JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO COA2025MS00001

APPLICATION NO COA2025APP00127

BETWEEN	**JENNIFER HOUSEN**	**APPLICANT**
AND	**THE GENERAL LEGAL COUNCIL**	**RESPONDENT**

Lemar Neale instructed by Nea|Lex for the applicant

Neco Pagon for the respondent

20, 24 November and 5 December 2025

IN CHAMBERS

LAING JA

[1] This is an application by Jennifer Housen ('the applicant') by way of a notice of application for court orders ('the application'), filed on 9 July 2025, seeking the following orders:

> "1. A stay of execution of the orders made on April 15, 2025 by the Disciplinary Committee of the Respondent, pending the determination of the appeal.
>
> 2. Costs of the application to be costs in the appeal.
>
> 3. Such further and other relief as this Honourable [court] may deem just."

[2] The application was heard on 20 November 2025. On 24 November 2025, I gave the following orders:

> (1) The orders sought in the applicant's notice of application filed 9 July 2025 are refused.

(2) The applicant's application for a stay of execution of the orders of the decisions of the Disciplinary Committee of the General Legal Council, made on 15 April 2025, is refused.

(3) The Registrar shall endeavour to set a date for the expedited hearing of the appeal.

(4) Costs of the application to be costs in the appeal.

I promised to give my reasons in writing. This is in fulfilment of that promise.

[3] The application was made on 22 grounds. These grounds are, in essence, the same grounds as the grounds of appeal, with appropriate modification to account for the procedural requirements of a notice of application of this type. These grounds of appeal are reproduced later in these reasons.

[4] The orders of the Disciplinary Committee of the General Legal Council ('the committee'), which is the subject of this application, have their origins in a complaint lodged by Carol Jackson ('the complainant'), by way of an application and supporting affidavit, both dated 17 May 2021, against the applicant. The facts grounding the complaint and which were accepted by the committee are contained in the complainant's affidavit filed on 14 February 2022. The essence of the complaint is that, on or about 12 June 2018, the complainant engaged the services of the applicant to sell her two parcels of land registered at Volume 1302 Folio 624 of the Register Book of Titles ('the property') to the purchaser, Tanglewood Limited, for the sum of £100,000.00. The property was transferred to the purchaser, and the complainant did not receive the purchase money in full. At the time the complaint was filed, the outstanding balance was approximately £20,000.00 plus interest. There is a difference in the sale price in the complaint's affidavit in support, sworn 17 May 2021, but no issue was joined on that point before me.

[5] In her affidavit sworn on 1 February 2022, the applicant averred that the complainant instructed her to represent the purchaser, whom she stated was her friend. The applicant stated that she satisfied herself that there was no conflict and appreciated that if there were ever a conflict, she would have resolved it by ceasing to represent both parties. The complainant confirmed that the agreement for the sale of the property ('the agreement for sale') provided that the purchaser would pay a deposit of £60,000.00 upon signing, and the balance of £40,000.00 would be payable to the vendor three months after the title was transferred in the purchaser's name. It was also a term of the agreement that, if the balance of the purchase price of £40,000.00 was not paid within three months of the transfer of title, the purchaser would provide a unit in the development valued at no less than J$10,000,000.00 to the complainant. The purchaser would also be liable for an action in debt and interest at the rate of 10% per month until the balance was paid.

[6] The applicant confirmed that the purchaser had paid a portion of the outstanding balance in the sum of £21,874.00 directly to her, but she was not immediately aware of this fact because that was not contemplated by the agreement for sale. After the deadline for payment of the balance expired, the complainant invoked the interest clause under the agreement for sale. The applicant accepted responsibility for the interest payable and entered into an agreement with the complainant in respect of the interest that was payable on £21,874.00.

[7] The complainant, in an affidavit sworn to on 11 February 2022 in response to the affidavit of the applicant, denied that she instructed the applicant to represent the purchaser and herself. The complainant asserted that it was the purchaser who introduced her to the applicant and indicated that the applicant was his attorney-at-law. By using the term "his" attorney-at-law, I understand the complainant to be referring to the principal of the purchaser, it being a company.

[8] The complainant also stated that although her instructions to the applicant was for a deposit of £60,000.00 to be paid initially, she believed that the applicant, as her lawyer, would have ensured that she received the balance of the purchase price.

[9] The committee conducted a hearing over several days. It rendered a decision, dated 25 April 2024, in which it reminded itself that in a disciplinary complaint, the standard of proof is beyond a reasonable doubt. It found that the complaint had been proved beyond a reasonable doubt and arrived at the following conclusion:

> "36. The Panel finds that the Respondent Attorney has not maintained the standards expected of a reasonable Attorney in a conveyancing transaction, and is guilty of professional misconduct and has breached the Canons 1(b) and IV(s)."

[10] The committee made the following findings of fact:

> "(a) The Complainant retained the Respondent to represent her interest in the sale of her Property to Tanglewood Limited;
>
> (b) The Respondent attorney also acted for the Purchaser, Tanglewood Limited;
>
> (c) The Respondent prepared an Agreement for Sale which was initialed on each page and signed by the Complainant as vendor;
>
> (d) The Respondent was introduced to the Complainant by the Purchaser;
>
> (e) The Respondent also acted for the Purchaser in separate transaction(s);
>
> (f) The terms of the Agreement provided that in the event of a conflict of interest, the Respondent would put the transaction on hold to allow the Complainant to find a new lawyer and she would continue to represent the Purchaser;

(g) There is no evidence that the Registered Proprietor/Vendor/Complainant was advised to secure independent legal representation;

(h) There is no evidence that the consequences of the terms of the Agreement was [sic] explained to the Complainant by the Respondent;

(i) The Property was transferred from the Complainant to the Purchaser prior to payment of the full purchase price to the Complainant;

(j) The Complainant sought the Respondent's assistance in collecting the unpaid portion of the purchase price from the Purchaser for her account;

(k) The Respondent accounted to the Complainant for the sum of £21,874.00 which she had received from the Purchaser and eventually paid over that sum plus interest to the Complainant on account of the balance purchase price;

(l) The Complainant was told by the Purchaser that he had paid over the full balance purchase price to the Respondent;

(m) A portion of the purchase price remains due and owing to the Complainant."

[11] The committee highlighted the significant potential for a conflict of interest arising from the applicant representing both the complainant and the purchaser. The committee identified and acknowledged the effect of Canon IV (l) of The Legal Profession (Canons of Professional Ethics) Rules, which provides that:

> "Notwithstanding the provisions of Canon IV (k), an attorney may represent multiple clients if he can adequately represent the interests of each and if each consent to such representation after full disclosure of the possible effects of such multiple representation."

However, the committee noted that two parties represented by the same attorney in a land transaction is notoriously ill-advised, particularly where the transaction is not a

simple, straightforward one. Reference was made to the observation of Danckwerts L.J. in **Gavaghan v Edwards** [1961] 2 QB 220, at page 225 as follows:

> "… It is hardly necessary to say that I regard this situation as very unsatisfactory. In many cases it may work perfectly all right, but if anything whatever goes wrong with regard to the sale, a solicitor who is acting for both parties is almost certainly placed in a position where the interests conflict and a difficult situation is likely to arise."

[12] The committee observed, at para. 22 of the decision, that an attorney owes her client undivided loyalty, and the primary function of an attorney representing a party to a land transaction is to protect the client's interest since the purchaser and vendor will usually have separate and distinct interests.

[13] The committee considered it significant that, under the transaction's structure, the complainant would give up legal ownership of the property before payment of the full purchase price. In the event that the purchaser failed to pay the balance, the complainant would have to seek redress utilising the following methods:

a) Claiming interest on the unpaid balance;

b) lodging a caveat;

c) filing an action in debt and contract; and

d) claiming an anticipatory legal interest in a unit in the proposed development, for which there was no stated commencement or completion date.

[14] The essential portion of the analysis which grounds the committee's ultimate conclusion that the complaint was proved, is contained in paras. 24-26 of the decision, which is reproduced as follows:

> "24. Much was made of the fact that the Complainant initialed each page of the Agreement and signed,

thereby signifying that she had in fact read and understood the terms. It is the view of the Panel that the Complainant's denial of the effect of the agreement would fail as against parties to the transaction, and even a third party such as a lender. Where however, the document was prepared by the attorney acting for both sides of the transaction with no record of the explanation of the effect of the terms, and inadequate protection of the Complainant, the attorney put herself in an invidious position in invoking the Complainant's signature as evidence of her understanding and agreement to terms that did not reflect what the Complainant wished to achieve by the transaction.

25. When this is juxtaposed with the effect of the terms of the agreement which resulted in the Complainant/Vendor to [sic] giving up her legal interest in the Property prior to receipt of the purchase price, it raises the issue of the propriety of the Respondent's structuring an agreement which allowed for an outcome that produced an inequitable imbalance against the interest of the Complainant.

26. The Panel finds that upon review of the evidence, there are glaring shortcomings in the Respondent Attorney's handling of the transaction, which deviated materially from what would is [sic] expected of an attorney exercising reasonable competence and due diligence in the handling of a conveyancing transaction between the parties for value and at arm's length."

[15] In its decision on sanction, the committee rehearsed its findings of fact. It considered the principles in **Fuglers LLP et al v Solicitors Regulatory Authority** [2014] EWHC 179 (Admin) ('**Fuglers LLP**') as applied in **Minett Lawrence v General Legal Council (Ex parte Kaon Northover)** [2022] JMCA Misc 1 ('**Minett Lawrence**'). It is accepted that the misconduct for which the applicant was found guilty is serious insofar as the complainant did not receive the full purchase price for her property prior to the applicant transferring the said property to the purchaser. The committee identified seven aggravating factors and two mitigating factors. The mitigating factors were, first, that the applicant had paid over to the complainant the sums received from the purchaser

and had also paid the interest from her own resources. Second, the applicant assumed personal responsibility for the delayed payment of the sums the purchaser had paid to the complainant.

[16] As has been previously mentioned, the committee having concluded that the applicant had not maintained the standards expected of a reasonable attorney in a conveyancing transaction, found that she was guilty of professional misconduct and has breached Canons I(b) and IV (s). These canons are in the following terms:

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."

[17] In determining what constituted an effective sanction, the committee considered the observations of Carey JA in **Witter v Forbes** (1989) 26 JLR 129 (CA). It concluded that a reprimand would be much too low given the seriousness of the applicant's conduct and would not be appropriate in the circumstances of this case.

[18] The sanctions imposed on the applicant were:

> "a. The Respondent Attorney Jennifer Housen is suspended from practice for a period of six (6) months.
>
> b. Costs in the sum of $400,000.00 is to be paid by the Respondent Attorney Jennifer Housen as to which $150,000.00 is to be paid to the General Legal Council, and $250,000.00 is to be paid to the complainant, and the said sums shall be paid within sixty (60) days of the date hereof."

Submissions on behalf of the applicant

[19] Mr Neale referred to **Hammond Suddard Solicitors v Agrichem International Holdings Limited** [2001] EWCA Civ 2065 and several cases from this court addressing the test for granting a stay of execution, including **Arlean Beckford v Disciplinary Committee of the General Legal Council** [2014] JMCA App 27 ('**Arlean Beckford**'); **Dwight Reece and another v General Legal Council (ex parte Diana Watson)** [2023] JMCA App 16 ('**Dwight Reece**').

[20] Counsel accepted that the applicant may only obtain a stay of execution if she demonstrates that the grounds of appeal challenging the liability and sanction decisions have merit. Counsel also accepted that cases such as **Don Foote v The General Legal Council** [2025] JMCA Misc 6 ('**Don Foote**') and **General Legal Council v Michael Lorne** [2024] UKPC 12 ('**Michael Lorne**') have provided guidance in the assessment of merit in appeals from decisions of the committee.

[21] The grounds of appeal filed by the applicant are as follows:

> "(a) The learned panel of the Disciplinary Committee of the General Legal Council erred as a matter of fact and/or law in finding that the Appellant failed in her basic duties to both the Vendor and Purchaser in the transaction which exposed all parties.
>
> (b) The learned panel of the Disciplinary Committee of the General Legal Council erred in disregarding or insufficiently regarding the totality of the evidence, which caused it to derive an erroneous conclusion that the Appellant was guilty beyond reasonable doubt of breaching Canons 1(b) and V(s) [sic].
>
> (c) The learned panel of the Disciplinary Committee of the General Legal Council erred as a matter of fact and/or in law finding that the Appellant was in breach of Canons 1(b) and IV(s) of the Legal Profession (Canons of Professional Ethics Rules).
>
> (d) The learned panel of the Disciplinary Committee of the General Legal Council disregarded the terms of the

agreement and, in particular, the protective mechanisms available to the Complainant and instead made findings on the preference or suitability of the use of a vendor's mortgage without first putting the issue to the Appellant for a response.

(e) The learned panel of the Disciplinary Committee of the General Legal Council made findings of fact not supported by the evidence, to wit:

(i) …the Attorney puts herself in an invidious position in invoking the Complainant's signature as evidence of her understanding and agreement to the terms that did not reflect what the Complainant wished to achieve by the transaction. [para 24]

(ii) When it is juxtaposed with the effect of the terms of the agreement which resulted in the Complainant/Vendor to [sic] giving up her legal interest in the Property prior to receipt of the purchase price, it raises the issue of the propriety of the Respondent's structuring an agreement which allowed for an outcome that produced an equitable imbalance against the interest of the Complainant. [para 25]

(iii) …there are glaring shortcomings in the Respondent Attorney's handling of the transaction, which deviated materially from what would is [sic] expected of an attorney exercising reasonable competence and due diligence in the handling of a conveyancing transaction between parties for value and at arm's length. [para 26]

(iv) There is no evidence that the consequence of the terms of the Agreement was explained to the Complainant by the Respondent. [para 28h]

(v) The Complainant was told by the purchaser that he had paid over the full balance purchase price to the Respondent. [para 28l)

(f) The learned panel of the Disciplinary Committee of the General Legal Council erred as a matter of fact and/or

law in finding that the Agreement for Sale created by the Appellant, without more effective protection of the Complainant's interests, created a risk.

(g) The learned panel of the Disciplinary Committee of the General Legal Council erred in finding that the Complainant met the burden of proof, beyond a reasonable doubt, to render the Appellant guilty of professional misconduct.

(h) The learned panel of the Disciplinary Committee of the General Legal Council erred in imposing the sanctions of suspension and costs which are unnecessary, unreasonable, disproportionate and manifestly excessive.

(i) The learned panel of the Disciplinary Committee of the General Legal Council erred in failing to provide any or any adequate reason for the imposition of the sanctions of suspension and costs against the Appellant."

[22] Mr Neale submitted that the committee made several findings of fact that were not supported by the evidence, and that it did not demonstrate how it resolved conflicting evidence between the parties, despite being bound to do so. Having not indicated which evidence it preferred, the committee proceeded to make findings of fact on challenged evidence. For example, counsel referred to the committee's finding at (g):

> "(g) There is no evidence that the Registered Proprietor/Vendor/Complainant was advised to secure independent legal representation."

[23] However, the main challenge to the committee's findings of fact and law, as reflected in the applicant's notice of appeal at para. 4, was directed at the findings of fact set out at (h) and (l) as follows:

> "(h) There is no evidence that the consequences of the terms of the Agreement was [sic] explained to the Complainant by the Respondent;
>
> …

(l) The Complainant was told by the Purchaser that he had paid over the full balance purchase price to the Respondent."

[24] Counsel referred to the complainant's affidavit, sworn to on 11 February 2022, at para. 10, where she stated:

> "10. Some time in June 2018, Ms. Housen met with me for the purpose of signing the Agreement for sale. When she gave me the Agreement she was in a hurry and informed me that the Agreement was a standard document that was used in all property sale transactions and that I should just sign it so that I could receive my money. Because I was of the view that Ms. Housen had my best interest as a Lawyer, I signed the Agreement for Sale without reading it in its entirety and without she explaining the contents to me."

[25] Counsel argued that the applicant refuted this in her affidavit, sworn to on 29 March 2022, at para. 7, where she averred as follows:

> "7. Paragraph 10 of the Complainant's second affidavit is incorrect. Ms. Jackson stated I was in a hurry. That is simply not true. At no time did Mrs Jackson ever visit my office and I spent less than an hour with her. Mrs Jackson prided herself on reading every document I gave to her and it simply would not be a situation where Mrs Jackson would have signed a document we did not go through thoroughly and which she did not read."

[26] Mr Neale posited that it can be inferred from the applicant's response that she explained the consequences of the salient features of the agreement for sale to the complainant.

[27] Counsel highlighted that the committee correctly proceeded on the premise that, in a typical transaction, the provision required payment of the full purchase price before the purchaser would obtain a transfer of title in his name. However, this did not mean there could be no deviation, and the committee was wrong in concluding that the remedies inserted in the agreement of sale for the protection of the complainant were insufficient.

[28] Counsel argued that the committee cited a vendor's mortgage, which, in its opinion, would have provided more effective protection to the complainant. However, the vendor's mortgage was raised for the first time in the decision, and it was used to the applicant's detriment without allowing her to respond. Counsel argued that in the interest of fairness to the applicant, the committee was obliged to raise the issue of the suitability of the vendor's mortgage and allow the applicant to respond. In support of this point, counsel offered the observations of McDonald-Bishop JA (as she then was) in **Donald Gittens v The General Legal Council** [2025] JMCA Misc 5 ('**Donald Gittens**').

[29] Counsel advanced the position that the provisions in the agreement for sale offered sufficient protection, and the evidence supported the conclusion that they were fully explained to the complainant and she consented thereto. Accordingly, there ought to have been no finding of professional negligence on the part of the applicant arising from her representation of both parties to the agreement for sale.

[30] Regarding the challenge to the decision on sanctions, counsel acknowledged the committee's power to impose sanctions following a finding of professional misconduct by an attorney, as provided in section 12(4) of the Legal Profession Act.

[31] Counsel referred to **Michael Lorne** and the test contained therein for circumstances in which an appellate court will interfere with the decision of the committee. In the absence of any error of law or principle, the test is whether the sanction is appropriate and necessary. Counsel submitted that the imposition of both suspension and costs is unnecessary, unreasonable, disproportionate and manifestly excessive. An appropriate sanction in the circumstances is a reprimand.

[32] Regarding costs, it was submitted that the costs order imposed is excessive and is bereft of factual and legal underpinning. Counsel relied on the case of **Donald Gittens** in which the court arrived at a similar conclusion.

[33] Counsel concluded by submitting that the applicant will suffer great injustice if a stay of the committee's decision pending the outcome of the appeal is not granted. The

applicant will be unable to practice law, and her reputation as an attorney-at-law with many years at the bar will suffer. Further, being unable to practice law has caused her great emotional and financial distress and hardship.

Submissions on behalf of the respondent

[34] Mr Pagon argued that the criteria for granting a stay of execution has been established in several cases within this jurisdiction, including **Channus Block and Marl Quarry Limited v Curlon Orlando Lawrence** [2013] JMCA App 16. These criteria consist of two essential and interconnected elements. First, a stay of execution should only be granted if the appeal possesses some merit. Second, a stay should only be issued if granting it is less likely to result in injustice between the parties. He noted that this test has been utilised in the context of stays of execution of committee decisions in cases like **Arlean Beckford** and **Dwight Reece**.

[35] Mr Pagon argued that the court must assess the issue of the merits of the appeal within the context of the principles which have been outlined by the court in decisions such as **Channus Block and Marl Quarry Limited v Curlon Orlando Lawrence** [2013] JMCA App 16 and **Michael Lorne** which confirm that the Court of Appeal should be loath to interfere with determinations made by the committee unless such conclusions are "unmistakably wrong or unwarranted in the circumstances".

[36] Counsel focused his position that the appeal is without merit on the following platform:

> "(1) The Committee employed the correct approach to determining the appellant's liability for professional misconduct.
>
> (2) The evidence before the Committee supported the two findings of fact, which have been challenged in the notice of appeal.
>
> (3) There is no demonstrable error of law or principle in the Committee's analysis of the facts.

(4) It was open to the Committee to find the appellant guilty of professional misconduct."

[37] Mr Pagon argued that of all the committee's pivotal findings, the appellant has only challenged the findings at paras. (h) and (l). He submitted, at para. 27, the following:

> "… although several of the Committee's findings are described in ground (e) of the notice [of] appeal as 'findings of fact', the findings mentioned there, other than those in paragraphs 28(h) and 28(l) of the liability decision, are analytical evaluations of the facts and consequent conclusions based on the facts, and not findings of fact."

[38] Mr Pagon highlighted that the transcript of the proceedings before the committee and the documentary evidence tendered are devoid of any evidence that the applicant explained the consequences of the agreement for sale to the complainant. He argued that the committee were not "plainly wrong" and it cannot be said that it could not have made those findings on the evidence as a whole.

[39] Counsel argued that "the Committee's analysis represents a straightforward assessment of the consequences resulting from the [applicant's] failure to draft the agreement for sale in a way that offered the usual protections to a vendor" and this did not ensure that the complainant received the proceeds of sale before parting with her property. This was exacerbated by the appellant's failure to explain the unusual provisions of the agreement for sale to the complainant.

[40] Counsel argued that the grounds for appeal, which claim the evidence does not support the committee's decision and that the breach of the Canons was not proven beyond a reasonable doubt, are without merit and unlikely to succeed.

[41] Regarding the sanction decision, Mr Pagon argued that the committee directed itself on the principles established in the English case **Fuglers LLP**, which were adopted by the Court of Appeal in **Minett Lawrence**. He posited that the reasons given by the Committee were adequate to explain the reasons for the sanctions imposed.

[42] Counsel referred the court to **Dwight Reece**, and the statement of P Williams JA, who, in a judgment given on application for a stay of execution of an order of suspension imposed by the Committee, stated at para. [44] that "… this court in **Loleta Henry** recognised that a sanction of suspension is not by its nature disproportionate when imposed as a result of breaches which do not involve deceit or moral turpitude".

[43] Mr Pagon argued that the sanctions were appropriate and proportionate to the circumstances of the applicant's professional misconduct. He noted that in most cases of misconduct where no suspension was imposed, the harm suffered by the complainant was minimal. For example, in the case of **Don Foote**, the transaction was cancelled, and the committee imposed a fine.

[44] Regarding the issue of prejudice, Mr Pagon has submitted that the appellant has not satisfied her duty to provide full, frank and clear evidence of prejudice to the satisfaction of the court on an application for a stay of execution. Therefore, there is no need for the court to consider the issue of prejudice to the applicant.

Analysis

[45] A convenient starting point is the principles governing a stay of execution of a judgment. This court has consistently adopted the observations of Phillips LJ in **Combi (Singapore) Pte Ltd v Sriram and another** [1997] EWCA 2164 where, in respect of the balancing exercise which the court has to undertake, he stated the following at para. 12:

> "12 In my judgment the proper approach must be to make that order which best accords with the interest of justice. If there is a risk that irremediable harm may be caused to the plaintiff if a stay is ordered but no similar detriment to the defendant if it is not, then a stay should not normally be ordered. Equally, if there is a risk that irremediable harm may be caused to the defendant if a stay is not ordered but no similar detriment to the plaintiff if a stay is ordered, then a stay should normally be ordered. This assumes of

> course that the court concludes that there may be some merit in the appeal. If it does not then no stay of execution should be ordered. But where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives in order to decide which of them is less likely to produce injustice. The starting point must be that the normal rule as indicated by Order 59, rule 13 is that there is no stay but, where the justice of that approach is in doubt, the answer may well depend upon the perceived strength of the appeal."

This extract sufficiently captures the approach to be taken and I concur with McDonald-Bishop JA (as she then was) when she opined, at para. [23] in **ADS Global Limited v Fly Jamaica Airways Limited** [2020] JMCA App 12, that the law is well settled and there is no need for any detailed exposition. It is also well settled that a single judge has the power to grant a stay of the judgment of the committee (see **Arlean Beckford**, and **Dwight Reece**).

Merit of the appeal

[46] The analysis of whether a stay ought to be granted is premised on the preliminary conclusion by the court that there may be some merit in the appeal.

[47] Many of the findings of fact by the committee are undisputed. The applicant represented the complainant, as vendor, and the purchaser in a transaction involving the sale of the complainant's property. The applicant drafted the agreement for sale. The property was transferred from the complainant to the purchaser prior to payment of the full purchase price to the complainant. At the time of the hearing, the complainant still had not received the balance of the purchase price.

[48] The committee explicitly stated that "while two parties may be represented in a land transaction, it is notoriously ill advised particularly where the sale is not a simple straight forward transaction". This was not a straightforward transaction because it did not provide for the complainant to obtain the full proceeds of the sale before the

purchaser received the transfer of the property. The committee highlighted, at para. 22 of the decision, that:

> "22. An attorney owes her client her undivided loyalty. The primary function of an attorney representing a party to a land transaction is to protect the client's interest. The purchaser and the vendor will usually have separate and distinct interests to be protected."

[49] The committee also noted that from the applicant's evidence, she was acting for the purchaser in other matters. Additionally, the committee recognised the provisions of clause 15 of the retainer agreement between the complainant and the applicant, which it accurately paraphrased, but which is in these terms:

> "... In the event that a subsequent conflict arises, I have advised you that we will place the transaction on hold, that I will continue to represent the purchaser, however, allow you, as the Vendor time to seek alternative legal representation in the event the sale/purchase is proceeding."

[50] Therefore, the committee was focused on the possibility of a conflict of interest and the elevated need for the applicant to protect the interests of the complainant. It can be gleaned from the judgment that the committee formed the view that this was necessary on the premise that, because the transaction as structured in the agreement of sale was not the typical arrangement of payment of full purchase price before transfer, the applicant needed to explain to the complainant the likely operation of the protective mechanisms contained therein, should the purchaser not pay the balance of the purchase price as agreed. Ultimately, the committee made the following finding:

> "(h) There is no evidence that the consequences of the terms of the Agreement was [sic] explained to the Complainant by the Respondent;"

[51] The challenge to this finding in particular forms a central plank of the appeal. It was submitted by Mr Neale that the applicant's statement that "…it simply would not be a situation where Mrs Jackson would have signed a document we did not go through thoroughly and which she did not read" is to be construed to mean that the applicant

explained the consequences of the agreement for sale to the complainant. However, the committee was entitled to accept the complainant's version of the events, which was that she was told by the applicant that "… the [a]greement was a standard document that was used in all property sale transactions and that I should just sign it so that I could receive my money". The complainant averred that she signed the agreement for sale without reading it in its entirety and without the applicant explaining its contents to her, because she believed the applicant had her best interests in mind as her lawyer. The committee was entitled to find that the fact that the complainant initialed each page of the agreement for sale and signed it, did not mean that she thereby signified that she had, in fact, read and understood the terms.

[52] The finding by the committee that the applicant did not explain the provisions of the agreement for sale to the complainant is vital in the context of the committee's conclusion at para. 29 that the agreement created the risk, which allowed for the transfer of the property prior to the payment of the balance of the purchase price without a more effective protection of the complainant's interest. The committee opined that more effective protection could have been achieved through the use of a vendor's mortgage, for example.

[53] The committee, comprised of practising attorneys, was entitled to conclude that the options provided in the agreement for sale to the complainant in the event of breach, and, in particular, the non-payment of the balance of the purchase price, were inadequate. Although, Mr Neale suggested that the committee was perhaps overly preoccupied with the vendor's mortgage as a means of providing added protection to the complainant, he did not deny that it could serve the purpose. When asked to suggest an alternative mechanism that the committee could have identified, counsel did not offer one.

[54] I was, therefore, unable to discern any prejudice or unfairness which might have been occasioned to the applicant by not having had the opportunity to respond at the

hearing to the committee's opinion that the vendor's mortgage might have provided enhanced protection to the complainant.

[55] In **Michael Lorne**, at para. 11, the Board acknowledged the nature of an appeal from the committee to the Court of Appeal as follows:

> "11. These sections make clear that an appeal from the Committee lies to the Court of Appeal and is a rehearing rather than a review. In other words, the Court of Appeal has full appellate rather than simply a supervisory jurisdiction. That means that rather than being limited to reviewing the legality of the decision, the Court of Appeal can conduct a rehearing and can substitute its own decision for that of the decision-maker in an appropriate case, provided always that caution is exercised before overturning a disciplinary decision in the absence of an error of law or principle. It may allow the appeal, set aside the decision and/or vary the sanction imposed."

[56] It is also well established, as was recently stated by V Harris JA in **Don Foote** at para. [37], that:

> "[37] … 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)."

[57] In my opinion, it is open to a full panel of this court to conclude that the committee's finding at (h) that "[t]here is no evidence that the consequences of the terms of the Agreement was [sic] explained to the Complainant by the Respondent" is supported by the evidence that was before the committee. Accordingly, I was not of the view that the committee "failed to consider relevant issues or took into account irrelevant matters,

or it made an error of law, or was plainly or palpably wrong" as regards this particular finding of fact that is challenged.

[58] Regarding the committee's finding that:

> "(l) The Complainant was told by the Purchaser that he had paid over the full balance purchase price to the Respondent;"

This did not appear to be of any great consequence. It was not germane to the committee's decision, the essential element of which I have outlined above. Even if it was not supported by the evidence, the undisputed fact is that at the time of the hearing, the complainant had not received the full balance of the purchase price, and that was the harm suffered by the complainant, which was considered material.

[59] Accordingly, the committee was entitled to conclude on the evidence, at para. 31:

> "31. The transfer of the property without appropriate terms was detrimental to the Complainant's legal interests, and caused her to suffer loss and incur avoidable expenses and cannot go unnoticed...."

Conclusion

[60] It cannot be gainsaid that the applicant's conduct was egregious. There was no dishonesty involved, but it is well settled that there is no necessity for there to be any moral turpitude for Canon I(b) to be engaged (see **Don Foote** citing with approval the decision in **Angella Smith v The General Legal Council and Fay Chang Rhule** [2023] JMCA Misc 2; **Dwight Reece**; and **Minett Lawrence**). In my view, there is ample evidence to support the committee's conclusion that the applicant has breached Canons I(b) and IV(s).

The sanction

[61] The applicant has appealed on the basis that the imposition of both suspension and costs is unnecessary, unreasonable, disproportionate and manifestly excessive.

[62] The committee, in its decision on sanction, referred to the guidance offered by **Fuglers LLP**, as to the correct approach of a Solicitors Disciplinary Tribunal. In **Minett Lawrence**, McDonald-Bishop JA (as she then was), at para. [104], stated that these principles have been modified and adopted for current purposes to be as follows:

> "(1) The appellate court should only interfere if there is an error of law, a failure to take account of relevant evidence, or a failure to provide proper reasons (see [**Solicitors Regulation Authority v Anderson** [2013] EWHC 4021 (Admin) ('**Anderson**')] at para. [60], per Treacy LJ).
>
> (2) The disciplinary tribunal, as an experienced body of attorneys-at-law, is best placed to weigh the seriousness of the professional misconduct and the effect that their findings and sanctions will have in promoting and maintaining the standards to be observed by individual members of the profession in the future, and the reputation and standing of the profession as a whole (see [**Bolton v Law Society** [1994] 1 WLR 512 ('**Bolton**')] at page 516, per Sir Thomas Bingham MR).
>
> (3) Accordingly, the appellate court must pay considerable respect to the sentencing decisions of the disciplinary tribunal and in the absence of legal error will not interfere unless the sentencing decision was clearly inappropriate (see [**Salsbury v Law Society** [2009] 1 WLR 1286 ('**Salsbury**')] at para. [30], per Jackson LJ; and **Anderson** at para. [64], per Treacy LJ). Although it is an overstatement to say that a very strong case is required before the court will interfere (see **Salsbury** at para. [30], per Jackson LJ), nevertheless, the test is a high hurdle (see **Anderson** at para. [65], per Treacy LJ)."

[63] In the evaluation of the grounds of appeal challenging the sanction, for purposes of determining whether there is any merit against the background of these principles, I have examined the committee's approach of identifying aggravating and mitigating factors. The aggravating factors as stated in para. 7 of the sanction decision are as follows:

"a. The Attorney placed herself in position of potential conflict of interest from the outset when she agreed to act on behalf of the Vendor and the Purchaser;

b. The Agreement prepared by the Attorney provided for the transfer of title in the name of the Purchaser prior to the payment of the balance of the purchase price without adequate or appropriate protection for the Complainant in the event of the Purchaser's breach of contract to pay the balance purchase price, for example a vendor's mortgage, which could have given the Complainant the right of foreclosure;

c. The Complainant's property was transferred to the Purchaser prior to the Attorney receiving the balance of the purchase price;

d. The Attorney continued to represent the Purchaser after a conflict arose between the Vendor and the Purchaser pursuant to the Retainer Agreement dated January 15, 2018 which had been prepared by the Respondent Attorney;

e. The Respondent Attorney delayed in paying sums to the Complainant which had been paid into her client account by the Purchaser;

f. The Respondent Attorney upon realizing that further payments had been made by the Purchaser towards the balance purchase price instead of immediately making the payment to the Complainant prepared an agreement to make periodic payments to the Complainant over a protracted period of time together with interest on the said balance purchase price;

g. The Complainant has had to lodge a caveat against the Property and file a claim against the Purchaser in an attempt to recover the balance purchase price."

The mitigating factors found by the committee are:

"a. The [applicant] has paid over sums paid by the Purchaser into her client account to the Complainant together with interest from her own resources;

b. The [applicant] assumed personal responsibility for the delayed payment of sums paid by the Purchaser to the Complainant."

[64] In para. 11 of the sanction decision, the committee stated that:

> "11. ... Having reviewed the facts, and assessed the aggravating and/or mitigating factors which ought properly to swing the pendulum one way or the other in determining the appropriate sanction, we consider that the range of sanctions for the offence for which the Attorney has been found guilty of [sic], is within the range of a fine or a suspension. The fact is that the misconduct has led to financial loss by the Complainant, who has been put to further expense as a result, in circumstances where she retained the [applicant] to represent her interest, and it was known to the [applicant] that the Complainant was selling the property at that price for a quick sale in order to embark upon another transaction, and therefore the proceeds were needed."

In assessing whether the sanction imposed on the applicant was excessive, I was guided by the observations of the Board in **Michael Lorne** and in particular paras. 43 and 44 of the decision as follows:

> "43. Where a disciplinary committee has the relevant expertise to make judgments on professional practice and professional discipline, the appellate court approaches its task 'with diffidence' (ie by exercising caution before overturning the disciplinary committee's decision in the absence of an error of law or principle). In *Khan v General Pharmaceutical Council* [2016] UKSC 64; [2017] 1 WLR 169 ('*Khan*') Lord Wilson, giving the judgment of the UK Supreme Court, stated at para 36:
>
> > 'An appellate court must approach a challenge to the sanction imposed by a professional disciplinary committee with diffidence. In a case such as the present, the committee's concern is for the damage already done or likely to be done to the reputation of the profession and it is best qualified to judge the measures required to

> address it: *Marinovich v General Medical Council* [2002] UKPC 36, para 28.'
>
> 44. In *Ghosh* at para 34 Lord Millett referred to an earlier case, *Evans v General Medical Council* (unreported) 19 November 1984 in which the Board acknowledged the importance of the professional experience of a disciplinary committee in weighing the seriousness of professional misconduct and stated:
>
> > 'The committee are familiar with the whole gradation of seriousness of the cases of various types which come before them, and are peculiarly well qualified to say at what point on that gradation erasure becomes the appropriate sentence. The Board does not have that advantage nor can it have the same capacity for judging what measures are from time to time required for the purpose of maintaining professional standards.'"

[65] The applicant is not asserting that the sanctions imposed on her are not within the range of sanctions that could be imposed, but is asserting that a reprimand would be more appropriate. The full panel of this court will be obliged to approach the applicant's challenge to the sanction imposed by the committee "with diffidence", and in my opinion, it is likely to conclude that this challenge has no merit. Mr Neale has taken issue with some of the aggravating factors found by the committee, but even if he is moderately successful on that point, the applicant's conduct, objectively viewed, appears to be egregious and provides sufficient grounds for the sanctions imposed by the committee.

[66] In considering whether the sanctions imposed are appropriate and proportionate, I examined other cases in which the attorney had represented the vendor and purchaser in a property sale transaction, and in which a complaint was filed against the attorney, for example, **Don Foote**. I asked Mr Neale whether he was aware of any other cases on similar facts as the instant case in which the attorney received only a reprimand, but he was unable to identify any. Mr Pagon submitted that **Don Foote** was not on all fours and could further be distinguished on the basis that in that case the transaction was cancelled

with no real harm to the vendor, whereas in this case the complainant up to the time of the hearing still had not received the total purchase price and had to incur additional expenses associated with the filing of a caveat and other steps aimed at getting the outstanding balance.

[67] Mr Neale has also submitted that the committee has not provided a sufficient basis for the order of costs for $400,000.00. This is also a component of the sanction imposed on the applicant. Counsel has relied on the case of **Donald Gittens.** In the case of **Donald Gittens**, McDonald-Bishop JA at para. [123] made the following observation:

> "[123] The record is, therefore, devoid of a factual basis on which it may be said that the GLC incurred costs and the amount of those costs, so incurred, against which the award can be objectively measured and found to be a reasonable contribution toward costs. As such, the legal and factual basis for a costs order to be made under section 12(4)(f), in favour of the GLC in the fixed sum of $75,000.00 is not, at all, apparent on the face of the reasoning of the Committee or the record."

The judge of appeal determined that when the committee imposes costs orders under section 12(4)(f), it must provide justification for those orders, as it does for any other penalties deemed suitable for professional misconduct. Without explanations for assigning costs in the specified fixed amount to the GLC, the court could not conclude that the order was made reasonably.

[68] There is merit in Mr Neale's submission on this point since the committee has not expressed the "factual and legal underpinning" of the costs order in that quantum, and the order may be subject to review by the court. Nevertheless, if on appeal the court reduces or removes the costs order in its entirety, in my view, that will not affect the order suspending the applicant. In such circumstances, there is no basis for a stay of the execution of the order for the suspension of the applicant.

Prejudice

[69] I did not accept the submission of Mr Pagon that the applicant has not produced sufficient evidence of prejudice if a stay of the order suspending her is not granted. The applicant is an attorney at law practising in this jurisdiction, and her assertion that she will not be able to practice earning a livelihood, without more, is strong evidence of prejudice and harm. Her other assertion that a suspension would result in her ruin does require additional support, especially given that the period of suspension is six months. There is also a theoretical possibility that the applicant might serve the period of suspension and be successful on the appeal, which would amount to prejudice. I am required by the authorities to assess the applicant's chances of success on appeal, and having done so, I concluded that the appeal lacks merit, save for the very limited ground I have identified. I was, therefore, constrained to refuse the application for a stay of execution as prayed for in the application.

[70] For the reasons set forth herein, I issued the orders at para. [2].