JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE V HARRIS JA
THE HON MRS JUSTICE G FRASER JA (AG)

MISCELLANEOUS APPEAL NO COA2018MS00002

BETWEEN	**DON FOOTE**	**APPELLANT**
AND	**THE GENERAL LEGAL COUNCIL**	**RESPONDENT**

Douglas Leys KC for the appellant

Mrs Sandra Minott-Phillips KC, Litrow Hickson and Jamaiq Charles instructed by Myers, Fletcher & Gordon for the respondent

30, 31 October 2023 and 25 July 2025

Disciplinary proceedings – Professional misconduct and negligence – Whether an attorney-at-law having joint carriage of sale with another attorney-at-law owes a duty of care to a co-owner of property he does not represent – Whether an attorney-at-law breaches his duty of care by allowing early possession of property without the knowledge and consent of all co-owners – Whether in those circumstances the alleged conduct of an attorney-at-law meets the professional standard of inexcusable or deplorable negligence or neglect – Whether the conduct of the attorney-at-law tended to discredit the profession – Whether the attorney-at-law can be found guilty of professional misconduct under Canon I(b) independently of any other Canon – Whether the sanction imposed is disproportionate and excessive – Canons I(b) and IV(s) of the Legal Profession (Canons of Professional Ethics) Rules

STRAW JA

[1] I have read, in draft, the judgment of V Harris JA. I agree with her reasoning and conclusion and have nothing to add.

V HARRIS JA

[2] This is an appeal by Mr Don Foote, an attorney-at-law, against the decision and sanction of the Disciplinary Committee of the General Legal Council ('the Committee') given on 11 April 2017. By that decision, the Committee found that Mr Foote's conduct tended to discredit the legal profession of which he is a member and amounted to inexcusable or deplorable negligence in the performance of his duties in breach of Canons I(b) and IV(s) of the Legal Profession (Canons of Professional Ethics) Rules ('the Canons'), respectively.

[3] On 23 February 2018, pursuant to section 12(4) of the Legal Profession Act ('the LPA'), Mr Foote was fined $1,000,000.00, which was to be paid to Miss Amy Robinson, the complainant in the disciplinary proceedings ('the complainant'), on or before 24 May 2018, failing which he would be suspended from practice for one year. Mr Foote was also ordered to pay costs of $100,000.00 to the complainant and $100,000.00 to the General Legal Council ('the GLC') on or before 24 May 2018.

[4] The substantial issue in this appeal is whether the Committee erred when it found that Mr Foote had breached Canon IV(s) in circumstances where the complaint was made by a third party. This question arose because Mr Foote, having joint carriage of sale of a property (subject to a court-ordered sale), represented one of the co-owners and did not have an attorney-client relationship with the other co-owner (the complainant), who was represented by another attorney-at-law. Before addressing this issue, a brief outline of the factual background is required to provide the context of the appeal.

Factual background

[5] The factual background of this matter has been helpfully summarised in the Committee's decision and is gratefully adopted with a few modifications.

[6] The complainant and her former husband, Mr Dorrel Saunders, are owners of premises known as Lot 10, Emmaville, located at Smithville, in the parish of Westmoreland, registered at Volume 1081 Folio 237 of the Register Book of Titles ('the

property'). Initially, they held the property as joint tenants. On 11 March 2010, by order of a judge of the Supreme Court, the joint tenancy was severed, and it was declared that they were each entitled to a half share in the property as tenants in common. It was further ordered, among other things, that there be a sale of the property and the net proceeds be distributed equally between the complainant and Mr Saunders.

[7] Subsequently, Mr Foote drafted an agreement for sale which was signed by the complainant (on 15 October 2010) and Mr Saunders as joint vendors ('the proposed agreement'). The prospective purchaser was Mr Henry Moo Young (now deceased). He did not sign the proposed agreement.

[8] Some key terms of the proposed agreement included that the purchase price was $9,500,000.00, the purchaser was to pay a deposit of $1,425,000.00 to the "Vendors Attorney-at-Law as stakeholders [sic]" on the signing of the proposed agreement, possession would be given on completion, and that Mr Foote (who represented Mr Saunders) and Ms Vonique R Mason (representing the complainant) had joint carriage of sale. The clause concerning completion was as follows:

> "**COMPLETION:** On or before the expiration of **NINETY (90) DAYS** From the date [presumably of the signing of the agreement] and on payment of the balance purchase price in exchange for [the] Duplicate Certificate of Title registered in the name of the Purchaser as the registered proprietor." (Emphasis as in original)

[9] The catalyst for the disciplinary proceedings against Mr Foote arose in this way. Sometime in December 2010, a family member informed the complainant that construction work was being done on the dwelling house located on the property. As it turned out, this was done without her knowledge and consent, as well as before Mr Moo Young had paid the full amount of the deposit and signed the proposed agreement. Consequently, on the complainant's behalf, Ms Mason wrote to Mr Foote on 12 January 2011, following a telephone conversation between them, formally requesting the fully

executed agreement for sale and a detailed update concerning the progress of the sale of the property. In that letter, Ms Mason also stated:

> "3. We express our disappointment over the unprofessional manner in which your firm has handled this sale to date. At no point did your [sic] seek our client's permission before you put the purchaser in possession of the property knowing full well that the sale has not been concluded and that in so doing you are in breach of the terms of the contract.
>
> 4. We take the opportunity to remind you that although your firm has carriage of this sale, there are two Vendors involved. You act on behalf of one and we act on behalf of the other.
>
> 5. In future please ensure that we are kept abreast of ***all*** matters concerning this sale." (Emphasis as in the original)

Mr Foote did not respond to this letter.

[10] Another letter from Ms Mason followed on 24 January 2011, indicating the complainant's instructions to have Mr Moo Young vacate the property, failing which she wished to rescind the proposed agreement, given that he was in breach of its terms. Disappointment about Mr Foote's handling of the sale was again expressed. There was no response from Mr Foote.

[11] Undeterred, Ms Mason again wrote to Mr Foote on 16 February 2011, stating that the complainant had instructed her to inform him that she wished to rescind the proposed agreement with immediate effect. This final letter ignited a response from Mr Foote on 1 March 2011. Given the importance of the contents of this letter to the Committee's finding and ultimately to the outcome of the appeal, it will be set out below in part:

> "I resent the tone of paragraph [sic] 1-3 of your letter to me of the 12th January 2011 and wish to reply as follows that:-
>
> > (1) [The complainant] abandoned the property the subject matter of this suit/sale over fourteen (14) years ago.
> >
> > (2) Having left the property in 1996 she made no financial contribution for [sic] the maintenance and upkeep of same

which since then has been the sole responsibility of my client (Mr. D. Saunders).

(3) Over the years and since the divorce of our clients there has [sic] been consistent attempts by [the complainant] to frustrate the voluntary sale of the property leading up to the Consent Agreement approved by Mangatal J on the 11th March 2010 **to sell the said property.**

(4) After many attempts there is now a signed Agreement for Sale with a purchaser who (having made an offer well over one (1) year) was about to withdraw his offer to purchase the said property which was being rapidly depreciated and vandalized.

(5) Upon my client's (Mr. Saunders) proposal to relieve his hardship/responsibility of solely maintaining the property and to save the sale at the original price, the purchaser was put into possession.

(6) Enclosed please find copy letter dated 8th October 2010 to me from Mr. Saunders expressing his difficulties and which form the basis of my putting the purchaser into possession.

(7) May I point out to you that it is not within [the complainant's] power to rescind the sale of this property which Mangatal J ordered to be sold.

[The complainant's] only interest in the property is in the proceeds of sale when completed on or before the 30th May 2011.

Kindly advise her accordingly. …" (Emphasis as in the original)

[12] On 29 March 2011, the complainant's attorneys-at-law responded to that letter, pointing out that they had not yet received a copy of the executed agreement for sale. The complainant's attorneys voiced their concerns about Mr Moo Young being placed in possession before completion and being allowed to make extensive renovations to the property without the complainant's knowledge or consent. They also made enquiries about whether an attorney-at-law represented Mr Moo Young and, if so, who that attorney was, and requested an immediate cancellation of the sale and cessation of renovations being carried out on the property by Mr Moo Young. Mr Foote was also

advised that the complainant, in the light of his handling of the sale and his failure to respond to her enquiries, had lodged a complaint against him with the GLC.

[13] A notice requiring completion of the sale, dated 9 May 2011, was subsequently served on Mr Moo Young. The complainant also commenced proceedings against him in the Supreme Court on 31 August 2011, for, among other things, damages for breach of contract. The record of appeal does not contain any further information about those proceedings.

The proceedings before the Committee

[14] The complainant filed a "Form of Application against an Attorney at Law", supported by an affidavit sworn on 13 June 2011 and a further affidavit sworn on 10 December 2012 in which she alleged that Mr Foote had acted with inexcusable or deplorable negligence in the performance of his duties, failed to maintain the honour and dignity of the profession and that his behaviour tended to discredit the profession.

[15] The gravamen of the complaint was that, without her knowledge and consent, Mr Foote permitted Mr Moo Young to have early possession of the property before he had paid the deposit in full and signed the proposed agreement, as well as allowing him (Mr Moo Young) to carry out "irreversible structural alterations" to the property in breach of the terms of the proposed agreement.

[16] Mr Foote's evidence before the Committee revealed a concession by him that Mr Moo Young ought not to have been put into possession until the completion of the sale as stipulated by the proposed agreement. Mr Foote also stated that he advised Mr Saunders to give early possession of the property to Mr Moo Young because he (Mr Moo Young) wanted to purchase the property and could repair it. He also indicated that he did not think it was necessary to reply to letters sent to him by the complainant's attorneys-at-law, given that Mr Moo Young intended to complete the transaction by 30 May 2011.

[17] Mr Moo Young, in an affidavit dated 10 February 2014 (in response to the complainant's further affidavit dated 10 December 2012), averred that he spoke with Mr Saunders, who permitted him to secure the property to prevent further vandalism and to carry out construction work on it. He also paid to Mr Foote, on or about 30 December 2010, a partial deposit of $1,000,000.00 "to hold the deal/sale for him", with a promise to pay the balance within six weeks of that date. Needless to say, he failed to do so. He further stated that he asked Mr Foote to continue to "hold the deal for him" until 30 May 2011, when he expected to have enough cash to pay the purchase price in full (although a special condition of the proposed agreement was that he was required to present Mr Foote with a letter of undertaking from a reputable financial institution within 45 days of the signing of the proposed agreement, failing which the parties would be entitled to rescind the sale). Mr Moo Young indicated that he advised Mr Foote of his financial difficulties and was told by him that Mr Saunders was willing to give him the time he needed to complete the sale. Neither the complainant nor her attorney-at-law was informed about any of those occurrences or developments.

[18] After considering the evidence and submissions of the parties, the Committee identified that there were two substantive issues for its resolution: (1) whether Mr Foote, in the performance of his duties, acted with inexcusable or deplorable negligence or neglect; and (2) whether Mr Foote failed to maintain the honour and dignity of the profession and abstained from behaviour which may tend to discredit the profession of which he was a member (at para. 25 of the written decision).

[19] Applying the principles in **Campbell v Hamlet** [2005] 3 All ER 1116 and **Earl Witter v Roy Forbes** (1989) 26 JLR 129 ('**Witter v Forbes**'), the Committee found that the complainant had proven her complaint against Mr Foote beyond a reasonable doubt and made the following findings of fact which are relevant to the appeal (at para. 34):

"...

(ii) The Agreement for Sale was signed by both the complainant and her former husband but was never signed by the purchaser.

(iii) [Mr Foote] had joint carriage of sale of the Agreement with Ms. Vonique Mason Attorney-at-Law from the firm of Brian [sic] Clarke & Company.

(iv) [Mr Foote] acted for and on behalf of the former husband of the complainant Mr. Dorrel Saunders.

(v) Ms. Vonique Mason acted on behalf of the complainant.

(vi) [Mr Foote] knew and was in contact with the proposed purchaser Mr. Moo Young.

(vii) More importantly, [Mr Foote] stated that he was in possession of the Duplicate Certificate of Title and that the purchaser was put into possession by [sic] Mr. Saunders [sic] permission. [Mr Foote] presented an undated letter signed 'D Saunders' giving his authority to act in writing.

(viii) [Mr Foote] put the purchaser in possession of the property without the consent and knowledge of either the complainant or her Attorney-at-Law.

(ix) The fact that [Mr Foote] alleged that persons were put into possession by permission of his client, Mr. Saunders does not negate the fact that permission was required from the complainant in light of her one-half (1/2) share in the property. The property was subject to a joint sale and the granting of early possession ought to have been communicated to the complainant and her consent obtained.

(x) Despite the fact that Mr. Moo Young did not sign the Agreement for Sale, he was allowed by [Mr Foote] to make alternations [sic] to the property.

(xi) The refusal to reply to the Complainant's Attorney-at-Law reflects [Mr Foote's] appalling communication skills and disregard for Counsel. He stated that the reason was due to the pending consummation of the contract but this never occurred because of the rescission letter. Nonetheless, [Mr Foote] had a duty to ensure that the joint owner of a property

to be sold and divided pursuant to the Court order was kept abreast of every development.

(xii) [Mr Foote] at all of the material times conducted the sale as if the sole vendor was his client, the former husband of the complainant, when in fact both the complainant and her former husband were the vendors and were entitled as a matter of law to equally decide of [sic] any and all of the material issues which may have come up for decision.

(xiii) [Mr Foote] acted with gross discourtesy to his fellow colleague, the Attorney-at-Law for the complainant throughout the transaction.

(xiv) [Mr Foote] had no right in law or pursuant to the terms of the proposed Agreement for Sale to place the proposed purchaser in possession without the purchaser having ever signed the Agreement for Sale.

(xv) [Mr Foote] had no right in law to consent to any alternations [sic] being done to the premises by the proposed purchaser.

(xvi) The conduct of [Mr Foote] fell far below the professional standards required by an Attorney in the conduct of the subject transaction. This was patently demonstrated by the fact that at the request of the Attorney-at-Law for the complainant, he refused to terminate or rescind an Agreement that he knew did not exist as it had not been signed by the purchaser, and under which the purchaser had no rights.

(xvii) The conduct of [Mr Foote] amounted to inexcusable or deplorable negligence or neglect in the performance of his duties.

(xviii) Viewed as a whole, in the circumstances of this complaint, the conduct of [Mr Foote] in the unprofessional way in which he handled this transaction, his failure to respond in a timely manner to letters sent by Ms. Mason all tend to discredit the profession and undermine the trust and confidence that members of the public place in Attorneys-at-Law in the conduct of their business."

[20] As previously expressed, the Committee found Mr Foote guilty of professional misconduct, having breached Canons I(b) and IV(s), and imposed the sanctions stated at para. [3] above.

The appeal

[21] Displeased with the Committee's decision, Mr Foote filed notice and grounds of appeal on 26 February 2018. Amended notice and grounds of appeal were subsequently filed on 21 May 2019, challenging several of the Committee's findings and the sanctions imposed. Those grounds are:

> "(a) [The Committee] [ignored] relevant matters, which should have been taken into consideration.
>
> (b) [The Committee] [used] wrong premises/substratum to ground the decision.
>
> (c) Bias – irrelevant matters taken into consideration."

[22] Before us, learned King's Counsel Mr Leys indicated that ground (c) was not being pursued and that grounds (a) and (b) would be argued as a single ground. If successful, Mr Foote seeks an order to set aside the Committee's decision and sanctions.

The issues

[23] The critical issue raised by the grounds of appeal is as stated at para. [4] above. However, based on submissions made on behalf of Mr Foote, the questions as to whether the complainant, not being his client, had the legal standing to make the complaint and the interplay between Canons I(b) and IV(s), if any, will also be briefly addressed.

[24] I would also like to thank counsel for the parties for their very helpful submissions and take the opportunity, at this juncture, to apologise for the delay in the delivery of this judgment, which is sincerely regretted.

Submissions

For Mr Foote

[25] Mr Leys submitted that Canon IV(s), under which Mr Foote was found liable, is premised under the chapeau that "AN ATTORNEY SHALL ACT IN THE BEST INTERESTS OF HIS CLIENT AND REPRESENT HIM HONESTLY, COMPETENTLY AND ZEALOUSLY WITHIN THE BOUNDS OF THE LAW. HE SHALL PRESERVE THE CONFIDENCE OF HIS CLIENT AND AVOID CONFLICTS OF INTEREST". Therefore, the canons under this heading (those comprised under Canon IV) are confined to relationships between attorneys and their clients. For that reason, he argued, the Committee erred in principle when it applied the authority of **Witter v Forbes** to the facts of the present case and found Mr Foote guilty of breaching Canon IV(s) in circumstances where there was no attorney-client relationship between him and the complainant. The case of **Lisamae Gordon v Disciplinary Committee of the General Legal Council** [2022] JMCA App 11 (the application for leave to appeal decision) was also distinguished on the basis that a signed agreement for sale existed in that case, unlike in the case at bar. Therefore, the high standard of inexcusable negligence that the Committee adopted was wrong in the context of the proposed agreement (which was not signed by the prospective purchaser), which would not have triggered Mr Foote's duties as an attorney-at-law.

[26] Learned King's Counsel further argued that the Committee's error was compounded by the fact that both Mr Foote and Ms Mason had joint carriage of sale, representing Mr Saunders and the complainant, respectively. However, the proposed agreement was never executed by Mr Moo Young. As a result, there was no binding contract between the complainant, Mr Saunders and Mr Moo Young, and those facts remained unchanged until the sale was aborted. Reliance was placed on **Carleen McFarlane v The General Legal Council** [2022] JMCA Misc 5 for the proposition that in the absence of an executed agreement for sale and an attorney-client relationship between Mr Foote and the complainant, the Committee fell into error when it found Mr Foote acted with inexcusable or deplorable negligence or neglect in the performance of his duties.

[27] Mr Leys also advanced that while it would have been prudent and courteous for Mr Foote to do so, he was not under a duty or a continuing duty to inform the complainant or her attorney-at-law that Mr Saunders had instructed him to put Mr Moo Young in possession or to keep them updated on the progress of the sale, because, "he had no attorney-client relationship with the complainant and neither did he have any relationship with her attorney as he did not have a consummated sale agreement". It was only when the proposed agreement was executed that Mr Foote's obligations would crystallise, and he could be adjudged in accordance with the standards to which fellow attorneys-at-law correspond with each other. Accordingly, his conduct in that context should not have been assessed on the same standard as an attorney who was required to complete a sale transaction promptly, but, in any event, Mr Foote provided a comprehensive response to Ms Mason in his letter dated 1 March 2011.

[28] It was also submitted that the Committee misconstrued Mr Foote's obligations to the complainant as it would be wrong to say that he was grossly negligent since he acted on his client's instructions and, in those circumstances, Mr Saunders "is answerable" to the complainant and "must bear the consequences associated with letting the purchaser into possession". So, even if Mr Foote could be said to be negligent in following his client's instructions, and as a result, the property sustained damages, the applicable standard would be that of the ordinary duty of care as enunciated by Lord Atkin in **Donoghue v Stevenson** [1932] AC 562 and not based on an attorney-client relationship. At best, it could be contended that Mr Foote was negligent in failing to advise Mr Saunders of the consequences of putting Mr Moo Young, as a prospective purchaser, into possession, but this would be a matter entirely between Mr Foote and Mr Saunders, the argument continued.

[29] Finally, it was posited that the Committee found Mr Foote liable under Canon I(b) because of its flawed findings in respect of Canon IV(s), since an objective examination of Mr Foote's conduct could not be construed as a discredit to the profession. This was

because of the nature of his relationship (or lack thereof) with the complainant and her attorney, and his conduct, at worst, could only be regarded as impolite.

For the Committee

[30] Learned King's Counsel Mrs Minott-Phillips commenced her oral submissions by referring the court to section 12(1) of the LPA. This was in response to what may be best described (in the absence of a ground of appeal challenging the Committee's jurisdiction to proceed with the disciplinary hearing in this matter) as a comment that was made in passing by Mr Leys, during his oral submissions, that the complainant lacked the legal standing to initiate the proceedings, given Mr Foote's stance that there was no attorney-client relationship between them. Mrs Minott-Phillips remarked that section 12(1) of the LPA allowed "any person" who alleged that they were aggrieved by an act of professional misconduct committed by an attorney to make a complaint to the Committee, which could result in the commencement of disciplinary proceedings. That provision, it was further submitted, was not exclusive or confined to only individuals who were clients of attorneys-at-law. Reliance was placed on **Angella Smith v The General Legal Council and Fay Chang Rhule** [2023] JMCA Misc 2 ('**Angella Smith v GLC**') in support of this submission.

[31] Mrs Minott-Phillips referred the court to several paragraphs in **Angella Smith v GLC** to bolster her submissions that the Committee: (1) correctly identified the standard of proof (that is, beyond a reasonable doubt) that was required to be established before Mr Foote could be found liable for professional misconduct (paras. [54] and [55] of that judgment); and (2) was entitled to determine, independently of Canon IV(s), whether Mr Foote's conduct fell below the reasonable standards of the profession and if he had breached Canon I(b) (paras. [80] and [106] of that judgment), since outside of the attorney-client relationship, the attorney has a duty to act within the reasonable standard of the profession.

[32] King's Counsel contended that even if the proposed agreement was not executed, the Committee was justified in finding Mr Foote guilty of professional misconduct under

Canon IV(s). She highlighted areas of the evidence that, in her view, supported the Committee's findings of inexcusable or deplorable negligence or neglect. Firstly, she submitted that Mr Foote had joint carriage of sale with Ms Mason and, as such, he had a duty to both the complainant and Mr Saunders as the vendors, who owned the property as tenants in common. Mr Foote also had a duty to act appropriately as an attorney in relation to Ms Mason, who was co-counsel with him in the sale of the property. His duty included advising her of the progress of the sale. He failed to do so despite receiving three letters from her. Secondly, Mr Foote represented to Ms Mason that he had a "signed Agreement for Sale with a purchaser" (in his letter of 1 March 2011), which was not true. Thirdly, Mr Foote admitted in evidence before the Committee (at page 133 of the record) that he advised Mr Saunders to put Mr Moo Young into early possession without consulting the complainant or her attorney, and in circumstances where Mr Moo Young had not signed the proposed agreement or paid the deposit in full. This was also in breach of the term of the proposed agreement (that had been signed by both Mr Saunders and the complainant) that possession would be upon completion. Fourthly, Mr Moo Young was allowed to make significant structural alterations to the property, although there was no valid contract for sale in place.

[33] Mrs Minott-Phillips argued that, in the light of the evidence, the Committee did not err when it found Mr Foote guilty of professional misconduct under Canons I(b) and IV(s), but in any event, the Committee's decision that Mr Foote was guilty under Canon I(b) is correct, even if the court should find that there is no liability under Canon IV(s).

[34] King's Counsel also briefly submitted that, given the Committee's extensive findings, the sanction imposed by the Committee was not manifestly excessive and, in fact, was quite lenient.

The legal framework

[35] Section 16(1) of the LPA provides the statutory basis for an appeal to this court from an order made by the Committee. That provision states that an appeal is by way of rehearing. In accordance with section 17 of the LPA, this court may dismiss the appeal

and confirm the Committee's order; allow the appeal and set aside or vary the order; allow the appeal and direct that the Committee rehear the application; and make orders as to costs before the Committee and on the appeal as it considers proper. The Disciplinary Committee (Appeal Rules), 1972, also provides that an appeal to this court is by way of rehearing, and by virtue of section 11, the Court of Appeal Rules ('the CAR') will apply to appeals under section 16 of the LPA to the extent that the latter do not conflict with the former.

[36] In the recent decision of **Lisamae Gordon v General Legal Council** [2025] JMCA Misc 3 ('**Lisamae Gordon v GLC**'), Dunbar Green JA expounded on the well-known role of the court when considering an appeal of this kind:

> "[14] In **General Legal Council v Michael Lorne** [2024] UKPC 12, the Privy Council elaborated on the powers of this court. It stated that the Court of Appeal operates with full appellate jurisdiction, which allows it to review the legality of decisions made by the GLC and, in appropriate cases, conduct a rehearing and arrive at its own decision. The Privy Council also emphasised that the power is not an unfettered one and it must be exercised cautiously when there is no error of law or principle."

[37] Additionally, it is now well established that this court will only interfere with a decision of the Committee if the evidence cannot support its findings, or it failed to consider relevant issues or took into account irrelevant matters, or it made an error of law, or was plainly or palpably wrong: **Lisamae Gordon v GLC** at para. [63] applying **Norman Samuels v General Legal Council** [2021] JMCA Civ 15 (para. [29]), **Jade Hollis v The Disciplinary Committee of the General Legal Council** [2017] JMCA Civ 11 (para. [48]), and **Hadmor Productions Ltd and others v Hamilton and others** [1982] 1 All ER 1042 (page 1046).

[38] Section 12(4) of the LPA delineates the sanctions that the Committee may impose for failure to comply with the Canons. These include the imposition of a fine, suspension from practice, and striking an attorney off the Roll.

[39] Canons I(b) and IV(s), which are relevant to this appeal, are set out below:

> "CANON I
>
> …
>
> (b) An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.
>
> …
>
> CANON IV
>
> …
>
> (s) In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect."

[40] The issues raised by the grounds will now be considered.

Discussion and analysis

Section 12(1) of the LPA

[41] Before addressing the substantive issue in this matter, I will briefly address the comment made by Mr Leys (since there is no ground of appeal raising this issue) that the complainant did not have the legal standing to initiate the disciplinary proceedings, presumably because she was not Mr Foote's client. However, as Mrs Minott-Phillips succinctly and correctly pointed out, section 12(1) of the LPA authorises the Committee to hear complaints from "**[a]ny person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney**" (emphasis supplied) and the utilisation of this provision to bring complaints before the Committee, which may culminate in disciplinary proceedings against attorneys, is not restricted to their clients. Several authorities support this position, including **McCalla v Disciplinary Committee of the General Legal Council** (1998) 53 WIR 272 at 290-291, a decision of the Judicial Committee of the Privy Council, **Angella Smith v GLC** (the complainant in that matter was not the attorney's client) and now **Lisamae Gordon**

v GLC (see para. [9] of that judgment). Accordingly, as a person who alleged that she was aggrieved by an act of professional misconduct committed by Mr Foote, the complainant was empowered by section 12(1) of the LPA to make the complaint.

Canon IV(s)

[42] Turning now to the question of whether the Committee erred when it found that there was a breach of Canon IV(s) in circumstances where, as submitted on Mr Foote's behalf, there was no attorney-client relationship between him and the complainant.

[43] Generally, attorneys do not owe a fiduciary duty to individuals other than their clients. As a result, an attorney is not liable for professional negligence to third parties. However, this general principle is subject to certain exceptions. As the authorities illustrate, professional negligence is not necessarily dependent on a contractual or attorney-client relationship, as attorneys can be held liable to third parties in certain circumstances. For example, depending on the nature and proximity of the relationship between the attorney and the third party and where there is an assumption of responsibility by the attorney to a third party: see **Caparo Industries Plc v Dickman and others** [1990] 2 AC 605 ('**Caparo v Dickman**'), a decision of the House of Lords which introduced a three-stage test to determine the existence of a duty of care in negligence cases. The test is as follows: (1) foreseeability of damage - it must be foreseeable that the defendant's negligence could cause harm to the claimant; (2) proximity - there must be a sufficiently close relationship between the defendant and the claimant; and (3) just and reasonable - it must be fair, just, and reasonable to impose a duty of care in the circumstances; **Hedley Byrne & Co Ltd v Heller & Partners Ltd** [1964] AC 465, a decision of the House of Lords which established the principle that a duty of care can arise in tort from an assumption of responsibility, especially regarding negligent misstatements; **White and another v Jones and others** [1995] 1 All ER 691 ('**White v Jones**'), another decision of the House of Lords which broadened the principle enunciated in **Hedley Byrne & Co Ltd v Heller & Partners Ltd** by articulating that solicitors have a duty of care to intended beneficiaries

of a will, even if the solicitor's primary duty is to the testator. The court emphasised that the assumption of responsibility for the task creates a special relationship.

[44] In determining whether the Committee was correct in concluding that Mr Foote's conduct amounted to inexcusable or deplorable negligence or neglect in the performance of his duties, the approach to the discussion will be to determine (i) whether Mr Foote owed a duty of care to the complainant; (ii) whether that duty of care was breached; and (iii) if a duty of care is established, whether the prerequisites for inexcusable or deplorable negligence or neglect were met.

Whether Mr Foote owed a duty of care to the complainant

[45] The starting point to the analysis must be the recognition that in conveyancing transactions, the typical position is that attorneys do not usually owe a duty of care to anyone but their client: **Gran Gelato Ltd v Richcliff (Group) Ltd and others** [1992] Ch 560 ('**Gran Gelato**'). In **Gran Gelato**, the solicitors acting for the vendor in a property transaction provided incorrect information to an enquiry made by the purchaser regarding the existence of adverse terms in a head lease. The court ruled that while the vendor was liable for damages due to the negligent misstatements, the solicitors did not owe a separate duty of care to the purchaser.

[46] This general principle was also stated in **White v Jones**. However, the outcome in that case was different. The facts are that the testator's solicitors (the respondents) negligently delayed the preparation of a new will in place of the previous one, which the testator had decided to revoke. The appellants were the intended beneficiaries under the new will. The testator died before the new will was executed. The question on appeal was whether an intended beneficiary under a will is entitled to recover damages from the testator's solicitors by whose negligence the testator's intention to benefit him under the will has failed to be carried into effect. In other words, whether solicitors are liable to the intended beneficiaries under a will, who, as a result of the solicitors' negligence, have failed to receive the benefit that the testator intended them to have. Applying the three-stage test in **Caparo v Dickman**, the majority of the House of Lords (3-2) determined

that the solicitors were negligent, although there was no prior contractual or fiduciary relationship between them and the intended beneficiaries. The court found that the loss caused by the solicitors' delay was reasonably foreseeable, that a sufficiently proximate relationship could be identified between the intended beneficiaries and the solicitors, and that it would be fair, just and reasonable for a duty of care to be imposed.

[47] Similarly, as in **White v Jones**, given the circumstances of this case, I am of the view that it is not open to Mr Foote to rely on the general rule that he does not owe a duty of care to the complainant because she was not his client. He had joint carriage of sale with Ms Mason. However, as the evidence before the Committee revealed, he took charge of or handled the proposed transaction from the outset. Mr Foote prepared the proposed agreement (so he was well aware of its terms), and he collected the partial deposit from Mr Moo Young, with whom he was in dialogue. So, while there was no contractual relationship between the complainant and Mr Foote, and although Ms Mason represented the complainant, Mr Foote had undertaken to conduct the proposed transaction, in which the complainant would have had a legitimate interest as a party to it. Therefore, the complainant would have relied on and reposed trust in Mr Foote to undertake the pertinent legal functions arising from the proposed agreement and act in her best interest as one of the vendors and co-owners of the property that was the subject of the sale. Also, any instructions that Mr Foote received in preparing the proposed agreement were to the benefit of both Mr Saunders and the complainant.

[48] It is worth emphasising that it is common ground that of the two attorneys having joint carriage of sale, Mr Foote was the person who handled the purported sale. The deficiency in Mr Leys' argument is that the complainant was not merely a person represented by another attorney in a transaction for sale and being dealt with at arm's length by Mr Foote. She, like Mr Saunders, was a co-owner of the property and a vendor under the proposed agreement. Mr Foote's obligations to Mr Saunders and the complainant as vendors would have been triggered, not when the proposed agreement was fully executed as advanced by Mr Leys, but from the moment he took on the

responsibility of conducting the sale. Prior to the signing of the proposed agreement, Mr Foote would have had a duty to ensure that the terms were in keeping with both vendors' instructions and adequately protected their interests. Neither could it be seriously challenged that both Mr Saunders and the complainant would have relied on him to act in their best interests in drafting the proposed agreement and carrying out its terms.

[49] If reliance is to be placed on the fact that Mr Moo Young did not sign the proposed agreement to invalidate the existence of an attorney-client relationship (which extended to cover the interests of both vendors), then by that reasoning, Mr Foote, in allowing possession to a prospective purchaser, acted outside of his authority, ostensible or otherwise. An attorney-client relationship (albeit formally only with Mr Saunders) would have had to exist prior to the signing of the proposed agreement to enable Mr Foote to act in relation to the property. In that regard, he would have been constrained to act in the interests of both vendors. Therefore, the actions Mr Foote took were in the capacity of the attorney conducting the sale **on behalf of both vendors**, irrespective of the fact that Mr Moo Young did not sign the proposed agreement, and Ms Mason represented the complainant.

[50] Consequently, in my judgment, the three-stage test in **Caparo v Dickman** is amply satisfied on the facts of this case. There was a sufficiently proximate relationship between the complainant and Mr Foote, that of vendor and attorney with joint carriage of sale, respectively. It was also foreseeable that as an attorney with joint carriage of sale handling the transaction, any acts of negligence on his part could cause harm not only to his client, Mr Saunders, but also to the complainant. Given the nature of the transaction (as well as the relationship between Mr Foote and the complainant that arose as a result), coupled with the duties that an attorney with carriage of sale owes to a vendor (which will be discussed below), it would be fair, just, and reasonable to impose a duty of care on Mr Foote for the benefit of the complainant.

Whether that duty of care was breached

[51] The second consideration is to determine whether Mr Foote breached the duty of care owed to the complainant as the attorney with joint carriage of sale. If so, the question then arises whether the breach amounted to inexcusable or deplorable negligence or neglect in breach of Canon IV(s), as the Committee found.

[52] While it has been challenging to find authorities that directly address the duties of an attorney with carriage of sale, two cases have been located that provide helpful insights into the scope of some of those duties. In **Barbara Grant v Derrick Williams** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 20/1985, judgment delivered 25 June 1987, a decision of this court, Kerr JA, after considering several cases, including **Keen v Mear** [1920] 2 Ch 574, relating to the authority of an estate agent to sign an agreement for sale on behalf of a party, stated the following principle at page 12 of the judgment:

> "From these cases I extract the principle that when a vendor authorises an estate agent to sell property at a stated price, or a solicitor to have the carriage of sale, it must not be taken that they are empowered to do more than in the case of an estate agent to agree with a prospective purchaser, the essential term i.e. the price, **and in the case of a solicitor or attorney, to protect the vendor's interest and prepare the necessary documents to complete the transaction**." (Emphasis added)

[53] Notably, in **Polischuk et al v Hagarty** (1983) 149 DLR (3d) 65, the Ontario Court of Appeal held that a solicitor acting for a purchaser of real property had a duty to complete the transaction in accordance with the terms of the agreement for sale and that those terms could not be varied without the consent of the purchaser. Although this case examined the duty of a solicitor who acted for a purchaser in a transaction for sale of property, it seems to me that the stated principle would be equally applicable to attorneys who have carriage of sale and act for vendors in such transactions.

[54] Therefore, an attorney with carriage of sale has several elementary duties. These include protecting the vendor's interest (a very broad and comprehensive concept, in my view), preparing the necessary documents to complete the transaction, and completing

the transaction in accordance with the terms of the agreement for sale, which the attorney cannot vary without the vendor's consent. However, it must be emphasised that this is not an exhaustive list of the duties of an attorney having carriage of sale, as those duties are often fact-specific, depending on the nature of the transaction and the terms of the agreement for sale, and, therefore, must be determined on a case-by-case basis.

[55] Critically, all the steps that Mr Foote took from the time he drafted the proposed agreement, including having the vendors sign it, collecting a partial deposit from Mr Moo Young, advising Mr Saunders to put Mr Moo Young into early possession and allowing Mr Moo Young to make structural modifications to the property, were clearly done in his capacity as the attorney with conduct of sale. Notwithstanding the fact that a valid agreement for sale did not exist due to Mr Moo Young's failure to sign the proposed agreement, its endorsement by the complainant and Mr Saunders indicates, at the very least, an agreement between them, as vendors, to the terms of the sale. Any changes to those terms would have required the consent of both vendors. It stands to reason that since Mr Saunders and the complainant had agreed that possession would be on completion, allowing early possession in these circumstances amounted to a radical variation and unauthorised departure from a crucial term of the proposed agreement.

[56] It seems to me, therefore, that the duties that Mr Foote owed to the complainant under the proposed agreement were the usual duties of any attorney acting on behalf of a vendor and having carriage of sale, that is, to protect the complainant's rights as a vendor and act in her best interest in the following ways:

(a) To ensure that there was compliance with the terms of the proposed agreement by acting diligently and by proper means in carrying out those terms;

(b) To keep both her and her attorney (as co-counsel with carriage of sale) informed as may be reasonably necessary and comply with reasonable requests concerning information about the progress of the sale;

(c) To advise her and/or her attorney of any material developments in order to obtain additional instructions if necessary;

(d) To consult with her and/or her attorney on any questions of doubt or if there are to be any changes to the terms of the proposed agreement; and

(e) To obtain her consent to change any of the terms of the proposed agreement.

[57] From the Committee's findings, it is apparent that its area of focus was on the relevant obligations germane to Mr Foote, as the attorney with joint carriage of sale and having charge of the proposed sale. There was overwhelming evidence (mostly unrefuted) before the Committee, which clearly showed that Mr Foote disregarded those duties mentioned above and ultimately breached his duty of care to the complainant by placing Mr Moo Young into early possession of the property and allowing him to make alterations to the property in contravention of the agreed terms under the proposed agreement without the complainant's or her attorney's knowledge and consent. He failed to take the diligent and proper steps to ensure that the terms of the proposed agreement, though not signed by Mr Moo Young, were not breached by him.

[58] There is no principle of law or professional dealing that justified Mr Foote's failure to enforce the terms of the proposed agreement, unless he had received instructions from both vendors to do so or the matter had been left to his discretion after they had been informed and properly advised of the risks involved in having a prospective purchaser put into early possession and being allowed to make structural alterations to the property in the absence of a fully executed agreement for sale. Mr Foote, as the Committee correctly determined, "had no right in law or pursuant to the terms of the proposed Agreement for Sale to place the proposed purchaser in possession without the purchaser having ever signed the Agreement for Sale" and also that he "had no right in law to consent to any alterations being done to the premises by the proposed purchaser".

[59] The decision to accept only a partial deposit from Mr Moo Young and to place him into early possession of the property without a valid contract of sale being in place would be material developments that not only varied the terms of the proposed agreement but had the potential to adversely affect the complainant's rights as a vendor (as it did since Mr Moo Young did significant structural alterations to the property and the purported sale fell through). As such, Mr Foote was duty-bound to advise the complainant and Ms Mason about what was being considered prior to any final decision being taken. The complainant had the right to be informed and to obtain appropriate legal advice and instructions before deciding whether to consent to any arrangement that would constitute a variation of the terms of the proposed agreement. In other words, her consent was required before Mr Foote decided, regardless of Mr Saunders' instructions, to put Mr Moo Young into early possession of the property and to permit him to make structural alterations to it. The complainant's consent was particularly crucial as Mr Foote was well aware of the uncertainty surrounding Mr Moo Young's financial affairs at the time, which was the main reason the proposed agreement was not fully executed and the sale was not completed. I think it would be reasonable to observe that Mr Foote's conduct was more in line with securing the sale at all costs, even if this meant placing Mr Moo Young's interests above those of the vendors, which he had a duty to protect as attorney with carriage of sale.

[60] The Committee, therefore, did not err when it found that:

> "(ix) The fact that [Mr Foote] alleged that persons were put into possession by permission of his client, Mr. Saunders does not negate the fact that permission was required from the complainant in light of her one-half (1/2) share in the property. The property was subject to a joint sale and the granting of early possession ought to have been communicated to the complainant and her consent obtained."

[61] Further, Mr Foote failed to keep the complainant and Ms Mason informed about the progress of the sale when he was reasonably required to do so. Following a telephone conversation between the attorneys, it took three letters from Ms Mason for Mr Foote to provide a rather impolite response to their repeated requests for a copy of the fully

executed agreement for sale and information regarding the progress of the sale. Furthermore, his response only came after it was indicated to him in the third letter that the complainant had instructed that the sale be rescinded immediately.

[62] This failure on the part of Mr Foote is correctly captured in the Committee's finding (and appropriately strongly worded) as follows:

> "(xi) The refusal to reply to the Complainant's Attorney-at-Law reflects [Mr Foote's] appalling communication skills and disregard for Counsel. He stated that the reason was due to the pending consummation of the contract but this never occurred because of the rescission letter. Nonetheless, [Mr Foote] had a duty to ensure that the joint owner of a property to be sold and divided pursuant to the Court order was kept abreast of every development.
>
> …
>
> (xiii) [Mr Foote] acted with gross discourtesy to his fellow colleague, the Attorney-at-Law for the complainant throughout the transaction."

[63] Mr Foote's overall dereliction of his obligations to the complainant is aptly encapsulated in the Committee's decision in this manner:

> "(xii) [Mr Foote] at all of the material times conducted the sale as if the sole vendor was his client, the former husband of the complainant, when in fact both the complainant and her former husband were the vendors and were entitled as a matter of law to equally decide of [sic] any and all of the material issues which may have come up for decision.

[64] It is against this background that I have concluded that the Committee cannot be faulted for finding that Mr Foote, in his capacity as attorney with joint carriage of sale, breached his duty of care to the complainant because he failed to protect her rights as a co-vendor with his client and act in her best interest. Accordingly, as previously indicated, the argument that Mr Foote's "duties as attorney-at-law to the complainant would not have been triggered" because the proposed agreement was unsigned by Mr Moo Young (or not fully executed) is misconceived.

Whether the prerequisites for inexcusable or deplorable negligence or neglect were met

[65] It is now convenient to consider whether the Committee correctly concluded that Mr Foote's conduct amounted to inexcusable or deplorable negligence or neglect in the performance of his duties in breach of Canon IV(s).

[66] Mr Leys relied on this court's decision in **Witter v Forbes** for the proposition that the Committee erred when it found Mr Foote guilty of professional misconduct under Canon IV(s) because the complainant was not his client. Carey JA opined in that case that Canon IV(s) is "…concerned with the proper performance of the duties of an Attorney to his client" and that it "…prescribes the standard of professional etiquette and professional conduct for Attorneys-at-Law, vis-à-vis their clients" (at page 131). He further stated that the Canon under which IV(s) falls (at page 131):

> "… requires that an Attorney 'shall act in the best interest of his client and represent him honestly, competently and zealously within the bounds of the Law. He shall preserve the confidence of his client and avoid conflict of interest.'
>
> The violated rules [Canons IV(r) and IV(s)], both involved an element of wrong-doing, in the sense that the Attorney knows and, as a reasonable competent lawyer, must know that he is not acting in the best interests of his client. …With respect to rule (s) it is not inadvertence or carelessness that is being made punishable but culpable non-performance. This is plain from the language used in the rules."

[67] Similarly, in **Angella Smith v GLC**, Laing JA (Ag) (as he then was) in his analysis of Canon IV(s) observed:

> "[59] The law of negligence does not easily lend itself to the extension of a duty of care to a third party, who is not the client of the attorney. I, therefore, have reservations as to whether the scheme of the Legal Profession Act or [the Canons] contemplated that a third party who is not the client of the attorney is permitted to properly assert a breach of Canon IV(s) by the attorney especially where the client is not making such an assertion."

[68] However, he further stated:

> "[60] Whether a complaint against an attorney for negligence is maintainable by a third party will always be dependent on the particular facts or circumstances of each case. …"

[69] The factual contexts in which both Carey JA in **Witter v Forbes** and Laing JA (Ag) in **Angella Smith v GLC** considered Canon IV(s) are remarkably different from the present case. Firstly, in **Witter v Forbes**, this court was contemplating the duties of an attorney to his client within the parameters of Canon IV(s) and not the applicability of Canon IV(s) to a complaint made by a third party or someone who was not the attorney's client. Therefore, in my view, the principle enunciated by Carey JA regarding Canon IV (s) is of general application based on the facts of that case and is not immune to exceptions.

[70] However, in **Angella Smith v GLC**, the court considered whether a complaint made by a third party that an attorney had breached Canon IV(s) was sustainable**.** In that case, the appellant, Ms Smith, and her husband, Mr Denton McKenzie, were registered in 1994, as joint proprietors of a property located in Charlemont, in the parish of Saint Catherine. In 2011, Ms Carolyn Alexander, who shared an intimate relationship with Mr McKenzie, engaged the services of Ms Fay Chang Rhule, an attorney, in relation to the sale of the property. Ms Alexander presented Ms Chang Rhule with a power of attorney that was signed by Mr McKenzie, as donor, which authorised her to act as the vendor in the sale of the property. Upon conducting her research on the title, Ms Chang Rhule discovered that Ms Smith was a co-owner of the property. When she made enquiries of Ms Alexander about this fact, Ms Alexander informed her that both owners of the property were incarcerated in Canada. Ms Alexander subsequently presented Ms Chang Rhule with another power of attorney made in her favour by Ms Smith, as donor. No evidence was presented regarding how long after Ms Smith's ownership was mentioned that Ms Alexander presented the power of attorney purportedly signed by her. Ms Chang Rhule conducted the sale of the property and paid over the proceeds to Ms Alexander. Following the sale, Ms Smith made a complaint to the GLC that Ms Chang Rhule had breached Canon I(b) by acting in accordance with the power of attorney, as

she had neither signed the power of attorney nor given her consent for the property to be sold. The Disciplinary Committee also considered whether Ms Chang Rhule had acted in breach of Canon IV(s). Applying the principles in **Witter v Forbes**, the Committee concluded that there was no breach of this Canon because an attorney-client relationship did not exist between Ms Smith and Ms Fay Chang Rhule.

[71] On appeal, Ms Smith argued that the Disciplinary Committee erred when it found that Ms Fay Chang Rhule had not acted with deplorable or inexcusable negligence in breach of Canon IV(s) in conducting the sale, which deprived her of her interest in the property without her knowledge and consent.

[72] It was against this background that the court upheld the Disciplinary Committee's decision on this issue, and Laing JA (Ag) made the pronouncements above at paras. [67] and [68]. Given the facts before both tribunals in **Angella Smith v GLC**, the decisions were as expected. Unlike in the present case, the three-stage test in **Caparo v Dickman** was not satisfied, because while it may be arguable that Ms Chang Rhule's negligence could have caused harm to Ms Smith, in the circumstances, there was no sufficient proximity of relationship between them to lawfully impose a duty of care on Ms Chang Rhule for Ms Smith's benefit. Additionally, it could not be said, on the facts, that Ms Chang Rhule's obligations to her client, Ms Alexander, were being undertaken (or ought to be imposed) for the benefit of Ms Smith, who was a third party.

[73] However, in the case at bar, given the nature of the transaction and special relationship between Mr Foote and the complainant that came into existence for the purpose of the sale of the property, in his role as attorney with joint carriage of sale, the Committee was entitled to find that Mr Foote's conduct amounted to inexcusable or deplorable negligence or neglect in the performance of his duties in breach of Canon IV(s). This conclusion is supported by the evidence of Mr Foote's many failings in giving effect to the terms of the proposed agreement and ensuring that the prospective purchaser complied with them. I am convinced that the present case, on its specific facts, is an exception to the general principle expressed in **Witter v Forbes** that Canon IV(s)

is only applicable in circumstances where an attorney-client relationship exists. It falls squarely into the category (alluded to by Laing JA (Ag) in **Angella Smith v GLC**) of being a "maintainable complaint" against Mr Foote by the complainant, as a third party.

[74] I have arrived at this conclusion for the reason that Mr Foote's obligations to his client, Mr Saunders, as attorney with joint carriage of sale, were also being undertaken for the benefit of the complainant, as discussed above at paras. [46] – [48] and in keeping with the authority of **White v Jones**. The contention that, because Mr Moo Young did not sign the proposed agreement, this would somehow relieve Mr Foote of his duty to act in the best interest of the complainant as a vendor and protect her rights while carrying out any functions as the attorney conducting the sale under that agreement (as he did), is indefensible. Equally unsustainable is the argument that because the proposed agreement was not fully executed, Mr Foote was only acting on Mr Saunders' behalf because "his duties as attorney-at-law to the complainant had not crystallized" for the reasons already stated above at paras. [49] – [50]. Additionally, the fact that Ms Mason represented the complainant did not relieve Mr Foote of his responsibility or duty to act in the complainant's best interest in carrying out the terms of the proposed agreement, which, as the Committee found, he failed to do.

[75] Given my decision, I am persuaded by, and unable to improve upon, the eloquent submissions of Mrs Minott-Phillips that "[Mr Foote's] conduct demonstrated neglect or negligence which no competent attorney would have been expected to commit" and that it satisfied the test of "culpable non-performance" as expressed in **Witter v Forbes**. Mrs Minott-Phillips meticulously highlighted those aspects of Mr Foote's conduct as follows:

a) representing to Ms Mason (as co-counsel and co-attorney for the vendors per the proposed agreement) in his letter dated 1 March 2011, that there was a signed agreement for sale with a purchaser when this was not so (a patent display of a lack of forthrightness to both Ms Mason and the complainant);

b) knowing that the proposed agreement had not been fully executed, he advised Mr Saunders that he would suffer no prejudice if he put Mr Moo Young into possession of the property, so long as it was not transferred (advice that was incorrect and improper, which caused the vendors to suffer damages);

c) that advice led to Mr Moo Young being prematurely granted possession/occupation of the property, following which he proceeded to carry out significant structural alterations to it (adversely prejudicing the rights of both co-owners of the property, especially since the purported transaction fell through and they were left with an incomplete building instead of the original completed structure);

d) in so advising Mr Saunders, Mr Foote ignored one of the terms of the proposed agreement that both vendors had agreed upon, namely that possession of the property would be upon completion. He was unmindful of the legal obligation to obtain the complainant's as well as Mr Saunders' permission to alter any of the proposed terms of sale. Additionally, he was oblivious to the duty of care he owed not only to Mr Saunders but also to the complainant, who were the vendors under the proposed agreement for which he had joint carriage of sale; and

e) he failed to provide timely responses to the repeated requests from Ms Mason concerning the progress of the sale and to provide a copy of the purported "fully executed agreement for sale", which not only amounted to professional discourtesy and culpable non-performance in circumstances where he assumed joint carriage of sale with her, but also precluded the complainant from exploring other options to have the property sold.

[76] To this long list, I would also add that by collecting a partial deposit from Mr Moo Young (to supposedly "hold the deal/sale"), Mr Foote unilaterally decided to accept the partial payment to hold the sale without any discussion with either the complainant or Ms

Mason. The proposed agreement required an initial payment of $1,425,000.00, and any deviation from this term, regardless of the reason, required that the complainant and Ms Mason be informed and the complainant's consent obtained. In general, the serious consequence of Mr Foote's conduct was his failure to protect and act in the best interests of not only the complainant but also of Mr Saunders by ensuring that Mr Moo Young signed the proposed agreement and complied with its terms. This superseded any desire by Mr Foote to "save the sale", as he stated.

[77] Significantly, as Mrs Minott-Phillips pointed out, Mr Foote did not refute the "salient facts constituting his professional misconduct and negligence in carriage of the sale of the property" and that they "emerged from his documents and affidavit evidence". Any reliance by Mr Foote on the partially executed proposed agreement and Mr Saunders' instructions to take the actions he did is misplaced. On a broad view, the cumulative acts of Mr Foote are incapable of being regarded as "slips in a busy practice", or "inadvertence or carelessness", but rather, are acts and omissions that were purposeful and deliberate and went well "beyond what is accepted of a reasonably competent lawyer" (per Carey JA in **Witter v Forbes**).

[78] It is for the Committee, as a professional body, comprised of experienced attorneys engaged in the practice of the law, to decide whether Mr Foote went beyond the acceptable level of negligence or neglect and ventured into the sphere of "inexcusable and deplorable". On the evidence, it was open to the Committee to find that the overall conduct of Mr Foote raised grave concerns about his competence in carrying out his duties as attorney with joint carriage of sale under the proposed agreement. Therefore, the Committee was not plainly wrong in finding that Mr Foote, in the performance of his duties, acted with inexcusable or deplorable negligence or neglect in breach of Canon IV(s). Accordingly, there is no justification for this court to interfere with the Committee's decision.

<u>Canon I(b)</u>

[79] Notwithstanding my conclusion on the applicability of Canon IV(s), I am satisfied that there is another basis upon which the Committee's finding of professional misconduct can be affirmed. This is in relation to its determination that Mr Foote's conduct ran afoul of Canon I(b).

[80] Mr Leys, on this point, argued that the Committee's conclusion that Mr Foote is guilty of professional misconduct under Canon I(b) was because of its flawed findings in respect of Canon IV(s) since on an objective examination of his conduct, it could not be construed as a discredit to the profession given the nature of his relationship (or lack thereof) with the complainant and her attorney, and his conduct, at worst, could only be regarded as impolite. I disagree.

[81] Firstly, Canon I(b) is a free-standing canon, and a finding of professional misconduct under this canon is neither hinged on a similar finding under another canon nor based on a complaint made against an attorney by a client. The authority of **Angella Smith v GLC** supports this position as the attorney in that case was found guilty of professional misconduct under Canon I(b) only.

[82] Secondly, in my view, the critical consideration, when Canon I(b) is engaged, is an assessment by the Commiteee of the duty of an attorney, in the particular circumstances of the case, to "…at all times maintain the honour and dignity of the profession and … abstain from behaviour which may tend to discredit the profession of which he is a member". In other words, as stated at paras. [69] – [70] in **Angella Smith v GLC**, given the established facts, what "is the scope of the duty [of an attorney] to act in accordance with the reasonable standards of the profession" in the given circumstances?

[83] As Laing JA (Ag) further stated at para. [70] of **Angella Smith v GLC**:

> "…[A]lthough Canon I(b) does not expressly impose an obligation on attorneys to 'act in accordance with the reasonable standards of the profession', that is the reasonable construction to be placed on the Canon. The existence or imposition of such a duty is manifestly

> sensible, in that, it prevents an attorney from relying on an absence of a fiduciary or other duty to third parties affected by his conduct, to behave in a manner which by bringing harm to third parties, may tend to discredit the profession."

[84] The Committee's decision that Mr Foote was guilty of professional misconduct under Canon I(b) was based on their evaluation of his overall conduct in the light of the complaint. It is for the Committee to determine whether the conduct of Mr Foote fell short of the standard that the public is entitled to expect of legal practitioners of good repute and competency; or put another way, whether the conduct of Mr Foote was "in accordance with the reasonable standards of the profession" (per Laing JA (Ag)). As Lord Widgery CJ stated in **Re a Solicitor** [1974] 3 All ER 853, at pages 859c:

> "It has been laid down over and over again that the decision as to what is professional misconduct is primarily a matter for the profession expressed through its own channels, including the disciplinary committee. I do not, therefore, for one moment question that if a properly constituted disciplinary committee says that this is the standard now required of solicitors that this court ought to accept that that is so and not endeavour to substitute any views of its own on the subject."

Therefore, this court is not to lightly disturb the decisions made by disciplinary tribunals unless it is demonstrated that their findings are unmistakably wrong or unwarranted in the circumstances.

[85] In **Arlene Gaynor v The Disciplinary Committee of the General Legal Council** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 72/2004, judgment delivered 28 July 2006, this court stated that the test to be applied in determining whether the conduct of the attorney falls within Canon I(b) "is not whether the [attorney] would be liable in an action in tort for deceit or negligence or innocent misrepresentation" but rather that "[t]he code of conduct which the Canon enshrined, requires that attorneys act with honour and propriety" (para. 35 of that judgment). This principle was also applied in **Minett Lawrence v General Legal Council (Ex parte Kaon Northover)** [2022] JMCA Misc 1 at para. [81].

[86] There is no need to repeat the details of what I regard as the egregious manner in which Mr Foote approached and executed his obligations under the proposed agreement, not only to the complainant, but also to his client, Mr Saunders, as vendors (see paras. [75] – [76] above). I also endorse the Committee's finding that Mr Foote's poor communication with and dishonest representations to Ms Mason displayed a level of disregard for co-counsel that was appalling and amounted to gross discourtesy. I would also add that his conduct demonstrated a blatant disregard for the integrity of the legal profession. The evidence overwhelmingly supports the Committee's finding that Mr Foote did not act with the honour and propriety expected of a reasonably competent attorney having joint carriage of sale, in the light of the circumstances that generated the complaint. Additionally, from the viewpoint of the complainant and the public at large, his conduct would have discredited or tended to discredit the legal profession of which he is a member. Grounds (a) and (b), therefore, fail.

The sanction

[87] Finally, although in his amended notice of appeal, Mr Foote indicated that he was challenging the sanctions imposed by the Committee, Mr Leys, quite prudently, did not advance any arguments before us under this ground. Mrs Minott-Phillips' brief submission (which was made, I believe, to ensure that all the issues raised in the amended notice and grounds of appeal were addressed) was that the sanction was neither excessive nor disproportionate, but quite lenient. I agree.

[88] The sanction imposed by the Committee adequately addressed the purpose for which it was intended: not to punish Mr Foote but to maintain the reputation, public confidence, and trust in the legal profession (see **Bolton v Law Society** [1994] 1 WLR 512) and was appropriate in the circumstances, given the seriousness of, and the harm caused to the complainant by, Mr Foote's conduct.

Conclusion

[89] For the preceding reasons, I find that this appeal is devoid of merit. The Committee's findings that Mr Foote was guilty of professional misconduct under Canons I(b) and IV(s) because his conduct, when viewed as a whole, tended to discredit the profession and undermine the trust and confidence that members of the public place in attorneys-at-law in the conduct of their business, and that it amounted to inexcusable and deplorable negligence or neglect in the performance of his duties, cannot be impugned on the basis that they were plainly wrong or that the Committee made an error of law in arriving at its decision.

[90] Consequently, I would dismiss the appeal and affirm the decision and orders of the Committee. I would also order that costs be awarded to the GLC, to be agreed or taxed, as there are no demonstrated exceptional reasons to deviate from the general rule that costs follow the event.

G FRASER JA (AG)

[91] I, too, have read the draft judgment of my sister, Harris JA and agree with her reasoning. I have nothing useful to add.

STRAW JA

ORDER

1. The appeal is dismissed.

2. The decision of the Disciplinary Committee of the General Legal Council made on 11 April 2017, that the appellant breached Canons I(b) and IV(s) of the Legal Profession (Canons of Professional Ethics) Rules, is affirmed.

3. The orders of the Disciplinary Committee of the General Legal Council, made at the sanction hearing on 23 February 2018, are affirmed.

4. Costs of the appeal to the respondent to be agreed or taxed.