of my practice. To have someone that I could go to when I am unsure about matters and aspects of practice management would be a huge benefit to me. I am very grateful that he has agreed to provide that mentoring service to me. I do not want to appear before the DC again. I want to ensure that I conduct my practice in a way that will not see that occur.*
- (n) I most sincerely and humbly request that the DC gives its earnest consideration to my request for restoration to the Register. My removal from it has had the desired effect of highlighting to me the serious impact of how I was managing my practice previously and has created a very strong desire in me to seek out a second chance and if restored, to ensure that there is not a repeat occurrence.*
- (o) Rather than the sanction being designed to be punitive, it should hopefully lead to rehabilitation.*
- (p) I believe that if the matter is to go on appeal, I have a good chance of having the permanent removal from the Register reduced to a period of suspension but to go through that path is an expensive exercise and I hope that the discretion which lies within the DC and the Chief Justice to sanction my restoration to the Register is a discretion that is availed in lieu of throwing myself at the mercy of the Court process and the considerations courts may have on appeal which differ to those the subject of a restoration application under Section 11 of the Act.*

8. At the hearing, Mrs Thyna handed up a number of documents including her sworn statement dated 9 April 2025, submissions and character references from a number of former clients and community members, including other lawyers namely Mr G. Blake and Mrs M.G. Nari.

9. The Committee informed Mrs Thyna that it had received the following response to the application for restoration from Ms Clark and handed her a copy:

Dear Florence, thank you for the email. The only reason I would oppose the application is I'd be concerned of her serious dishonesty in my case, the Misappropriation of my funds and her refusal to pay me back.

10. The Committee also informed Mrs Thyna that Mrs Samuel had not been able to locate Mr James but that it had also wished to hear his response to the application.
11. Mrs Thyna informed the Committee that Mr James is currently suing her in the Supreme Court for payment of monies. She said that she has told them that she has an appeal and an application before the Committee, but that as soon as those are resolved, she wants to settle his case and pay the monies owed to him.

B. The Law

12. Section 11 of the Act provides as follows:

11. The Chief Justice may subject to any order made under this Act, if he thinks fit, at any time order the Registrar to replace on the Roll the name of a Barrister and Solicitor whose name has been removed or struck off the Roll.

13. "Roll" is defined in s. 1 of the Act as follows:

"Roll" means the Roll of Barristers and Solicitors, kept by the Registrar in accordance with provisions of section 1D;

14. The Act gives the Disciplinary Committee the jurisdiction to deal with this application, pursuant to subs. 11(1), which provides as follows:

11. (1) A person against whom an order has been made under section 9(3)(a) may apply to the Disciplinary Committee at any time or times after 6 months have elapsed after the making of the order to have his name restored to the Register of Legal Practitioners.

15. The reference to section 9(3)(a) of the Act refers to the Disciplinary Committee's power to order that a legal practitioner be struck off the Register.

16. The Committee has the absolute discretion to decide on the matter pursuant to subs. 11(3) of the Act which provides as follows:

11. ...

- (3) *The Disciplinary Committee shall have absolute discretion to restore the name of the applicant to the Register of Legal Practitioners, cancel the order, shorten the period of suspension or refuse the application.*

17. No guidance is given by the statute as to what considerations might inform the decision to restore.

C. Timing of Hearing

18. The present Disciplinary Committee was formally appointed on 5 June 2024 and gazetted on 7 June 2024.
19. On 11 September 2024, the Committee held its first meeting. The Committee understood that Mrs Thyna's application should be considered in the first instance by the Law Council, then it could refer the application to the Committee for hearing. In March 2025, the Committee received legal advice that it has an absolute discretion in relation to restoration applications therefore it should proceed to hear the application without a referral by the Law Council. The Committee then listed the application for hearing on 9 April 2025. The delay is regrettable.

D. Discussion

20. We propose to deal with the grounds of the application under the following headings:
- (a) That the Committee erred in finding dishonesty on Mrs Thyna's part;
 - (b) That the material before the Committee had not established that any funds were misappropriated;
 - (c) That Mrs Thyna did not have a sufficient understanding how to run a private practice;
 - (d) The steps taken post-striking off to rehabilitate, where relevant; and
 - (e) Service to members of the public who seek French-speaking lawyers.

That the Committee erred in finding dishonesty on Mrs Thyna's part

21. Mrs Thyna asserted in a number of the grounds of the application that the Committee erred in making findings of dishonesty, including the following at [9](c) and (d):
- (c) *I would urge the DC to consider more closely the conduct alleged against me. The conduct attributable to me in the complaints did not, I would suggest, amount to a level of dishonesty reflecting a knowing intent to deceive and profit from deception.*
 - (d) *Whilst the findings of the DC relied heavily on findings of dishonesty on my part, when analysing the underlying factors and giving closer consideration of the conduct involved, I believe the problems I encountered which became the subject of the complaints arose out of poor management practices on my part. However, notwithstanding those poor practices, I do not believe that I acted dishonestly. Rather, I was perhaps careless with a lack of attention to detail in respect to the charging of fees, which arose I would respectfully submit, out of a misunderstanding between me and a client and again this could have been down to less an [sic] ideal communication on my part.*
22. Mrs Thyna's submissions that the Committee erred in its decisions in finding dishonesty on her part as to the complaints by Ms Clark and Mr James are matters which can be raised on appeal against those decisions. This is because the appellate body's role is to consider alleged errors by the decision-maker in making the decision under appeal.
23. However, such assertions are not relevant to a restoration application as the Committee is not revisiting its earlier decisions nor hearing grounds of appeal on an application for restoration. Accordingly, the Committee declines Mrs Thyna's invitation to 'consider more closely' the conduct alleged against her.
24. Mrs Thyna submitted that refusing her application for restoration would amount to an extremely severe punishment both psychologically and financially. With respect, a submission about the severity of a punishment is a matter to raise on appeal. It is open to an appellate body to impose a lesser penalty if the grounds of appeal are made out. Accordingly, the Committee considers that the effect on Mrs Thyna of its determination of the present application is not a relevant consideration.
25. For the foregoing reasons, these grounds of the application are not made out.

That the material before the Committee had not established that any funds were misappropriated

26. Mrs Thyna submitted that in neither the *Clark* nor the *James* case was she accused of “misappropriating” funds nor did the material before the DC established [sic] that any funds were misappropriated.

27. First, whether or not the Committee erred in a finding that funds were misappropriated is a matter which can be raised on appeal against the decisions.

28. Secondly, the Committee put to Mrs Thyna that this ground of the application misstated the position due to the following finding in the *Clark* decision at [27] that Mrs Thyna accepted that she used VT75,000 of Ms Clark’s money without any authority from Ms Clark which was dishonest and equated to theft of a client’s funds:

27. *It was put to her whether she had written to Mrs Clark seeking her approval for the use of Mrs Clark’s funds in respect of the George Soalo/Annette Tims case and whether written consent was given by Mrs Clark for her funds to be so used in settling Mrs Thyna’s legal fees in the George Soalo case. Mrs Thyna’s response was an unequivocal admission that she had used about VT 75,000 of Mrs Clark’s money to settle her fees for the George Soalo case, and that she did so without any authority from Mrs Clark or even asking for such. That was dishonest, and equates to theft of a client’s funds. She stated: “I had no authority to deduct George Soalo’s legal fees from Sam’s account”.*

29. Mrs Thyna accepted that the Committee made this finding in the *Clark* decision.

30. The Committee also notes the following findings in the *James* decision at [48] and [53]:

48. *What was most concerning for the Committee was the obvious dishonesty in Ms Thyna not advising Mr James the true amount of damages he was receiving; the further dishonesty in drafting and getting Mr James to sign the agreement which compounded the earlier inaccuracy as to the true amount; the clear indication of wrong-doing evidenced by the statement (bill of costs) which was only tendered upon complaint being made despite having been previously prepared and which sought to justify the extent of the amount taken by Ms Thyna as her legal fees; and the final compounding dishonesty displayed in attempting to get Mr James to withdraw his valid complaint in return for a VT 2 million bribe.*

....

53. *We were concerned that the main aspect of the case highlighted dishonesty, but other aspects of Mrs Thyna's established misconduct were also of note. Given that dishonesty was at the forefront of Mrs Thyna's misconduct, the only proportionate response must be that she be struck off. We consider that appropriate in relation to this complaint, without that decision being impacted by her earlier striking off.*

31. For the foregoing reasons, this ground of the application is not made out.

That Mrs Thyna did not have a sufficient understanding how to run a private practice

32. Mrs Thyna suggested that many lawyers starting out in private practice do so without sufficient understanding of how to run a practice. She acknowledged that she did not fully appreciate the expectations and standards required to set out as a sole practitioner. She stated that she did not receive relevant mentoring when she worked at Ridgway Blake Lawyers as to the conduct and management of legal practice (supported by a letter from Mr Blake) and that she then moved to the State Law Office 'which does not prepare a lawyer for life in the private legal sector.'
33. The Committee considers that the suggestion as to other lawyers' alleged lack of preparedness for private practice does not assist Mrs Thyna. She acknowledged her own lack of preparedness, no doubt with the benefit of hindsight. It appeared as if she was blaming her lack of preparedness on Ridgway Blake Lawyers and the State Law Office. This overlooks the fact that Mrs Thyna *chose* to apply for unconditional registration which allows a legal practitioner to practise on his or her own account, and *chose* to enter private practice.
34. The Committee considers that Mrs Thyna's asserted lack of preparation for private practice cannot displace the Committee's findings in its *Clark* and *James* decisions as to Mrs Thyna's conduct. Accordingly, it considers that this ground of the application is not made out.

The steps taken post-striking off to rehabilitate, where relevant

35. Mrs Thyna submitted that since being struck off the Register, she has had cause to give serious consideration to her future plans and to reflect on her past professional life. She stated that from the experiences arising from the two complaints against

her, the reflection she has undertaken and her communications with Mr Blake on the matter would make her a better lawyer than she was before her striking off. She stated that Mr Blake has agreed to her request to act as her mentor if she were to be reinstated to the Register. Mr Blake confirmed this in a letter attached to Mrs Thyna's sworn statement.

36. Mrs Thyna stated in the application at [9](d) that she does not believe that she acted dishonestly with respect to both complaints against her. As set out above, she urged the Committee to consider more closely the conduct alleged against her, submitting that the problems she encountered arose out of poor management practices on her part, her carelessness with respect to the charging of fees and less than ideal communication with her clients resulting in misunderstanding between them. The Committee understood from Mrs Thyna's submissions that she does not accept the findings that the Committee made in the *Clark* and the *James* decisions.
37. The Committee acknowledges that this may be due to the fact that Mrs Thyna's appeal against both decisions has not yet been heard.
38. However, given that the Committee's findings as to dishonesty on Mrs Thyna's part were at the forefront in both the *Clark* and the *James* decisions, the Committee considers that Mrs Thyna has not demonstrated insight into her conduct *vis-à-vis* Ms Clark and Mr James.
39. Given the findings against her as to dishonesty on her part, it is most concerning to the Committee that Mrs Thyna does not accept that she acted dishonestly in relation to Ms Clark and Mr James, yet is seeking restoration to the Register.
40. The Committee considers that in the circumstances, the protection of the public would not be served by granting Mrs Thyna's application for restoration.
41. The Committee considers that the mentoring support that Mr Blake would provide to Mrs Thyna if she were to be restored to Register is not sufficient on its own to persuade the Committee to grant the application for restoration. No doubt the mentoring support would benefit Mrs Thyna but the Committee is not persuaded to grant the application when Mrs Thyna has not demonstrated insight into her conduct which resulted in her being struck off from the Register not just once, but twice.

Service to members of the public who seek French-speaking lawyers

42. Mrs Thyna submitted that she was educated in the French education system and is fully fluent in both written and spoken French. Further, that apart from Mrs Patterson, she is the only fluent French speaking lawyer in Vanuatu. She submitted that access to legal services in French for French speakers is extremely limited. She submitted that refusing her application for restoration would impact those in the community who seek out French-speaking lawyers to better communicate their need for legal assistance.
43. As set out above, the Committee considers that the effect of its decision as to the present application on members of the public who seek French-speaking lawyers is not a relevant consideration.
44. In any event, this factor cannot displace the Committee's findings in its *Clark* and *James* decisions as to Mrs Thyna's conduct, nor does it constitute on its own sufficient ground to restore Mrs Thyna to the Register.
45. For the reasons given, the application is declined.



.....
V.M. Trief
Chairperson, Disciplinary Committee