[2021] JMCA Civ 17

JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO 3/2017

BEFORE: THE HON MR JUSTICE F WILLIAMS JA
THE HON MISS JUSTICE P WILLIAMS JA
THE HON MISS JUSTICE STRAW JA

BETWEEN	**MICHAEL LORNE**	**APPELLANT**
AND	**THE GENERAL LEGAL COUNCIL (Ex parte Olive C Blake)**	**RESPONDENT**

Miss Bianca Samuels instructed by Knight Junor & Samuels for the appellant

Mrs Sandra Minott-Phillips QC and Mr Litrow Hickson instructed by Myers Fletcher & Gordon for the respondent

10, 11 June 2019 and 26 March 2021

F WILLIAMS JA

Background

[1] By notice of appeal filed on 27 June 2017, the appellant has sought to overturn the decision and orders of a panel of the Disciplinary Committee of the General Legal Council (hereafter referred to as "the panel"). The decision was made on 2 March 2017 and the orders were made on 26 April 2017 and 24 June 2017. By virtue of that decision, the appellant was, *inter alia,* found to be in breach of canon VII (b) ii of the Legal Profession (Canons of Professional Ethics) Rules ("the canons"), and so thereby guilty of

professional misconduct. By virtue of the orders, the applicant was, among other things, struck from the Roll of Attorneys-at-law entitled to practise in Jamaica and required to make certain payments.

Further background – the complaint

[2] The findings and sanctions of the panel have their origin in a complaint dated 8 October 2012, filed by Ms Olive Blake ("the complainant") with the General Legal Council ("the GLC") on 11 October 2012. The essence of the complaint was that the appellant was retained to sell property registered at Volume 1452 Folio 667 of the Register Book of Titles, with the civic address 10 Fairbourne Road, Kingston 2 ("the property") and had failed to account to her for her half proceeds from the sale.

[3] The complainant contended that she was entitled to half the proceeds of sale on the basis that she and her brother, Mr Howard Wilson, had been bequeathed the premises in equal shares by their father, Mr Herbert Wilson, now deceased. She alleged that they were the co-executors and sole beneficiaries under their father's will.

[4] The documentation before the panel demonstrated that the property was transferred to one Owen Hamilton on 22 November 2011, so that the complainant had not been paid any part of the proceeds of sale for almost a year, counting the time from when the transfer was made, to when she made her complaint to the GLC. Hence, her inclusion in her affidavit supporting her complaint of the following:

> "My brother Howard Wilson employed Mr. M Lorne to sell the property at 10 Fairbourne Rd. Kingston 2 and to distribute the proceeds between Howard Wilson and myself. Mr. Lorne told

> me that the property had been sold and that he sent a portion of the money to my brother I did not receive any portion and Mr. Lorne refuses to answer or contact me."

The complainant concludes her affidavit with the statement of her ground of complaint as follows:

> "Mr. Lorne has not accounted for all the monies in his hands for my account or credit although I have reasonably required him to do so."

A summary of the course of the hearings before the panel

[5] It took some 15 sittings for the complaint to be heard and the panel's conclusion to be arrived at. In light of (i) how the matter was finally resolved, (ii) the fact that certain admissions were made; and also (iii) how the hearing of this appeal proceeded, it will suffice to say at this point that there were several applications by the appellant for adjournments of the sittings.

[6] In essence, the appellant's explanation for the occurrence of the events giving rise to the complaint was that he was instructed by Mr Howard Wilson not to give the proceeds of sale to the complainant but rather to him, Mr Wilson, as the complainant had used other funds from the estate which exceeded her half interest in the proceeds of sale from the property. The appellant stated that, on those instructions, he had forwarded all proceeds of the sale to Mr Wilson. As it happened, however, during one of the hearings, the appellant eventually agreed that he ought to have equally divided and paid in equal shares the net proceeds of sale of the property to the complainant and her brother.

The principal findings of the panel

[7] In its decision dated 2 March 2017, setting out its findings of professional misconduct on the part of the appellant, the panel made some 58 findings. It is unnecessary to set them all out. It will be enough for the purposes of this appeal to set out just a few of them (to wit, numbers 22; 36-42; 48 and 49). They are as follows:

> "22. The attorney had a fiduciary duty to both Howard Wilson and the complainant Olive Constance Blake.
>
> …
>
> 36. The attorney was obliged in law to fulfill the mandate of the Will of Herbert Wilson wherein the testator had stated that 'I devise and bequeath all my real- and personal property ----to the said Olive Constance Blake and Howard Wilson in equal shares.'
>
> 37. The complainant, Olive Constance Blake, was entitled in law to the same share in the balance proceeds of sale after all legitimate expenses had been paid, as was Howard Wilson.
>
> 38. The attorney had no authority in law to send to Howard Wilson any sums to which Olive Constance Blake was entitled.
>
> 39. The attorney held the sums due to Olive Constance Blake in trust for her.
>
> 40. The attorney was obliged in law to use the funds due to Olive Constance Blake only for the purposes connected to her interests and on her sole direction.
>
> 42. By document dated the 30th April 2014 and headed Agreement, the attorney agreed to pay the sum of 2.5 million dollars to the complainant representing her share of the proceeds of sale.
>
> ….
>
> 48. The complainant has not received from the attorney any monies representing her share of the proceeds of sale of 10 Fairbourne Road after all legitimate expenses have been paid.

> 49. The Attorney breached his fiduciary duty to the complainant, if as he says, he paid over monies due to her to her brother Howard Wilson without her authority."

[8] These were the full terms of the order imposing the sanctions, as contained in the judgment of the panel dated 24 June 2017 ("the sanctions judgment"):

> "Taking all the circumstances of this cases as outlined above the panel imposes the following sanctions on the attorney
>
> • That the attorney make restitution to the complainant Olive Blake of the sums stated at p 30 of the [judgment]
>
> • Half balance proceeds of sale $1,935,913.40
>
> • Half of outstanding proceeds of sale $38,310.23
>
> • Half Transfer Tax on [Estate] Constance Wilson $91,651.92
>
> • Half Real Estate Commission $90,000.00
>
> • Half Rental and initial Retainer $84,236.85
>
> • Total $2,240, 112.40
>
> The panel confirms that all the above sums were paid to the attorneys-at-law for the complainant on the 10th April 2017 and which receipt has been acknowledged by these attorneys-at-law
>
> • It was also agreed by the attorneys-at-law for the complainant and the attorney-at-law for the attorney that the following sums be paid to the complainant.
>
> • Interest compounded in the terms ordered by the panel $858,380.22
>
> • Costs of travel and accommodation $868,475.20
>
> • Attorneys costs $2,000,000.00
>
> • Total due $3,726,855.42

> The panel so orders in keeping with the above terms of Agreement.
>
> Lastly, based on the detailed analysis of the evidence and the relevant law outlined above, and in spite of the fact that the attorney has repaid the sums incorporated in the order, and the glowing tributes made by the character witnesses of the attorney, it is the decision and order of the panel that the Attorney Michael Lorne be struck from the Roll of Attorneys-at-law entitled to practise in Jamaica, pursuant [to] Section 12 (4) (a) of the Legal Profession Act as amended."

The appeal

[9] The appellant's original grounds of appeal were as follows:

> "1. The Disciplinary Committee, in refusing the Appellant's Application for adjournment on April 5, 2014, failed to exercise its discretion judicially, having regard to the illness of the Appellant and all the prevailing circumstances, thereby breaching the principles of Natural Justice and the Appellant's Constitutional right to a fair hearing.
>
> 2. The Disciplinary Committee, in proceeding with the hearing in the absence of the Appellant on July 12, 2014, failed to exercise judicially, its discretion to adjourn the matter of its own motion, thereby infringing the principles of natural justice and the Appellant's Constitutional right to a fair hearing.
>
> 3. The sanction/sentence of striking the Appellant from the Roll of Attorneys-at-law, imposed by the Disciplinary Committee, is manifestly excessive and is not, in all the circumstances, supported by the evidence."

[10] By way of an amended notice and grounds of appeal dated and filed 7 June 2018, the following new ground was added as the first ground: ground "a":

> "a. A member of the Panel, Mrs. Pamela Benka-Coker, QC wrongfully refused to recuse herself from the hearing notwithstanding an application made for her recusal, having regards to the fact that she had earlier presided over a matter involving the Appellant in 2003, where the Attorney was unanimously found guilty of professional misconduct."

[11] The other original grounds were then retained and assigned letters instead of numbers; so that what was ground 1 in the original notice became ground b in the amended notice; what was ground 2 became ground c; and what was ground 3 became ground d.

[12] The orders sought on appeal were as follows:

> "a. The judgement [sic] of the Disciplinary Committee of the General Legal Council dated March 2, 2017 and decisions flowing therefrom dated April 26, 2017 and June 24, 2017, be set aside.
>
> b. The sentence/sanction of striking off be set aside.
>
> c. That the appellant be restored to the Roll of Attorneys-at-law entitled to practice in the several courts of the Island of Jamaica."

The hearing of the appeal

[13] When the appeal came on for hearing, however, there was a significant departure in how it was argued, from what was foreshadowed by the original and amended grounds of appeal. This was due in large measure to the contents of paragraph 31, at page 12 of the respondent's submissions. That paragraph reads as follows:

> "31. There is something incongruous about an attorney-at-law who admits the facts constituting his professional misconduct appealing the [Disciplinary Committee's] ratification of his own conclusion on the ground of a denial to him of a fair hearing in accordance with the principles of natural justice. This court may wish to ask itself, where is the miscarriage of justice that surely must underlie any such assertion? The answer, it is respectfully suggested, is that there is none, particularly in light of Mr Lorne's written agreement (constituting an undertaking by him which he is duty-bound to fulfil) that, without more, he could have been

> summarily ordered by a court to perform (without need for pleadings, viva voce evidence, etc.)."

[14] Taking a pragmatic view of the power and force of this, Mrs Minott-Phillips QC's submission, Miss Samuels commendably decided to "alter the trajectory of [her] arguments…" (as seen at paragraph 1 of the appellant's speaking notes). This led to certain important acknowledgements, to be seen in paragraphs [2] and [5] of the appellant's speaking notes, and a summary of the new trajectory of the arguments, in paragraph [6] of the said speaking notes, as follows:

> "[2]. There was an admission on Mr. Lorne's part that though he had been labouring under a different understanding of the circumstances at the time and though he did not believe he had a duty so to do at the time of his actions, having regard to his instructions from the complainant's brother, in hindsight, he did have a duty to Ms. Blake to account to her for … her half of the proceeds of sale. However, he did not do so, for reasons which, though misguided, do explain his choices at the time….
>
> [5]. Within the strict confines of the canons, his explanation aside, Mr. Lorne therefore did admit to a breach of that canon, and according to canon VIII (d), once that canon has been breached, no matter the circumstances under which that breach has been committed, such breach 'shall constitute misconduct in a professional respect'.
>
> [6]. That being said, I will essentially therefore be tailoring my arguments to address the matter of sentence. Because that strict liability imposed by the canons and Mr. Lorne's admission of a failure to account, cannot be viewed in isolation…just as a man may say, I did kill X, but I was provoked, and this Court can and has reduced his charge to a lesser one and reduced his sentence, having regard to all the circumstances of this case and in particular the reason for Mr. Lorne's actions, the sanction herein imposed by the Panel of bringing an end to Mr. Lorne's career, was manifestly excessive having regard to all the circumstances of this case."

[15] So, although Miss Samuels said that the only ground that she was abandoning was ground a, her focus, on a review of the submissions, was also not on grounds b and c; but primarily, if not exclusively, on ground d – the matter of sentence.

[16] The importance and force of the point made by learned Queen's Counsel for the respondent cannot be overemphasized. The appellant's admission to having had a duty to pay half the proceeds of sale for the property to the complainant and of failing to do so, makes it difficult, if not impossible, to understand the logic of challenging the fairness of the hearing or any other aspect of the process leading to the finding of guilt of professional misconduct. To look at the matter, using Miss Samuels' criminal-case analogy, it is like a defendant in a criminal trial originally pleading not guilty; but later changing his plea to one of guilty and, without alleging something in the nature of coercion or mistake, later seeking to challenge the conviction. Or, on the civil side, it is somewhat like a litigant entering a consent judgment after initially contesting a suit; and later seeking to set that judgment aside on the basis that the process was unfair, without advancing an argument that he entered the judgment in error or through coercion or the like. Either effort would be an exercise in futility.

[17] In the instant case, the appellant is not seeking to contend that his admission was not voluntarily and freely made or that it was due to some error, or, for example, incompetence of counsel. He is in no way seeking to retreat from his admission that he erred in not paying half the proceeds of sale to the complainant and of thereby being in breach of the canons. It, therefore, simply cannot avail him to question, as he does in grounds b and c, whether adjournments ought to have been granted in a process, the

substance of and reason for which he admitted – to wit, his breach of the canons. The appellant, it should be remembered, has also complied with all the orders made by the panel; and, in keeping with his agreement, has paid all amounts due, without demur. Neither the panel's order that he make the payments nor the quantum of the payments is being challenged in the grounds of appeal. At the end of the day, the issue of the right to a fair hearing aside, it is only the contended harshness of the sanction of striking off that is being questioned.

[18] In the light of this, the decision to focus on the sanction of striking off that was imposed (and less on those grounds of appeal challenging the fairness of the process) was, we find, a judicious one. However, grounds b and c (which aver that the panel, in refusing to grant the appellant adjournments, did not exercise its discretion judicially) were not, strictly speaking, abandoned. Though they were not argued in any detail, an attempt was made to use them in a somewhat oblique attack on the sanction of striking off that was imposed – the suggestion being that there was some lack of fairness on the part of the panel, that informed the imposition of that sanction. However, the approach that it is recommended to be taken in this analysis is to focus on the sanction of striking off itself in the circumstances of this case: it will either be found to be appropriate or harsh. Therefore, an analysis of any possible motive or other cause for the contended harshness of the sanction, would, in this approach, be wholly unnecessary.

Ground d: the sanction of striking off

Summary of submissions

[19] For the appellant, it was submitted that this court has the power, on hearing an appeal of this nature, to revisit the sanction of striking off that was imposed. Additionally, it was further submitted, this court should set that sanction aside and replace it with one that is fairer and more appropriate to this case, given the severity of the sanction, which severity is unwarranted in the circumstances.

[20] It was argued that the position advanced in **Bolton v The Law Society** [1994] 2 All ER 486, that courts should be reluctant to interfere with decisions of disciplinary tribunals, had, with the passage of time, and through later decisions, softened considerably. The original position was reflected in the dictum of Sir Thomas Bingham MR at page 490 of the judgment. There he reviewed the Privy Council decision of **McCoan v General Medical Council** [1964] 1 WLR 1107, at 1113, where it was observed as follows:

> "Their Lordships are of opinion that LORD PARKER, C.J., may have gone too far in *In Re a Solicitor* (…[1960] 2 QB 212 at page 221) when he said that the appellate court would never differ from sentence in cases of professional misconduct, but their Lordships agree with LORD GODDARD, C.J., in *In Re a Solicitor* (…[1956] 1 WLR 1312 at page 1314) when he said that it would require a very strong case to interfere with sentence in such a case, because the Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct."

[21] Of that passage, Sir Thomas Bingham observed as follows:

> "…there is no controversy about the correctness of that principle which, for the last thirty years at least, has been very clearly understood and very regularly applied."

[22] However, Miss Samuels, citing several cases, sought to convince the court that the modern approach, in a nutshell, is that an appellate court's intervention is justified if the circumstances of the case require it. For example, in the case of **Langford v Law Society** [2002] EWHC 2802 (Admin), Rose LJ at paragraph [14] was cited as saying the following:

> "…in dealing with an appeal of this kind, a greater flexibility is now appropriate than was suggested in Bolton which was decided before the coming into force of the Human Rights Act."

[23] She also pointed us to comments made by the panel on the cusp of handing down the sanctions, which, she submitted, gave a possible indication of an error or a matter which the panel incorrectly took into account and which informed the severity of the sanctions imposed. The panel had observed at page 5 of its sanctions judgment:

> "The legal reasoning in this case has been adopted in many disciplinary cases against attorneys in Jamaica and these attorneys have been struck from the Roll of Attorneys-at-law entitled to practise in Jamaica for dishonestly handling monies belonging to clients or to third parties." (Emphasis added)

That was an important reference, she submitted, as there was no finding of dishonesty in this case.

[24] On behalf of the respondent, Mrs Minott-Phillips sought to ensure that this court recognize that the appellant's lapse in this case is a serious one. The court should also, she submitted, consider the appellant's perspective on the matter which is reflected in a

letter he wrote to the complainant's brother dated 9 October 2014, in which he referred to the complainant as "a wicked and evil devil". It was submitted that the imposition of the striking-off sanction is not manifestly excessive and is supported by the evidence in this case, including the appellant's own evidence.

The considerations of the panel

[25] In coming to its decision as to the sanctions that were, in its view, appropriate in this case, the panel had regard primarily to excerpts from **Bolton v Law Society**, specifically the following portions which appear at pages 491 and 492 et seq:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness….
>
> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors….
>
> In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of

> whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

[26] The panel, at page 4 of its sanctions judgment, also made the following observation in deciding on the appropriate sanctions:

> "The panel is of the considered opinion that the unethical acts of the attorney which constituted its findings of professional misconduct against the attorney are very serious, and are extremely egregious, inexcusable and unacceptable. The conduct of the attorney totally undermines the basis of trust in attorneys-at-law on which the entire practise of conveyancing in Jamaica is based.
>
> Attorneys-at-law are expected to adhere to the highest ethical standards when dealing with the business of clients and third parties. They are obliged to account for and pay over sums of money that are due to clients as they become due. They are obliged to keep funds in trust accounts and deal with them in a manner that is wholly in the interest of and at the direction of the client. This the attorney did not do."

Discussion

[27] It is true that the position with respect to appellate courts being loath to interfere with sanctions of disciplinary tribunals, is as reflected in such cases as **In Re a Solicitor**. Similar guidance as to the approach of courts to these matters might also be seen in the case of **Bolton v The Law Society**.

[28] A perusal of later cases, however, does convey the impression that the modern-day approach is somewhat less hidebound than it originally was. For example, in the case of **The Law Society v Brendan John Salsbury** [2008] EWCA Civ 1285, it was observed by the English Court of Appeal, at paragraph [30] of the report, as follows:

> "From this review of authority I conclude that the statements of principle set out by the Master of the Rolls in *Bolton* remain good law, subject to this qualification. In applying the *Bolton* principles the Solicitors Disciplinary Tribunal must also take into account the rights of the solicitor under articles 6 and 8 of the Convention. It is now an overstatement to say that 'a very strong case' is required before the court will interfere with the sentence imposed by the Solicitors Disciplinary Tribunal. The correct analysis is that the Solicitors Disciplinary Tribunal comprises an expert and informed tribunal, which is particularly well placed in any case to assess what measures are required to deal with defaulting solicitors and to protect the public interest. Absent any error of law, the High Court must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere. It should also be noted that an appeal from the Solicitors Disciplinary Tribunal to the High Court normally proceeds by way of review; see CPR rule 52.11(1)," (Emphasis added)

[29] The reference to "the Convention" has to do with the European Convention on Human Rights, from which the Human Rights Act of 1998 originates. The reference to article 6 (the same in both documents) relates to the right to a fair and public trial; whereas the reference to article 8 relates to the right to protection of one's family and private life. The latter article is, of course, not relevant here. However, article 6 has its approximate equivalent in section 16 of the Jamaican Charter of Fundamental Rights and Freedoms. Reference to the provisions in the Convention and the Human Rights Act just

seems to us to call for a greater awareness on the part of disciplinary tribunals of the rights of persons appearing before them and to try as much as possible to ensure that the requirements of due process are followed.

[30] Accordingly, the intervention of the appellate court in matters of sentencing, imposed by the disciplinary tribunal ought to be limited to cases where errors of law exist or where the sentence is demonstrated to be clearly inappropriate.

[31] In reviewing this matter and considering how it should be resolved, we also remind ourselves of our powers as an appellate court, pursuant to section 17 of the Legal Profession Act. That section sets out the powers of this court on hearing appeals from panels of the disciplinary committee. It reads as follows:

> "17.-(1) The Court of Appeal may dismiss the appeal and confirm the order or may allow the appeal and set aside the order or may vary the order or may allow the appeal and direct that the application be reheard by the Committee and may also make such order as to costs before the Committee and as to costs of the appeal, as the Court may think proper:
>
> Provided that in the rehearing of an application following an appeal by the attorney no greater punishment shall be inflicted upon the attorney concerned than was inflicted by the order made at the first hearing."

[32] As such, it is open to this court to make orders for the just disposal of the appeal.

[33] It is recognized that there have been several cases heard by this court over the years in which this court, whilst being aware of the guidance given in **Bolton v Law Society**, has nonetheless found it necessary to adjust sanctions imposed on appellants in decisions of the disciplinary committee of the GLC. Among such cases are **Audley**

Melhado v The General Legal Council [2014] JMCA Civ 41; and **Ian Robins v The General Legal Council** [2019] JMCA Civ 30, for example. On the other hand, this court has, in other cases, also upheld striking-off sanctions imposed by the disciplinary committee – even in cases not involving dishonesty. One such case is that of **Hopeton Karl Clarke v The General Legal Council** [2021] JMCA Civ 12. This court, therefore, gives each case careful consideration, based on its own circumstances. So that, while we give all due respect and consideration to the decisions of the very experienced panel in this case, we are yet duty bound to review all the circumstances to see whether it was fair and just for the ultimate sanction of striking off the Roll to have been imposed.

[34] In considering the appropriateness of the sanction of striking off the appellant from the Roll of attorneys-at-law entitled to practise in Jamaica, consideration has been given to section 12(4) of the Legal Profession Act. That section prescribes the sanctions that can be imposed on the hearing of a complaint. It provides as follows:

> "(4) On the hearing of any such application the Committee may, as it thinks just, make one or more of the following orders as to-
>
> (a) striking off the Roll the name of the attorney to whom the application relates;
>
> (b) suspending the attorney from practice on such conditions as it may determine;
>
> (c) the imposition on the attorney of such fine as the Committee thinks proper;
>
> (d) subjecting the attorney to a reprimand;

(e) the attendance by the attorney at prescribed courses of training in order to meet the requirements for continuing legal professional development;

(f) the payment by any party of costs of such sum as the Committee considers a reasonable contribution towards costs; and

(g) the payment by the attorney of such sum by way of restitution as it may consider reasonable,

So, however, that orders under paragraphs (a) and (b) shall not be made together."

[35] Accordingly, on the facts of this case, the panel would have imposed sanctions pursuant to paragraphs (a), (f) and (g). There can be no doubt that a panel of the disciplinary committee of the GLC is authorised to strike attorneys-at-law off the Roll. However, such a sanction, being the most draconian of those provided, must be appropriate to the circumstances of the particular case. This is demonstrated in the dicta of Sir Thomas Bingham in **Bolton v Law Society** where at page 491 it was observed as follows:

"Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the Tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind

> would the Tribunal be likely to regard as appropriate any order less severe than one of suspension." (Emphasis added)

[36] One matter that is of great concern is the panel's reference, as the last matter in its discussion of **Bolton v Law Society**, to the following:

> "The legal reasoning in this case has been adopted in many disciplinary cases against attorneys in Jamaica and these attorneys have been struck from the Roll of Attorneys-at-law entitled to practise in Jamaica for dishonestly handling monies belonging to clients or to third parties. These decisions by the Disciplinary Committee have been upheld by the Court of Appeal." (Emphasis added)

[37] It is not unreasonable to conclude that, implicit in this reference to striking dishonest lawyers from the Roll and then proceeding immediately thereafter to impose the said sanction, is the presumption that the appellant also handled clients' money dishonestly. However, of its 58 findings in the complaint brought against the appellant, none related to dishonesty in the strict or usual sense. There was a reference to "unethical acts"; but this seems to be a reference to a breach of professional standards, rather than to dishonesty. It is important as well to remember that what was before the panel was one complaint of failing to account to the complainant when reasonably required to do so. To establish this did not require proof of any *mens rea* or other component of dishonesty. There were certain references by the complainant to what she said were acts of the appellant, which, if they had been pursued and proven to the satisfaction of the panel, could possibly have led to such a conclusion; but the complaint was never amended to include any matter other than the failure to account; and so consideration of any of those other matters would have been improper. In fact, the panel stated that it was not taking those matters into account.

[38] In criminal cases that come before the courts, a sentence that at first seems harsh, might later come to be accepted as being appropriate when previous convictions are taken into account. However, the panel clearly indicated that it was not taking any previous interaction between itself and the appellant into account. So, to all intents and purposes, the appellant would have been dealt with by the panel as an attorney-at-law running afoul of the canons for the first time.

[39] Although this court gives every deference to the panel in its finding of guilt of the complaint alleged, the actions of the appellant in relation to the complainant strike us as being more in the nature of professional naïveté bordering on, if not directly amounting to, gross negligence. It seems that the appellant's conduct in this case and in relation to this complainant could very well have come about due to a lack of familiarity with the law and practice in the area of conveyancing and probate of wills and the interplay of those two areas of law and practice. In the circumstances of this case, the appellant's conduct, though wholly unacceptable and a flagrant departure from acceptable professional standards, could not reasonably be regarded as giving rise to dishonesty.

[40] In again weighing the suitability or otherwise of the imposition of the sanction of striking off, we observe that the appellant, despite his earlier challenging of the complaint, towards the end of the proceedings, complied with the requirement of the sanctions imposed on him for the payment of money to the complainant amounting to $2,240,112.40. He also agreed to pay certain other sums amounting to $3,726,855.42. He has therefore paid a total of $5,966,967.82. By doing so, he has made full restitution to the complainant and complied with all the orders of the panel, thus putting the

complainant in the position in which she would have been, had he not committed a breach of the canons. The applicant has also paid, as a part of these payments, a sum as compound interest. All in all, he has therefore co-operated in helping to lessen the impact of his breach that was felt by the complainant.

[41] Against the background of all these circumstances, we do not consider that the imposition of the ultimate sanction of striking off was appropriate in this case. It seems to us that the panel's desire to comply with the purposes of disciplinary tribunals, discussed in **Bolton v Law Society**, could have been adequately met by a sufficiently-lengthy period of suspension. This, to us, could be coupled with a directive that the appellant complete, say, 10 credits in continuing legal professional development courses, sanctioned by the GLC's accreditation committee, in client welfare and business management with an emphasis on conflict of interest. That would be in addition to the yearly requirement of accumulation of the minimum of credits required of all attorneys-at-law. It is proposed that the court also grant the parties liberty to apply in respect of this aspect of the order, in an effort to facilitate its smooth execution.

[42] Additionally, in relation to the question of the costs of this appeal, in light of the fact that each party has been successful (or, looked at conversely, unsuccessful) on different parts of the appeal, the fairest order in relation to costs is for each party to bear its own costs of the appeal. If either party disagrees, then the appellant or the GLC may file and serve, within 14 days of the date of this order, submissions outlining its position, with the other party replying within seven days of being served. Otherwise, the order that each party bear its own costs of appeal shall stand.

[43] In the result, with apologies for the delay, the following are the orders that are being proposed:

1. The appeal is allowed in part as follows:

   (i) The judgment of the panel dated 2 March 2017 is affirmed.

   (ii) The judgment of the panel dated 26 April 2017 is affirmed.

   (iii) The sanctions judgment of the panel dated 24 June 2017 is varied in that the order that the appellant be struck from the Roll of Attorneys-at-law entitled to practise in Jamaica is set aside and substituted therefor are the following orders:

      (a) That the appellant be suspended from practicing as an attorney-at-law for a period of five years, commencing from 24 June 2017.

      (b) Before being restored to the Roll of attorneys-at-law entitled to practise in Jamaica, the appellant shall successfully attain 10 credits in continuing legal professional development courses, approved by the GLC's Accreditation Committee, relating to the areas of client welfare, and business management with an emphasis on conflict of interest, in addition to any other usual requirement imposed on all attorneys-at-law entitled to practice in Jamaica.

(c) There shall be liberty to apply with respect to this part of the court's orders.

(iv) The sanctions judgment of the panel dated 24 June 2017 is affirmed in all other respects.

2. Each party is to bear its own costs of the appeal.

3. If either party is dissatisfied with the order as to costs of the appeal, he/it may file and serve written submissions within 14 days of the date hereof in respect of the order being contended for; with the other party being required to file and serve written submissions in reply within seven days of being so served.

4. Failing the filing of the said submissions, order 2 shall stand as the order in respect of costs.

P WILLIAMS JA

[44] I have read in draft the judgment of F Williams JA and agree with his reasoning and conclusion. There is nothing that I wish to add.

STRAW JA

[45] I too have read the draft judgment of F Williams JA. I agree with his reasoning and conclusions and have nothing to add.

F WILLIAMS JA

ORDER

1. The appeal is allowed in part as follows:

(i) The judgment of the panel dated 2 March 2017 is affirmed.

(ii) The judgment of the panel dated 26 April 2017 is affirmed.

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(c) There shall be liberty to apply with respect to this part of the court's orders.

(iv) The sanctions judgment of the panel dated 24 June 2017 is affirmed in all other respects.

2. Each party is to bear its own costs of the appeal.

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4. Failing the filing of the said submissions, order 2 shall stand as the order in respect of costs.