

JERSEY / JUDGMENT

Batonnier v Advocate Sinel [2000] JCA 15 (27 January 2000)

[2000] JCA 15

COURT

COURT OF APPEAL

BEFORE

Sir David Calcutt, Q. C., President,

R. C. Southwell, Esq., Q. C., and;

M. G. Clarke, Esq., Q. C.,

IN THE MATTER OF

the Representation of the

Bâtonnier (RESPONDENT)

regarding Advocate Philip

Cowan Sinel (APPELLANT)

AND IN THE MATTER OF

An application by Advocate

P. C. Sinel for Orders recusing the Jurats as a body from sitting

and the Attorney General

from appearing as

Amicus Curiae

, at

the hearing of the Bâtonnier's Representation.

Appeal

by the Appellant from so much of the Judgment of the Royal Court of 1

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R. C. Southwell, Esq., Q. C., and;
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regarding Advocate Philip
Cowan Sinel (APPELLANT)
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An application by Advocate
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, at
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Appeal
by the Appellant from so much of the Judgment of the Royal Court of 1
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July, 1999, as refused the
applications of the
Appellant:

1.
to
have the Jurats of the Royal Court recused from sitting at the hearing of the
Representation; and
2.
to
have Her Majesty's Attorney General excluded from acting as '
Amicus Curiae
'
The
Bâtonnier, Advocate R. J. Michel;
Advocate
N. M. Santos Costa for the Attorney General;
Advocate
D. E. Le Cornu for Advocate P. C. Sinel.

JUDGMENT

SOUTHWELL. J. A. During the 1990s there was a serious fraud committed in Jersey by Dr Young and others. Dr Young and one of his associates were sentenced to terms of imprisonment. In connection with this fraud civil proceedings were brought in Jersey by clients of Advocate Philip Sinel. Civil proceedings were also brought by those clients and others in the federal District Court of the Southern District of New York, in the United States of America. The defendants in the American proceedings applied for a stay of those proceedings on the ground that the appropriate jurisdiction, the forum conveniens, for the determination of the disputes was Jersey, and not in the U. S. District Court. The application for a stay was opposed by Mr Sinel's clients. As part of that opposition Mr Sinel swore an affidavit in Jersey on 18 th March 1998 apparently before an advocate in Mr Sinel's own firm (the Affidavit). In the Affidavit Mr Sinel sought to put forward

arguments and allegations to the effect that his clients could not obtain justice in Jersey. Not surprisingly opposition to the stay based (inter alia) on Mr Sinel's allegations failed. The District Court and the Court of Appeals granted the stay of the American proceedings. In July 1998 a complaint of professional misconduct against Mr Sinel as a Jersey Advocate was made to the then Bâtonnier, Advocate Peter Maurant. He appointed a panel of Advocates to investigate and advise on this complaint. Advocate Richard Michel was on 8 th October, 1998, elected Bâtonnier in place of Advocate Maurant. He authorised the panel to continue its work. On 8 th February, 1999, the panel answered four questions posed by Advocate Maurant. Having received those answers Advocate Michel as Bâtonnier made a representation in the Superior Number of the Royal Court for that Court to deal as it deemed appropriate with the complaint against Advocate Sinel. Since the Affidavit contained allegations against the Bailiff and the Deputy Bailiff, those Judges decided not to sit in relation to this matter, and a Commissioner, Mr Robert Harman, Q. C., a retired member of the Court of Appeal, was appointed. Meanwhile on 11 th March, 1999, Mr Sinel and the Attorney General had been convened to appear in respect of the Representation. The Representation came before the Commissioner and five Jurats on 12 th April, 1999, when it was ordered (inter alia) that three preliminary applications by Advocate Le Cornu, appearing for Mr Sinel, be heard at a later date. These applications were (a) to recuse the Commissioner (this application was subsequently abandoned); (b) to recuse all the Jurats of the Royal Court; and (c) to discharge the Attorney General from the proceedings. The Attorney General had, in accordance with normal practice, nominated a Crown Advocate to appear as an *amicus curiae*. On 23 rd April, 1999, the Bâtonnier served an amended Representation in which he spelled out in more detail those parts of the Affidavit alleged to involve professional misconduct on Mr Sinel's part. Mr Sinel's answer to the amended Representation was served thereafter, but was not dated by Advocate Le Cornu. I repeat yet again, that all documents filed with the Court or served on other parties must bear their date of filing or service. On 18 th May 1999 the Bâtonnier served a re-amended Representation. I will return later to the terms of this re-amended Representation and of the Answer. Applications (b) and (c) already referred to came before the Commissioner sitting alone on 30 th June and 1 st July 1999. In his reserved judgment of 1 st July 1999 he refused both applications. The Commissioner concluded that the Jurats, as the deciders of issues of fact, would not be judges in their own cause, that they were not automatically disqualified, that there was no reason to suppose that the Jurats would not, or would not be seen to, act fairly, and that there was no basis for the case put forward for Mr Sinel that they would not be "an independent and impartial tribunal" for the purposes of Article 6.1 of the European Convention on Human Rights ("ECHR"). The Commissioner also concluded that, though the Affidavit contained criticisms of the present Attorney General, there was no basis for considering that the Court might be adversely affected or prejudiced by the assistance of Mr Santos Costa as an *amicus curiae*. In this summary I have not done full justice to the Commissioner's carefully considered judgment, for the reason that before the Court of Appeal the matter took a rather different course than before the Commissioner. Advocate Sinel now appeals to this Court. I must now set out more of the background of these disciplinary proceedings. I refer first to the Affidavit. This was an Affidavit sworn by Mr Sinel as a Jersey Advocate and an officer of the Royal Court. In the Affidavit Advocate Sinel made a large number of allegations adverse to the Bailiff, the Deputy

Bailiff, the Attorney General, the Solicitor General, the Bailiff's predecessor, and (in the most general terms) the Jurats. I do not wish in any way to prejudge any conclusions which may be reached by the Royal Court concerning these allegations. They do give at first sight the appearance of an excessive lack of objectivity on the part of Mr Sinel. But whether the making of this Affidavit amounted to professional misconduct as a Jersey Advocate is a issue to be determined hereafter. I turn next to the Bâtonnier's re-amended Representation. The form of this document as it stood before the Commissioner and at the commencement of the hearing of the appeal was as follows. The Bâtonnier in paragraphs 1 - 7 set out the relevant history. In paragraph 8 he set out what amounts to "professional misconduct" of an advocate or "conduct unbecoming" to an advocate. In paragraph 9 he stated that "The Affidavit must be read as a whole", and went on to draw specific attention to particular paragraphs of the Affidavit and the allegations contained in those paragraphs. Though initially the Bâtonnier had complained of paragraphs 25 and 26 of the Affidavit which, as part of a section including paragraphs 23 to 27, contained generalised allegations in relation to the Jurats, this had been deleted by the Bâtonnier. In paragraph 10 the Bâtonnier summarised the effect of the allegations in the paragraphs of the Affidavit of which complaint was made. Paragraph 11 contained a comment adverse to Mr Sinel. Paragraph 12 read as follows: "These allegations made by Advocate Sinel are not supported adequately or at all by the evidence and/or justification purportedly adduced in support". I should have mentioned that the Affidavit was accompanied by two lever-arch files of exhibits. It was clear from paragraph 12 as it appeared in the re-amended Representation that substantial issues of fact were raised by the Bâtonnier. My assessment of the likely length of any trial as to the "support" of or "justification" for Mr Sinel's allegations is that such a trial would probably have lasted at least 3 - 6 months, and it would have taken a substantial period to assemble the evidence on each side. This is a matter to which I will return. In paragraph 13 of the re-amended Representation the Bâtonnier alleged (inter alia) that it was a breach of his duties "for an Advocate to accuse the Royal Court of bias or partiality, and to impute improper motives and conduct to its Judges and [the] Crown Officers." In paragraph 14 the basis on which Mr Sinel was said to have been guilty of "professional misconduct" or "conduct unbecoming" was set out, including allegations that his conduct had been "dishonest" and "capable of amounting to a criminal or other contempt of Court". To allege "dishonesty" (a very serious charge with potential implications of criminal misconduct) without giving appropriate particulars is not permitted in the Courts of Jersey. In his Answer Mr Sinel contended that the Bâtonnier's allegations were not properly particularised and were vague, and that he could not plead to the re-amended Representation as then drafted; accordingly the Representation should be struck out or dismissed as void for uncertainty or bad for duplicity. Though in his Answer Mr Le Cornu for Advocate Sinel foreshadowed an application to strike out the Representation, it is noteworthy that Mr Le Cornu delayed making any such application until shortly before the appeal came on for hearing before this Court. A party who wishes to apply to strike out his opponent's pleading must do so timeously, and if he fails to move timeously, the court may decline to hear his application. Here Mr Le Cornu had ample opportunity from early in the summer of 1999 so to apply; and in particular it was incumbent on him to do so before the other applications came before the Commissioner, so that the Commissioner could decide all outstanding matters at the one hearing. Mr Le Cornu's delay in making the application gives rise

to the suspicion, at least, that this was a tactical manoeuvre to secure delay in the resolution of the disciplinary proceedings. Next, I must refer to the way in which disciplinary proceedings against Advocates are conducted. This does not arise from any statute or rule. I note in passing that, though in *In re An Advocate*

(1978) JJ 193 the Court of Appeal expressed the strong view (at page 200) that: "We consider it to be very desirable that urgent consideration be given to the question of making agreed rules as to procedure in disciplinary matters both for the benefit of the public and of the Bar itself", no such rule (or statute) is yet in existence. The basis of the disciplinary proceedings lies in long-standing practice. If a complaint is made to the Bâtonnier, or the Bâtonnier decides of his own motion to proceed, the first step is for the Bâtonnier either himself or by a panel formed as in the present instance to investigate the matter. It may prove to be relatively not serious, and to be capable of being dealt with by the Bâtonnier informally. Otherwise the practice has been for the Bâtonnier to refer the matter for the decision of the Royal Court, in practice of the Superior Number of the Royal Court. The Bâtonnier does so because in Jersey, as in England and Wales, the ultimate control over and discipline of those who appear before or work in the Courts of Jersey, lies with the Royal Court of Jersey, subject to any appeal to the Court of Appeal. The Bâtonnier, or an Advocate acting for him, prosecutes the alleged misconduct. At one time the Attorney General was involved in the determination of all civil causes or matters. In disciplinary proceedings the Attorney General is still involved, either himself or by an Advocate nominated by the Attorney General, in two respects: (1) to provide whatever assistance, particularly as to law, practice or procedure, may best assist the Royal Court, and (2) to offer "conclusions" as to the appropriate sanction, if misconduct is found to be proved, analogously to the role in providing "conclusions" as to sentence in criminal proceedings. The position of the Royal Court is regulated by the Royal Court (Jersey) Law 1948 ("the 1948 Law") as amended. I will refer later to the provisions relating to the Jurats. At this point it suffices to refer to Articles 13 and 13B. Pursuant to Article 13, in all civil causes and matters the Bailiff (or the Judge taking the place of the Bailiff) is to be the sole Judge of law, and the Jurats are to be the sole Judges of fact. In *In re An Advocate* it was held by this Court that for the purposes of the Court of Appeal (Jersey) Law 1961 a disciplinary matter is a "civil matter", so that this Court has jurisdiction to hear an appeal in such a matter. Equally a disciplinary matter is a civil cause or matter for the purposes of Article 13 of the 1948 Law. It follows that if the disciplinary matter involves material issues of fact, those issues of fact must be decided by Jurats and not by the Judge, unless Article 13B is applied. Article 13B provides as follows: "(1) Any cause or matter in which only issues of law arise may be determined by the Bailiff (or other Judge) sitting alone. (2) Any civil cause or matter - (a) in which issues of law and fact arise; and (b) in which - (i) the parties to the proceedings have applied to the Judicial Greffier for certification that the cause or matter is suitable for trial by the Bailiff alone; and (ii) the Judicial Greffier has granted such a certification; may, if, the Bailiff thinks fit, be determined by the Bailiff sitting alone. (3) The Judicial Greffier shall not grant a certificate under sub-paragraph (b) of paragraph (2)

of this Article unless he is of the opinion that the issues raised are predominantly issues of law." I turn now to the matters argued on the hearing of this Appeal. Mr Le Cornu first argued three preliminary matters: (1) He said that the application to strike out the Representation should be heard first, and the hearing of the appeal should be adjourned until after that application had been determined. It will be apparent from what I have already said that in my judgment it is doubtful whether the application to strike out should be heard at all, because it has been delayed so long. In any event the notion that the appeal should not be heard when all three counsel were before us ready to argue the appeal was wholly misconceived. Accordingly the application to adjourn was rejected. (2) Mr Le Cornu said that, because Advocate Sinel has made allegations against the present Attorney General, Mr Santos Costa, the amicus curiae nominated by the Attorney General, should not be permitted to advance any arguments before this Court. That application was rejected, and the grounds for its rejection appear later in this judgment, when I deal with the position of the Attorney General and Mr Santos Costa. (3) Mr Le Cornu argued that the Bâtonnier should not be heard, and his written contentions should not be taken into account, because the Bâtonnier had failed to serve those written contentions timeously in accordance with the relevant Rules, and this Court's Consolidated Practice Direction. Though the Bâtonnier can justifiably be criticised for late service of his contentions, this Court in its discretion considered that this application also should be rejected, in the interests of justice and because the Bâtonnier did not raise any material point not already put to the Commissioner. Turning then to the substantive matters argued on this appeal, I deal first with Advocate Le Cornu's argument that all the Jurats are disqualified from hearing this disciplinary matter. He put this argument in three different ways: (1) The Jurats are automatically disqualified because they have an interest in the maintenance of the present justice system in Jersey and would therefore be judges in their own cause; (2) there would be a "real danger" that the Jurats would be affected by bias, however unconscious, adopting for this purpose the test laid down for England and Wales in *R -v- Gough*

[1993] AC 646 ; (3) the Jurats would not be "an independent and impartial tribunal" for the purposes of Article 6.1 of the ECHR. In considering the position of the Jurats, it is important, in my judgment, to bear in mind the statutory provisions contained in the 1948 Law and elsewhere, relating to the appointment and functions of the Jurats. (i) To be a Jurat a man or woman must be 40 years old or more, a British Subject, and either born in Jersey or ordinarily resident in Jersey for the five years preceding the day of appointment. (Article 3 of the 1948 Law). (ii) A person is disqualified if they hold any paid office or other place of profit under the Crown or the States or any administration of the States or are a paid officer of any parochial authority, or are not solvent or not in full control of their property, or have in the previous seven years been convicted anywhere in the British Commonwealth of any offence and have been imprisoned for no less than three months without the option of a fine , or are involved in the liquor or brewing trades (Article 4 of the 1948 Law). (iii) Jurats are appointed to fill vacancies by an Electoral College, consisting

of the Bailiff as President, the Jurats (less than 12 if there is a vacancy), the 12 Constables, the 44 elected members of the States, and the practising members of the Jersey Bar and Solicitors (*écrivains*) numbering about 180 (Article 5 of the 1948 Law). The numbers of electors show that the Bailiff and the remaining Jurats are in a small minority. (iv) The Jurats cease to hold office at the age of 72. But they can be appointed by the Bailiff to act as a Jurat for any period or in relation to any cause or matter until they reach the age of 75. If a Jurat for a continuous period of 12 months fails without good reason to discharge the duties of their office, or who in the opinion of the Royal Court is permanently unable efficiently to carry out the duties of their office, such Jurat may be called on by the Royal Court to resign, and if they do not within a reasonable time present a petition to Her Majesty in Council for permission to resign, such Jurat may be removed by order of Her Majesty in Council on the petition of the Superior Number of the Royal Court (Article 10 as amended of the 1948 Law). (v) Each Jurat has to swear an oath of office (Article 8 of and the Second Schedule to the 1948 Law) in terms similar to the judicial oaths, requiring the Jurat (*inter alia*) to decide cases "*selon la pureté de votre conscience*". (vi) Jurats are to bear due respect to the Bailiff, as representing Her Majesty's person (paragraph 5 of the Order in Council of 27 th July 1671). I observe that such respect is equally required of every person who attends the Royal Court in whatever capacity. Having regard to these statutory provisions, the suggestion that because the Jurats are an essential part of the justice system in Jersey, they have an interest in resisting criticism of the Bailiff, Deputy Bailiff and Law Officers, so as to be judges in their own cause is in my judgment without foundation. It cannot legitimately be said that the Jurats as a body have any interest other than in the due administration of justice, or that they have any interest in protecting against criticism any particular holder of the offices of Bailiff, Deputy Bailiff or the Law Officers. Mr. Le Cornu placed great emphasis on what he said were "the links" between the Jurats and the Bailiff and the Deputy Bailiff. When pressed to explain what these "links" were alleged to be, he could refer only to the undoubted fact that Jurats regularly sit in the Royal Court with one or other of these Judges, and to the Electoral College. But he abandoned reliance on the Electoral College once I had pointed out to him the numbers of electors of different categories in the Electoral College. He was left with the point about sittings in Court, which, as he appreciated, afforded us no adequate foundation for his proposition that Jurats would be judges in their cause or interest. The next question was whether there would be a "real danger" that the Jurats would be consciously or unconsciously biased in favour of the Judges and against Mr. Sinel. Mr. Le Cornu's suggestion was that because the Jurats sit with the Judges in the Royal Court quite regularly such a "real danger" would exist. This is a remarkable suggestion. It is well known in Jersey that there have been in recent years a number of cases in which the sitting Jurats have insisted on deciding civil cases in a way contrary to that advised by the sitting Judge. The real position is that the Jurats are jealous of their situation as the sole judges of fact, and are true to their oaths of office in insisting on deciding the facts of cases in accordance with their individual judgments. Mr. Le Cornu was not able to refer to any factor pointing to a deference paid by the Jurats to the Judges' views. In my judgment there

is no "real danger" of bias. At this point I should refer to the different tests of what is sometimes called "apparent bias" adopted in various common law countries. As the decision in the House of Lords in *R -v- Gough* shows, until that decision there were two different tests applied in different circumstances in England and Wales: (A) the "real likelihood" or "real danger" test; and (B) the "reasonable apprehension" test. Test (A) is binding on all courts in England and Wales. It is not binding on the courts of Jersey. (B), the "reasonable apprehension" test, has been adopted in preference in Scotland, in Australia, in New Zealand and in other common law countries: see e.g. the case of *Webb -v- The Queen* (1993-94) 181 CLR 41 in which the High Court of Australia considered all the previous cases including *R -v- Gough* and rejected test (A) in favour of the "reasonable apprehension" test. It is not necessary in this case to decide which is the appropriate test for Jersey. Mr. Le Cornu fails, whichever test is applied. I wish to reserve for future decision whether the appropriate test is the "reasonable apprehension" test, rather than the "real danger" test, for the reasons spelled out in *Webb* and in particular because the "reasonable apprehension" test places, correctly in my judgment, greater emphasis on how the matter would be viewed by the ordinary, not legally qualified, citizen. Finally, under this head I turn to Article 6.1 of the ECHR. The question is whether the Jurats would form, as the judges of fact, an "independent and impartial tribunal". Reference was made in this connection to cases such as *McGonnell -v- United Kingdom* (Application no 28488/95) before the European Commission of Human Rights, *Langborger -v- Sweden* EHRR 416 before the European Court of Human Rights, and *Starrs and Chalmers -v- Procurator Fiscal* (Appeal nos. 1798, 1799 and 2006/99) before the High Court of Justiciary in Scotland. Those and the other cases referred to by Mr. Le Cornu are in my judgment clearly distinguishable. The Jurats are appointed by an Electoral College dominated by independent advocates and solicitors, and not by the executive or the legislature. They hold office until the age of 72, and the provision for their removal before that age is severely limited. They cannot be appointed before the age of 40. Their oath of office requires them to decide cases in accordance with their own individual judgment and conscience. There is no evidence before this Court that they have ever not been true to their oaths of office. In my judgment the Jurats clearly form an independent and impartial tribunal for the purposes of Article 6. Having argued the matter in the most general terms Mr. Le Cornu tried next to argue that in the instant case involving Mr. Sinel there is a real danger of bias. He pointed to the criticisms of the Jersey justice system in Mr. Sinel's Affidavit, including the general criticisms of the Jurats contained in paragraphs 23 to 27. In my view such criticisms carry Mr. Le Cornu's arguments no further. Indeed there was an element of "bootstraps" argument in what he put forward. It seemed to be implicit in what he said that if a litigant in Jersey makes sufficiently wide-sweeping allegations against the Jurats, that would in his submission suffice to disqualify all the Jurats from sitting to determine the facts of that litigant's case. This proposition has only to be spelled out to be seen to be misconceived. It is not the making of general allegations which is material, but the position of the Jurats as part of the Jersey justice system, in which, as I have indicated, the Jurats have a largely unfettered independence of position and decision. My conclusion

is that Mr. Sinel's attempt to disqualify all the Jurats is misconceived. I will return to the involvement of the Jurats later. Turning to the position of Mr. Santos Costa and the Attorney General, I observe that the Affidavit contains sharp criticisms of the present holder of that office. If the Attorney General himself were to appear before the Court in this matter, that might be a legitimate subject of objection. But the Attorney General has taken the proper and sensible course of nominating Mr. Santos Costa to assist the Royal Court (and this Court) as an amicus. Mr. Santos Costa is a Crown Advocate, i.e. he is appointed on the Attorney General's recommendation by the Royal Court for a five year period to act, when asked by the Law Officers, in criminal prosecutions and as an amicus in civil cases. Mr. Santos Costa is in private practice and his work as Crown Advocate involves only a part of his working time. There is a close analogy in England and Wales. There the Attorney General appoints barristers in independent practice as Junior Counsel to the Crown. When an amicus curiae is required it is usual for the Attorney General to nominate one of these Junior Counsel to the Crown with a suitable private practice to act as amicus. The position of Mr. Santos Costa is little different. He is well known to this Court as a competent, reliable and independent advocate. His assistance will be of value to the Commissioner (who is a retired English Queen's Counsel) on matters of Jersey law, practice, procedure and history. In my judgment there is nothing in Mr. Le Cornu's objection to Mr. Santos Costa acting as amicus. Finally, I turn to some of the realities of these disciplinary proceedings. (1) These proceedings need to be resolved speedily in the interests of Advocate Sinel and in the public interest. It is not in the interests of an advocate to have a charge of professional misconduct hanging over him like the Sword of Damocles for any length of time. The complaint was made as long ago as July 1998. It is now late January 2000 and already one and a half years have gone by. (2) The Bâtonnier has assured this Court that he has never intended by his Representation to raise substantial factual issues requiring a lengthy trial. He was taken aback when the members of this Court pointed out to him that by his re-amended Representation he was raising such substantial factual issues as I have already indicated. He has therefore sought and been given by this Court leave to amend the Representation again so as to remove those parts of the pleading which appeared to raise such issues. No order in respect of the costs occasioned by this amendment is made. He has reaffirmed in oral submissions to this Court that the case he seeks to make against Mr. Sinel is simply that the swearing of the Affidavit amounted in itself to professional misconduct, and that he does not seek to raise any factual issues as to the numerous specific or general allegations made in the Affidavit. In case it may hereafter be suggested that some such factual issues remain, it should here be made clear that the Bâtonnier has disclaimed an intention to create such issues. In these circumstances the issues for determination by the Royal Court may well be wholly, or almost wholly, issues of law. (3) Both Mr. Le Cornu and Mr. Santos Costa have indicated that questions of fact may arise if and in so far as Advocate Sinel seeks to and is permitted to raise factual matters including matters of his belief in answer to the charge of professional misconduct. I have considerable doubt whether Mr. Sinel would be permitted to do this, even if he sought to do so. The gravamen of the charge against him lies in

paragraph 13 of the Representation, which reads as follows: "13. Advocate Sinel swore an Affidavit as an Advocate and accordingly as an officer of the Royal Court. Advocates, as officers of the court, are as much a part of the court and the system for the administration of justice within the Island as are the judges, the jurats and the crown officers. Advocates occupy a privileged position and owe duties to the court over and above those owed by ordinary citizens. As officers of the court, Advocates have a duty to uphold the standing and authority of the Royal Court, its judges and crown officers. It is a breach of those duties for an Advocate to accuse the Royal Court of bias or partiality and to impute improper motives and conduct to its judges and crown officers." In my judgment, however much Mr. Sinel may have believed or persuaded himself that his allegations were properly founded, that would be unlikely to provide any answer to the charge, and would at the highest go to mitigation of penalty. (4) As the pleadings now stand, there are in my judgment few, if any, factual issues arising. In these circumstances it would be appropriate for the Judicial Greffier to certify accordingly under Article 13B of the 1948 Law, and for the Commissioner to sit alone to decide the disciplinary charge. (5) If, however, hereafter it becomes clear that more factual issues will arise, and it is thought to be inappropriate because of that that the Commissioner should alone hear the matter, then in the light of the conclusions I have reached about the position of the Jurats I am satisfied that there is no problem as matters stand in this case either in Jersey law or in ECHR law in the Commissioner sitting with Jurats. That is because no specific allegations have been made against the Jurats either as a body or as individuals which would raise any question as to their independence or impartiality in deciding the sole question which arises in this case, that is, whether or not Mr. Sinel's conduct in swearing the Affidavit amounted to professional misconduct. (6) I asked Mr. Le Cornu what he saw as the next step in these proceedings. He told me that he would press ahead vigorously with his application to strike out the Representation. In my view that would be neither appropriate nor in Mr. Sinel's own interests. There would be further delay before the strike out application was heard by the Commissioner, and then, whichever way he decided, there would almost inevitably be an appeal. If the Representation was allowed to stand, only then could the hearing of the proceedings begin. In view of Mr. Le Cornu's serious delay in making the strike-out application, and the long passage of time since the complaint was made, in my judgment a more practical approach must be adopted. (7) What should now happen, in my view, is this. The proceedings should be fixed for trial at the earliest convenient date. The first point to be argued should be whether the matters pleaded in the Representation are capable of amounting to professional misconduct (an issue similar to that which would be argued on a strike-out application). If they are, then the Royal Court should proceed to hear the parties on the matters complained of and reach a decision. If that decision were adverse to Mr. Sinel, then the Royal Court should decide on the appropriate penalty, whether reprimand and/or a fine or other suitable sanction. Only when the Royal Court has finally dealt with all the matters arising in connection with the complaint should an appeal to this Court be made. In any appeal this Court should be in a position to deal finally with all such matters, subject always to any application for leave to appeal further.

It is not appropriate or just or in the interests of Mr. Sinel or of the public for the matter to continue to be dealt with piecemeal, with the attendant long delays, particularly because so much delay has been caused by Mr. Le Cornu's failure timeously to apply to strike out the Representation. Before leaving the matters now before this Court I observe that the Court of Appeal's recent Consolidated Practice Direction has not been complied with, in that none of the Advocates provided a chronology (an essential tool for efficient handling of an appeal) and Mr. Michel and Mr. Santos Costa duplicated authorities already in Mr. Le Cornu's file of authorities. It is not too much to ask of Jersey advocates that they should read and comply with the relatively simple directions of this Court. Authorities The Royal Court (Jersey) Law 1948. The Royal Court (Amendment No.10) (Jersey) Law, 1998. R -v- Gough

[1993] AC 646 . R -v- Inner West London Coroner ex parte Dallaglio [1994] 4 All ER 139. R -v- Bow Street Metropolitan Stipendiary Magistrate and others , ex parte Pinochet Ugarte (No.2)

[1999] 2 WLR 272 . Locabail (U. K.) Ltd -v- Bayfield Properties Ltd (17 th November, 1999) English Court of Appeal, reported at

[2000] 1 All ER 65 . Starrs & Chalmers -v- Procurator Fiscal, Unreported (11 th November, 1999) (Appeal Court, High Court of Justiciary) Scotland. European Convention of Human Rights: Article 6. Campbell and Fell -v- United Kingdom (1984) 7 E. H. R. R. 165. Langborger -v- Sweden (1989) 12 E. H. R. R. 416. McGonnell -v- United Kingdom E. C. H. R. Application 28488/95. Re: an Advocate (1978) JJ 193. Webb -v- The Queen (1993-94) 181 CLR 41 High Court of Australia. Page Last Updated: 02 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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