DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL

COMPLAINT No. 145/2001

BETWEEN	**DORIENNE ROWAN-CAMPBELL**	**THE COMPLAINANT**
AND	**ETHLYN NORTON-COKE**	**THE RESPONDENT**

THE PANEL: NORMA LINTON Q.C., RAYMOND KING, ALLAN S. WOOD

MR. C. DENNIS MORRISON Q.C. appearing for the Complainant.

No appearance by the Respondent.

Date of hearing: 22nd February 2003, 3th July 2003

PROCEEDING ON THE COMPLAINT

1. The Complaint was laid on 26th April 2001, and arises out of an agreement made by the Complainant in May 1996 to sell the premises comprised in Certificate of Title registered at Volume 921 Folio 3, known as 9 Barton Aerie, Hermitage, in the parish of St. Andrew to John Hendrickson and Ralph Hendrickson for the price of $5,900,000.00. The Respondent acted in the sale on behalf of the Complainant.
2. The Complaint against the Respondent was summarised in the Complainant's Affidavit in support of the Complaint sworn on 26th April 2001 as follows:
   i. She failed to provide final accounts of the sale transaction.
   ii. She failed to act to protect my interests in a timely manner.
   iii. She failed to respond to my urgent and repeated instructions.
   iv. She failed to keep me informed, despite repeated requests for information.
3. The notice of the date for the hearing of the Complaint was duly served on the Respondent through the registered post on 15th January 2003, which was substantiated by Affidavit of Marvalyn Walker sworn to on 20th February 2003. The Respondent did not appear at the hearing and there was no explanation for her absence. In the circumstances, the Panel proceeded with the hearing of the Complaint in accordance with Rule 8 of the Fourth Schedule of the Legal Profession Act.
4. The Complaint was supported by Affidavit and viva voce testimony of the Complainant and a number of documents were admitted as exhibits during the course of her testimony. The Panel accepts the Complainant's evidence as truthful.

THE EVIDENCE AND FINDINGS OF FACT

5. The Complainant's evidence was that in May 1996 she executed a written agreement for the sale of her premises for $5.9 million. The agreement (an undated copy of which was admitted into evidence as

exhibit 1) stipulated the date for completion as 15th August 1996. The Complainant was assured by the Respondent that the transaction would be completed by the stipulated date. The agreement was subject to the purchasers obtaining a mortgage from Victoria Mutual Building Society in the sum of $2,000,000.00 within 60 days of delivery of a signed agreement, failing which the agreement could be rescinded by notice in writing given within 14 days. It has to be assumed that the purchasers obtained the mortgage commitment as stipulated, for there was no correspondence from the Respondent to the purchasers' attorney making mention of any delay on that account or for that reason invoking either the right to rescission or demanding payment of interest.

6. Clause 9 of the agreement contained an express stipulation for payment of interest at the rate of 30 percent per annum should the purchasers default in making payment, and as some of the issues for determination turns on this clause, same is set out verbatim as follows:

> "If any amount payable under this Agreement is paid after the due date for payment interest shall be payable on such sum from the day next immediately after the due date to the date of actual payment at the rate of no less than 30% per annum provided that the delay in payment is attributable to the default of the Purchasers and/or their mortgagee..."

7. The genesis of the complaint arises from delay in the completion of the sale. It was the Complainant's evidence that for much of the time she was off the Island as she was employed as an international consultant. The Complainant was therefore totally reliant upon the Respondent to protect her interests and to implement her instructions. The stipulated date for completion had passed, despite verbal assurances made to the Complainant by the Respondent that the agreed date for completion would have been met. As recorded in a facsimile from the Complainant to the Respondent dated November 25, 1996 (exhibit 2), the Respondent had informed her at the end of August 1996 that the sale would be complete by September 30, 1996 and that the Complainant was not to make mortgage payments or renew the insurance on the premises. When there was no prospect of completion in September, the Complainant was then informed by the Respondent that the purchasers had undertaken to pay rental in exchange for possession and that the closing would take place in October.

8. Relying upon the fact that the Respondent would implement her instructions, the Complainant verbally instructed the Respondent to allow the purchasers to have possession provided that the Respondent secured the purchasers' agreement to pay rental of $45,000.00 per month. The Respondent was abroad at this time and had no direct dealings with the purchasers; rather she relied on the Respondent

to give effect to her instructions and she was told by the Respondent that payment of rental was agreed. Acting on the assurance that the Respondent had complied with her instructions to secure a rental agreement, the keys to the premises were delivered to the purchasers in September 1996.

9. Thereafter the month of October having passed without completion, the Complainant followed up by facsimile to the Respondent dated 25th November 1996 (exhibit 2) to which reference has already been made.

10. By December 1996 no rental had been received and the Complainant was in a difficult position, as, also based on the Respondent's advice, she had ceased making mortgage payments and with the delay, she was now running the risk of incurring penalties. On a visit to the Island, she gave the Respondent explicit instructions in writing on December 16, 1996 (exhibit 3 delivered by facsimile and by hand) to pursue collection of interest as follows:

> "I am back but find you are abroad. I am very concerned that nothing has happened in my absence.
>
> 1. Further to your stated intent to collect an interim payment from the purchasers' house and despite my authorization that any payment made in my absence be made out to my husband nothing has been received either in his name or in mine.
> 2. Let me remind you Ethlyn that I am receiving:
>   - no interest on the moneys held against the sale of the house
>   - No rental and the tenants/purchasers have been domiciled there since September
> 3. On your instruction, I ceased paying my mortgage. You explained that the deal was closing and further payments should not be made. VMBS contests this and warns me that penalties are accruing for non-payment and that my credit rating is also being jeopardized. I do not have enough money to pay off what is owing on the mortgage.
> 4. I have been pressing you since October to apply clause 9 of the agreement whereby, being in default of the agreement a 30% interest is payable on the sum paid after due date. I have had no confirmation that you have applied the penalty clause.

I urgently need an update on the situation and to learn of your plans to finalize the sale so that I can be paid immediately."

11. A payment of $500,000.00 was forthcoming from the purchasers in January 1997. Unbeknown to the Complainant Respondent at that time, the Respondent had not complied with her instructions to claim interest and rental but rather made an arrangement with the purchasers' attorney, Mr. David Wong Ken, for a payment of $500,000.00 on account of the purchase price in exchange for early possession, as confirmed by letter dated 11th December 1996 (exhibit 9) from Mr. Wong Ken to the Respondent. This letter was discovered by the Complainant in April 1997 when she secured a copy of the Respondent's file. The letter, exhibit 9 stated as follows:

> "We acknowledge your request to advance an amount to Mrs. Viola Miller to cover the Vendor's obligation to pay the real estate commission. We have attempted to reach the Purchasers but we are afraid that they may be away from the Island until after Christmas. We will continue to our effort to locate our clients.
>
> We further acknowledge your request that the payment of $500,000.00 being made on account of purchase price and in exchange for early possession is to be made to the Vendor's husband, Gladstone L.I. Fisher. We are pleased to enclose this firm's cheque made payable to Mr. Fisher in said amount.
>
> Please acknowledge safe receipt by signing and returning the copy letter provided for that purpose."

12. At no stage of the transaction does it appear that the Respondent complied with the Complainant's instructions to secure payment of rental and interest, while the purchasers were in possession and proceeded to make alterations to the dwelling house prior to completion.
13. As is confirmed by copy of the Certificate of Title, registered at Volume 921 Folio 3 (exhibit 12) the title was transferred to the purchasers on 1st April 1997. Under cover of letter dated 2nd April 1997 addressed to the Complainant (exhibit 11A) Mr. David Wong Ken advised that, acting on the instructions of the Respondent, he was tendering his firm's cheque for the sum of $1,881,728.00 being the balance of purchase price due that was not covered by the mortgage loan. No mention was made of interest or rent.
14. The Complainant's evidence continued that on one of her visits to the Island in February 1997, she met with the Respondent at her office and insisted that the Respondent provide a draft account. To use the

Complainant's exact language as to how this draft account was obtained - "Standing over her in her office she faxed it to me." This draft account dated 28th February 1997 was admitted as exhibit 14. It is noticeable that the draft account contained no items for payment of rental or interest and therefore clearly supports a finding that the Respondent had not taken steps in the protection of her client's interests to have the purchasers agree to payment of rental prior to allowing them into possession. The Respondent had failed to comply with her client's instructions in that regard. Significantly, the Respondent's file, which was copied by the Complainant in April 1997, contained no document, note or record of a rental agreement made by the purchasers.

15. The Complainant faxed and delivered a document to the Respondent on 28th February 1997 (exhibit 15) responding to the draft account and identifying that such an account should in her view contain provision for rental and interest. The Complainant received no response nor has she received a copy of a final account. It is requisite for the vendor's attorney, having carriage of sale, to prepare and deliver such an account in the course of the process of completion, so that the parties will have certainty as to the correct balance which must be paid at completion. The delivery of the draft account was in our view not sufficient and not a proper or adequate compliance with the duty owed by the Respondent to render a correct final account at completion of the sale.
16. The Complainant never received from the Respondent a final statement of account reflecting the balances paid and the balances remaining outstanding (if such be the case) as is customary and requisite in a sale of land transaction. Repeated requests for a closing statement were made to the Respondent by the Complainant's Counsel, Mr. Morrison, by letters dated 14th August 1998, 27th November 1998, 2nd March 1999 and 15th August 1999, (exhibits 16 A to E) respectively. These letters never begat the courtesy of a response from the Respondent nor has she responded to the Complaint filed on 26 April 2001.
17. Having regard to the evidence tendered in support of the Complaint, which we have set out in abbreviated form, we find that the Complaint against the Respondent has been established beyond reasonable doubt and that the Respondent acted in complete dereliction of her duty to protect her client.

DUTIES OWED BY THE RESPONDENT TO THE COMPLAINANT

18. The duties owed by the Respondent to the Complainant were the normal duties of any attorney acting in a sale of land transaction on behalf of a vendor, and having carriage of the sale. Particularly where, as in this case, the Respondent had recommended to her client that the purchasers be allowed to enter

possession prior to completion, the Respondent owed a duty to the Complainant to ensure that there was compliance with her instructions to secure the purchasers' agreement to pay rental, prior to allowing the purchasers into possession.

19. We find that, as is alleged in the Affidavit in support of the Complaint, the Respondent failed to heed or respond to her client's repeated instructions and that she failed to act in the protection of her client's interests. This is the obvious and basic duty of an attorney which is set out in the Cordery on Solicitors 8th Edition at page 137 as follows:

> **"To protect the client's interest**
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> The exact scope of the solicitor's duty to protect his client's interest is difficult to define, but he should at least
>
> a) carry out his instructions in the matters to which the retainer relates, with diligence and by proper means;
> b) consult with the client on all questions of doubt which do not fall within the express or implied discretion left to him; and
> c) keep his keep his client informed to such an extent as may be reasonably necessary, and comply with reasonable requests from the client for information about his affairs."

20. Moreover on the evidence of the Complainant, which we accept, she received verbal assurances from the Respondent that her instructions to secure a rental agreement from the purchasers' had been performed. In the circumstances this was a deception perpetrated by the Respondent upon her client, which led to the delivery of the keys for the premises to the purchasers.

21. The duty to provide the Complainant with a final closing account as to the balance due (if any) was another obvious and elementary duty owed by the Respondent to the Complainant, which was completely ignored by Respondent. Up to the date of the hearing of the Complaint, almost 6 years from the date of the registration of the transfer to the purchasers, the Complainant does not know what if anything is held by the Respondent to her account and what is the balance, if any, which is due from the purchasers.

22. In summary therefore, we find that:

    i. In breach of Canon VII (b) of the Legal Profession (Canons of Professional Ethics) Rules, the Respondent has failed to account to her client for all moneys in the hands of the attorney for the account or credit of the client when reasonably required to do so.

ii. In breach of Canon IV (s) of the Legal Profession (Canons of Professional Ethics) Rules, the Respondent has acted with inexcusable and deplorable negligence and neglect in the performance of her duties

iii. In breach of Canon IV (r) of the Legal Profession (Canons of Professional Ethics) Rules, the Respondent has failed to deal with her client's business with all due expedition and she has failed to provide her client with all information as to the progress of the client's business with due expedition.

iv. In breach of Canon I (b) of the Legal Profession (Canons of Professional Ethics) Rules, the Respondent's behaviour has tended to discredit the legal profession.

RESTITUTION UNDER S. 12(4) (c) LEGAL PROFESSION ACT

23. Learned Counsel for the Complainant submitted at the hearing that, pursuant to section 12(4) (c) of the Legal Profession Act, the Complainant, as a person aggrieved by the Respondent's professional misconduct, was entitled to an order by way of restitution against the Respondent. The submission continued that the total sum ordered to be paid should be equivalent to the rental and interest which ought to have been collected by the Respondent in compliance with her client's instructions.

24. There is no doubt that among the powers conferred on the Disciplinary Committee to sanction professional misconduct is the power to order payment by way of restitution. Such an order can be made in addition to or in lieu of other orders such as a reprimand, fine, suspension or striking off. The question is whether it is appropriate to make such an order for restitution on the facts of the present case?

25. This question is frequently avoided by the expedience of the Disciplinary Committee making an order for the attorney to pay a fine and directing that all or a part of the fine be paid over to the Complainant. This is a power conferred by section 12(5) of the Act. However there is an essential difference between an order for payment of a fine and an order for payment by way of restitution.

26. The levying or imposition of a fine is essentially the exercise of a penal jurisdiction. Though this jurisdiction must be exercised reasonably and judiciously, taking into account relevant considerations such as the gravity of the misconduct, the exercise of such a power is intrinsically dependent on the discretion of the particular panel and therefore this is somewhat of an arbitrary power, particularly as to the quantification of the fine and its apportionment, which may or may not reflect the loss suffered by the aggrieved party.

27. The order for restitution is not penal but entirely compensatory in nature, and for that reason there is

no element of arbitrariness as described above; rather such an order ought to reflect the true quantum of the recoverable loss suffered by the aggrieved party as a consequence of the attorney's professional misconduct and breach of duty. The assessment of the quantum of loss therefore falls to be made in accordance with well established principles.

28. However, particularly within the last decade, the word "restitution" has acquired a somewhat technical meaning, as referring to the recovery of money on the principle of unjust enrichment. Although the Respondent failed to render a final account in the transaction and there was some suggestion that there may remain sums in her hands for the Complainant, we find that there is no evidence to the requisite standard of proof to give rise to an application of the principle of unjust enrichment. The issue arises whether the power to order a payment by way of restitution is limited to situations of unjust enrichment.

29. The power conferred by section 12(4)(c) of the Act to order payment by way of restitution is not, in our view, limited to instances of unjust enrichment or unjust taking by an attorney. Rather it has been long accepted by the Disciplinary Committee that the word "restitution," as used in the Act, is to be interpreted in accordance with the wider and more general meaning of that word deriving from the concept of "restitutio in integrum," that is to say, the placing of the aggrieved person who suffers loss as a consequence of the attorney's misconduct, back to the original position, insofar as this can be done by ordering a monetary payment. The meaning of the word "restitution" is so treated in the older works on damages such as **Halsbury's Laws of England 3rd Ed Vol. 11 pars. 400 – 401**. This wider principle of restitution was applied by the Disciplinary Committee in making an order for payment to a party who was not a client, when an attorney had dishonoured an undertaking to that party, an order which was upheld by the Court of Appeal in **Morris v General Legal Council (1985) 22 JLR 1.**

30. A contrary and more limited interpretation of the power conferred by section 12(4) (c) of the Act would, in our opinion, place an unwarranted restriction upon the powers of the Disciplinary Committee to deal effectively with acts of professional misconduct. Such powers were originally part of an unlimited jurisdiction historically exercised by the Supreme Court, and which have been delegated to the Disciplinary Committee by the Act of Parliament; a point noted in the analysis of the Jamaican Act in the unreported judgment of the Full Court of the Supreme Court, delivered by Clarke J., in **R v Disciplinary Committee of the General Legal Council ex parte McCalla suit M 75/92** (delivered April 30, 1993) at page 6 as follows:

> "How did the Disciplinary Committee as distinct from the judges come to be

vested with such a jurisdiction? Lord Denning gives the historical background: 'By common law of England the judges have the right to determine who will be admitted to practise as barristers and solicitors, and as incidental thereto the right to suspend or prohibit from practice. In England this power has for a very long time been delegated, so far as barristers are concerned, to the Inns of Court; and...so far as solicitors are concerned, to the Law Society. In the colonies the judges have retained the power in their own hands, at any rate, in those colonies where the profession is 'fused': **Attorney General of the Gambia v N'Jie [1961] 2 All ER 504 at 508 (PC)**

The Legal Profession Act, 1971 of the Parliament of independent Jamaica fused the profession and created in place of barristers and solicitors practitioners known as attorneys-at-law. At the same time the Act delegated the disciplinary jurisdiction to a Disciplinary Committee appointed by the General Legal Council, itself established by the Act."

31. It is also for the same reason that s. 15 (3) of the Act stipulates that, upon filing with the Registrar of the Supreme Court, the orders of the Disciplinary Committee shall be acted upon and enforced in the same manner as a judgment of the Supreme Court to the like effect.

RESPONDENT CAUSED LOSS TO THE COMPLAINANT

32. The argument could be made on the Respondent's behalf that the Complainant could have pursued an action for rent and interest against the purchasers during the intervening period following completion of the transfer of title for the premises. Such an argument would, in our view, be entirely untenable and spurious, as it ignores the invidious position in which the Complainant was placed by the Respondent's defaults and dereliction of duty as the vendor's attorney having carriage of sale. Had the Respondent discharged her duties to the Respondent, there would, in all likelihood, have been no need to pursue any such claim or action, for the purchasers ought not to have been allowed into possession until the issue of payment of rental or interest was resolved and agreed. If the Respondent had doubts concerning the purchasers' ability to pay, in order to protect the Complainant, the purchasers could also have been required to provide an undertaking for such payment from their attorney or from a reputable financial institution. None of these obvious precautions were adopted by the Respondent in protection of her client's interests prior to allowing the purchasers to take possession. Such precautions would have avoided any need to pursue a claim against the purchasers after the premises had been

transferred. Further the failure of the Respondent to render a proper final account reflecting sums collected, as well as the correct sum remaining due inclusive of rental and/ or interest, also rendered such a claim against the purchasers fraught with expense but with little prospect of a certain outcome.

33. For the reasons, which we have endeavoured to set out in detail, the Panel is of the opinion that the Complainant is entitled to an order for restitution reflecting the loss caused by the Respondent's breaches and professional misconduct. What is that loss?

CLAIMS FOR RENT AND INTEREST

34. As to the actual quantum of loss suffered by the Complainant, Mr. Morrison submitted that an order should be made for the sum which represents rental as well as interest at the rate of 30 per cent per annum on the balance purchase price for the period of 7 months, from September 1996 to April 1997, when the purchasers had possession pending completion. To substantiate that the Complainant would have been entitled to both the rental and interest from the purchasers for the period of possession prior to completion, the learned Counsel cited the opinion of the Judicial Committee of the Privy Council in Sale v Allen (1987) 36 WIR 294. In that case their Lordships were of the opinion that interest should be paid on the balance purchase price by a purchaser in possession and in receipt of the rents and profits from the property pending completion, notwithstanding that there was an agreement made by the vendor and the purchaser for payment of rental of $10.00 per month.

35. However, though we do so with utmost respect, the Panel does not agree with Counsel for the Complainant that the case of Sale v Allen is authority for the proposition that a vendor can recover both rent as well as interest from a purchaser who is allowed to take possession prior to completion. As we understand it, the general rule is that when a vendor permits a purchaser to enter into possession pending completion of the sale, the vendor is entitled to receive interest on the unpaid balance of the purchase price or a sum which represents mesne profits and rent but the vendor is not entitled to both. Their Lordships in the case cited can not be taken as derogating from this general rule, for in that case they were at pains to note, at page 229A-B, that the agreement for the payment of rent was but a nominal sum which was agreed by the vendor because of an apprehension that the purchaser might otherwise obtain a possessory title. Their Lordships therefore found that this arrangement did not displace the ordinary rule that interest should be paid on the balance purchase money during the period of the purchasers' possession pending completion.

36. The decision in Sale v Allen may be contrasted with Manchester Beverages Limited v Williams (1984) 21 JLR 277, where in making an order for specific performance of a contract for sale of land, Alexander

J. (Ag) made no award in favour of the vendor who had collected rental from the purchaser in possession, which was equivalent to interest on the unpaid balance of purchase price. This decision was affirmed on appeal, reported at (1986) 23 JLR 207 and particularly see the judgment of Campbell JA who dealt with this point at 223 A-D.

37. The general rule is expressed at Halsbury's Laws of England 4th Ed., Volume 42 at par 194 in this way:

> "A Vendor's right to interest
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> As a general rule, as soon as the vendor ceases to be entitled to receive the rents and profits for his own benefit, he becomes entitled to interest on the unpaid purchase money until actual payment. The right to interest may be either an implied or an express term of the contract."

38. It is therefore clear that the vendor's entitlement to receive interest only arises upon the cessation of an entitlement to receipt of rents and profits from the land. This supports that the vendor is not generally entitled to receive both rent and interest from the purchaser in possession.

APPLICABILITY OF CLAUSE 9 OF THE SALE AGREEMENT

39. Was the Complainant entitled to receive interest at the rate of 30 per cent per annum as stipulated by clause 9 of the Agreement, exhibit 1? Mr. Morrison submitted that that clause was an express term of the contract, and was therefore applicable. Again, but with utmost respect, we do not agree. Clause 9 did stipulate that interest at the rate of 30 per cent per annum should be paid on outstanding sums, where the purchasers' delay in making payment was attributable to default or breach whether committed by the purchasers or the mortgagee. Clause 9 was therefore an express term dealing with liability to pay interest upon occurrence of a default or breach by the purchasers or the mortgagee in making payment of the balance purchase price after same had fallen due. The rate stipulated was therefore, as described by the Complainant, "a penal" or extremely high rate, as compared to interest on judgment debts, which is now fixed at 12 per cent per annum.

40. Further there is no evidence to support a finding that the delay in completing the agreement from August 15, 1996, the agreed date for completion, was due to the purchasers' default or breach. To the contrary the documentary evidence reveals that, in addition to making a substantial part payment in January 1997, the balance purchase price owed by the purchasers was tendered immediately upon registration of the transfer, by letter from Mr. Wong Ken dated April 2, 1997, to which reference has already been made.

41. There is nothing in clause 9 which suggests that that "penal" rate of interest should also be payable where the purchasers were given early possession prior to completion. That was an entirely different situation not contemplated by the Agreement and an entirely different situation from that dealt with by clause 9, as, by taking early possession, the purchasers could not by any stretch be described as being in default. To interpret or construe clause 9 as making provision for the payment of interest at the rate of 30% on the unpaid balance of purchase money while the purchasers were in possession pending completion, would require the Panel to rewrite the Agreement or at least to write into the clause an amendment to cover a situation not expressly dealt with in the Agreement. However it seems to the Panel to be unlikely, if not wholly unreasonable, to expect, and therefore impossible to imply, that the purchasers would have agreed to the payment of interest on the balance of purchase price at the exorbitant interest rate stipulated by clause 9 as the consideration for taking early possession, had this been broached to them in September or October 1996. The agreement for sale stipulated that the balance purchase price payable on completion was $5,015,000.00. That sum was reduced in January 1997 , when a part payment of $500,000.00 was received by the Complainant, and was further reduced by a payment of $1,881,728 on April 2, 1997 and on the testimony of the Complainant, the proceeds of the purchasers' mortgage financing was not received until the month of May 1997. The Complainant would be entitled to interest at a reasonable rate on the balance purchase price for the period that the purchasers were in occupation prior to completion.
42. Had the Respondent complied with the Complainant's instructions, the purchasers would not have been allowed into possession of the premises in September 1996 without their agreement to pay a monthly rental of $45,000.00. That monthly sum, in our view, also approximates to what would be assessed for reasonable interest on the balance purchase price in lieu of rent, if the Panel is correct that clause 9 was not applicable while the purchasers were in possession prior to completion, in absence of proof of the purchasers' default. This monthly amount for the period to completion, in our view, reflects the loss suffered by the Complainant as a consequence of the Respondent's misconduct. The Panel considers that it would be appropriate to award the Complainant restitution for the loss suffered due to the Respondent's non-compliance with her instructions and professional duties by awarding a sum of $45,000 per month for the period of the 7 month delay from September 1996 to April 1997 which amounts to $315,000.00. Interest should also be paid by the Respondent on this sum from 30th April 1997 at the rate of 12 per centum per annum.

SANCTION FOR MISCONDUCT

43. In addition, depending on the gravity of the attorney's misconduct, there is often an element in the orders of the Disciplinary Committee which has to be penal in nature. However the principal purpose of such an order is not to punish, though such may be the effect. Rather such orders are intended to protect the public and to maintain the reputation and trustworthiness of the legal profession by dissuading repetition of such acts of misconduct. This is not a novel principle nor is it a principle limited in application to the legal profession. In delivering the opinion of the Judicial Committee of the Privy Council, sitting on appeal from a decision of the United Kingdom General Medical Council, Lord Rodger of Earlsferry stated in Gupta v The General Medical Council (PC No 44 of 2001, unreported judgment December 21, 2001) at par 21:

> "It has frequently been observed that, where professional discipline is at stake, the relevant committee is not concerned exclusively, or even primarily, with the punishment of the practitioner concerned. Their Lordships refer, for instance, to the judgment of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512, 517H – 519E where his Lordship set out the general approach that has to be adopted. In particular he pointed out that, since the professional body is not primarily concerned with matters of punishment, considerations which would normally weigh in mitigation of punishment have less effect on the exercise of this kind of jurisdiction. And he observed that it can never be an objection to an order for suspension that the practitioner may be unable to re-establish his practice when the period has passed. That consequence may be deeply unfortunate for the individual concerned but it does not make the order for suspension wrong if it is otherwise right. The Master of the Rolls concluded at p 519H:
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> 'The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.'"

44. Regard must be had not merely to the Respondent's dereliction of her duties to her client during the course of the transaction, but, particularly to her casual disregard of her duties while assuring the Complainant that a rental agreement had been made by the purchasers to induce the Complainant to

part with possession, her subsequent refusal or failure to render an account and to provide information despite numerous requests made by letters from Mr. Morrison and her refusal or failure to respond to the Complaint or to appear at the hearing of same. Having taken all these factors into account, though the Respondent's misconduct is not at the extreme end of the scale, it is appropriate that there be a penal element as a deterrent to repetition of such misconduct by the Respondent. It is therefore proper, we believe, to order that the Respondent pay to the General Legal Council a fine of $50,000.00.

SUMMARY

45. Having regard to the foregoing it is hereby ordered:

i. Pursuant to section 12 (4) (c) of the Legal Profession Act the Respondent, Ethlyn Norton- Coke is to pay to the Complainant the sum of $315,000.00 with interest accruing thereon at the rate of 12 per centum per annum from April 30,1997 to the date of payment.

ii. Pursuant to section 12 (4) (a) of the Legal Profession Act the Respondent, Ethlyn Norton-Coke is pay to the General Legal Council a fine of $50,000.00.

iii. Pursuant to section 12 (4) (b), in addition the Respondent, Ethyln Norton-Coke is to pay to the Complainant costs in the sum $20,000.00.

Dated the 30th day of July 2003

NORMA LINTON Q. C.

RAYMOND KING

ALLAN S. WOOD