

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE V HARRIS JA
THE HON MRS JUSTICE DUNBAR GREEN JA**

MISCELLANEOUS APPEAL NO 2/2017

**BETWEEN GREGORY M D LOPEZ APPELLANT
AND THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL RESPONDENT**

Ms Zara Lewis instructed by Zara Lewis and Company for the appellant

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

22 and 25 November 2022

ORAL JUDGMENT

DUNBAR GREEN JA

[1] On 4 February 2017, the appellant was found guilty of professional misconduct by the Disciplinary Committee of the General Legal Council ('the Committee'), in breach of Canons I(b) and VII(b) of the Legal Profession Canons of Professional Ethics) Rules. On 25 March 2017, pursuant to section 12(4)(a) of the Legal Profession Act, as amended ('the Act'), the Committee ordered that the appellant be struck from the roll of attorneys-at-law entitled to practice in the several courts in the island of Jamaica. It also ordered him to pay costs to the complainant and the General Legal Council ('the GLC').

[2] The disciplinary proceedings were commenced against the appellant following a complaint by his former client, Paul Black ('the complainant'), on 6 November 2014, wherein he alleged that: (a) the appellant had not dealt with his business with all due

expedition; (b) the appellant had acted with inexcusable or deplorable negligence in the performance of his duties; and (c) the appellant had not accounted for all monies in his hands for his (the complainant's) account or credit although he had reasonably required the appellant to do so.

[3] Canon 1(b) provides that:

“ 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.”

[4] Canon VII(b) provides that:

“ An Attorney shall:

i...

- ii. account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonably required to do so;

and he shall for these purposes keep the said accounts in conformity with the regulations which may from time to time be prescribed by the General Legal Council.”

Proceedings before the Committee

[5] The complainant gave evidence that, in or around 2006, the appellant represented him in the sale of a property known as lot 198 Mermaid Crescent, Prospect, in the parish of Saint Thomas, comprised in certificate of title registered at Volume 1014 Folio 49 of the Register Book of Titles ('the property'), for a sale price of \$1,650,000.00. The sale was completed in January 2014 with a balance of \$1,504,000.00 owed to the complainant by the appellant, who had received full payment for the sale. The appellant subsequently paid portions of the outstanding amount, but there was a balance that he failed to pay over despite repeated promises to do so. Eventually, the appellant closed his office and left no forwarding address.

[6] At the time the complaint was lodged, the net proceeds of the sale owed was \$654,000.00. It was subsequently paid in instalments during the disciplinary hearing before the Committee.

[7] At the disciplinary hearing, the appellant elected not to cross-examine the complainant. He relied exclusively on his affidavit, filed on 25 November 2015, in which it was deposed, among other things:

"...

2. That for the most part the account given by [the complainant] in his Affidavit are [sic] true with the exception that the transaction was in fact completed in December 2014, although my firm did receive the vast majority of the funds from January of that year.
3. That my brother Peter Lopez who resides in Canada has been holding funds in trust for me in the amount of about [\$10,000,000.00] since the death of my mother...and he has steadfastly refused to make any advance to me or to pay out part of the share of the trust funds which he is holding.
4. That the said Peter Lopez has several times told me that he would pay or arrange to have [the complainant] paid out of these funds but he has up to date not done so.
5. That in July 2013 my firm was forced to leave office... and as a result of the dislocation my firm have not been getting the volume of work which we usually do and therefore I have not been able to pay [the complainant] the funds owed or any part thereof to date.
6. That I however, by the middle of December this year I [sic] will be able to pay [the complainant] a substantial part of the funds owed to him and it is hoped that I will be able to settle the entire amount plus interest before the end of the year..."

Findings of fact by the Committee

[8] Having considered the complainant's evidence and the documentary evidence, the Committee found that the complaint had been established beyond reasonable doubt and that, among other things, "the appellant had misappropriated the Complainant's money [and had] acted dishonestly and thereby failed to maintain the honour and dignity of the profession and his behaviour [had] discredited the profession of which he [was] a member".

[9] The Committee, in the presence of the appellant, set a sanction hearing for 25 March 2017. A follow-up notice was sent by registered post to the appellant advising him of the date for the sanction hearing. But, the appellant did not attend the hearing; neither was he represented or any excuse received by the panel for his absence. The Committee, therefore, proceeded in his absence and made an order in these terms:

"(a) Pursuant to s 12(4)(a) of the Legal Profession Act the name of the Attorney Gregory M.D.Lopez, is struck off the Roll of Attorneys-at-law entitled to practise in the several Courts of the island of Jamaica.

(b) Costs of these proceedings in the amount of Fifty Thousand Dollars (\$50,000.00) are to be paid by the Attorney as to which Thirty Thousand Dollars (\$30,000.00) is to be paid to the Complainant and Twenty Thousand Dollars (\$20,000.00) to the General Legal Council."

The appeal

[10] By notice of appeal, filed on 18 April 2017 ('the notice'), the appellant sought to challenge the decision and order of the Committee. The notice of appeal contained 13 grounds of appeal. However, at the commencement of this hearing, the appellant abandoned the grounds in relation to the finding of guilt for professional misconduct and pursued only those grounds pertaining to the sanction and costs. In consequence,

grounds 2, 3, 5, 10, 12 and 13 were abandoned; ground 6 (which was an assertion rather than a ground) excluded; and grounds 1, 4, 7, 8,9 and 11 were amended as necessary.

Grounds advanced

[11] These were the grounds advanced:

- (a) the panel took into account matters that were immaterial and irrelevant in arriving at its sanction;
- (b) the panel failed to take into account mitigating circumstances in arriving at its sanction;
- (c) the panel failed to apply and adhere to the rules of natural justice at the sanction hearing;
- (d) there was procedural unfairness as regards the sanction hearing;
- (e) there was a failure on the part of the panel to allow the appellant sufficient time for the preparation of submissions in mitigation; and
- (f) the sanction imposed by the Committee is harsh and manifestly excessive.

[12] Two issues were distilled from these grounds, namely: (i) whether there was any breach of the principles of natural justice as regards the sanction hearing; and (ii) whether the sentence imposed was harsh and manifestly excessive.

Issue 1: Whether there was any breach of the principles of natural justice with regard to the sanction hearing

The appellant's submissions

[13] Counsel, Miss Lewis, appearing for the appellant, made two principal submissions. Firstly, that there was a procedural breach by the Committee in proceeding to sentence the appellant in his absence without the benefit of a plea in mitigation, in circumstances where he had been present throughout the disciplinary hearing, made reparation, and the non-attendance was not out of disrespect for the Committee. Counsel indicated that the appellant had filed an affidavit in this court to which he appended a prescription from a medical doctor, indicating that he had been ill at the relevant date. She, however, conceded that the prescription was dated some three months before the sanction hearing and, therefore, could not assist the appellant.

[14] Secondly, counsel contended that the Committee, on realising that the appellant was not in attendance at the sanction hearing, ought properly to have sought to communicate with him to determine why he was absent. Fairness and prudence required such effort on the Committee's part, she submitted.

[15] The appellant relied on **Owen K Clunie v The General Legal Council** [2014] JMCA Civ 31 to support his contention that the sanction hearing should have been adjourned to allow for submissions in mitigation.

Issue 2: Whether the sentence was manifestly harsh and excessive

[16] Relying on **Michael Lorne v The General Legal Council (ex parte Olive C Blake)** [2021] JMCA Civ 17, Miss Lewis submitted that an appropriate sanction would be a "long period of suspension" with the requirement for training. She conceded that the circumstances in **Michael Lorne** were different but argued that the reparation in this instance would "go to the weight of the sanction".

The respondent's submissions on Issues 1 and 2

[17] King's Counsel, Mrs Minott-Phillips, appearing for the respondent, pointed out that no findings of fact or law in relation to the imposition of the sanction or anything else had been challenged by the appellant in his notice of appeal. She illustrated that paras. 2 and 3 of the notice did not contain any such challenge, but instead an exact repetition of grounds of appeal set out in para. 4. Furthermore, none of the grounds of appeal made any reference to the findings of fact being challenged. King's Counsel indicated that although items (i) – (iv) in para. 3 related to issues of fairness, none of them referenced a finding of law by the Committee.

[18] In relation to the sanction hearing, Mrs Minott-Phillips submitted that the appellant had been given actual notice both from being present when the date was set and in writing by registered post. King's Counsel indicated that, unlike the case of **Owen Clunie**, the Committee did not immediately sanction the appellant after it pronounced guilt. Instead, it set a date for the appellant and his attorney-at-law to return - to be afforded an opportunity to be heard in relation to sanction. The appellant failed to attend the sanction hearing of which he was aware, and there is no evidence that he provided an excuse to the Committee for not doing so or sought an adjournment of the sanction hearing from them. Unlike Mr Clunie, he was afforded an opportunity to attend the sanction hearing and make representations at that hearing. His first attempt at an excuse was an affidavit in support of an application for a stay of the Committee's decision pending appeal, which was not pursued. That affidavit was never put before the Committee and therefore does not form a part of the record for this appeal, King's Counsel argued.

[19] As regards the appellant's reliance on **Michael Lorne**, King's Counsel submitted that this court had found no error of law on the Committee's part, only that, in the circumstances, the sanction was inappropriate.

[20] The respondent relied on **Minett Lawrence v General Legal Council** [2022] JMCA Misc 1 as an authoritative statement on the approach that this court should take when reviewing decisions of the Committee. Further, no dishonesty was found in that

case, but the striking-off decision was upheld; an illustration that each case had to be decided on its particular facts.

[21] Finally, the respondent submitted that having not identified any error of law in the Committee's findings, it was not open to the appellant to say that the decision of the Committee regarding sanction was flawed. Moreover, he never challenged the evidence of misappropriation and, in fact, admitted in his affidavit that he owed the money; did not pay it when it was demanded; and stated when he would pay it but breached that assurance. In those circumstances, the sanction is not inappropriate, King's Counsel contended.

Analysis

Standard of review

[22] In **Michael Lorne**, this court acknowledged, at para. [30], that "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". Elaborating on that approach in **Minett Lawrence**, at para. [104], McDonald Bishop JA observed that the disciplinary tribunal is comprised of "an experienced body of attorneys-at-law who are best placed to weigh the seriousness of professional misconduct and the effect that their findings and sanction will have in promoting and maintaining the standard to be observed by individual members of the profession in the future, and the reputation and standing of the profession as a whole" (see also **Bolton v The Law Society** [1994] 2 ALL ER 486 and **Salsbury v Law Society** [2009] 1 WLR 1286, which were referenced, with approval).

[23] Turning first to the question of whether there was a breach of natural justice, we have considered that rule 8 of the Legal Profession (Disciplinary Proceedings) Rules permits the Committee to hear a complaint in the absence of an attorney-at-law upon proof of notice being sent to him or her. By parity of reasoning, a sanction hearing may proceed in similar circumstances. In the instant case, the appellant was not only present

when the date for the sanction hearing was set, but he was also sent a notice by registered post, the receipt of which has not been disputed. Moreover, the appellant provided no excuse to the Committee for his absence. In these circumstances, the Committee cannot be faulted for proceeding with the sanction hearing in the appellant's absence. This view is supported by dicta from the following two cases from the Court of Appeal of Barbados and the Court of Appeal of Trinidad and Tobago, respectively.

[24] In **Re Niles** (1993) 47 WIR 38, it was held that an attorney-at-law, who, by letter, requested an adjournment from the disciplinary tribunal at the last minute, purportedly for medical reasons without a supporting medical certificate, he having failed to respond to previous notices from the committee, "...had been given every opportunity of informing the committee of anything that he wanted to say; [and] in all the circumstances it was impossible to say that the committee was wrong to have proceeded with the hearing in his absence...".

[25] The second case is **Forde v The Law Society and Another** (1987) 40 WIR 361, the headnote of which states, in part, "where an appellant who complained that the refusal of an adjournment had amounted to a denial of justice was himself instrumental in creating the situation which gave rise to the order he could not be successful in pleading that he had been denied justice".

[26] Although the issue in the instant appeal is not about the Committee's refusal to grant an adjournment, none having been sought, these cases make it plain that the appellant, who himself created the situation which led the Committee to proceed in his absence, could not successfully claim that he had been denied an opportunity to mitigate his sentence.

[27] The case of **Owen Clunie** does not assist the appellant. Mr Clunie was summoned to appear before the Disciplinary Committee to answer charges in relation to a complaint against him but had failed to attend. As it turned out, he did not receive the complaint which had been sent to him by registered post (there was evidence that it was returned

unclaimed to the post office from which it was dispatched). Having not appeared, the hearing of the complaint commenced in his absence. He eventually appeared after being sent an email with the notes and other documents. At that instance, his attorney-at-law indicated that “there was no dispute to facts” and applied for an adjournment “to make good”. The adjournment was refused, and Mr Clunie was sentenced immediately following the pronouncement of guilt.

[28] On appeal, this court held that the Committee erred in denying Mr Clunie an opportunity to make his plea in mitigation. As a consequence, the sentence was quashed, and the matter remitted for the Committee to hear submissions in mitigation and determine the sanction thereafter.

[29] The result, in that case, accords with the principle, reiterated by the Privy Council in **Dominique Moss v The Queen** [2013] UKPC 32, that the court has a duty to give a defendant the opportunity to be heard before sentencing in circumstances where the sentence is not fixed by law (see also **R v Billericay Justices, Ex parte Rumsey** [1978] Crim LR 305, where the sentence was quashed because the appellant was sentenced immediately following the pronouncement of guilt). Although the disciplinary tribunal is not a court, an adherence to the principle of procedural fairness is required when it presides over the hearing of complaints.

[30] **Owen Clunie** is clearly distinguishable on the facts. Whereas in that case, Mr Clunie was sentenced immediately after guilt was pronounced, in the instant case, there was an adjournment to facilitate the appellant’s preparation of his submissions in mitigation. When he chose not to turn up or inform the Committee of the reason for his absence, he did so at his own peril.

[31] The appellant’s attorney-at-law indicated that he was ill, but that assertion was unsupported. In an abandoned application for a stay of the Committee’s decision pending appeal, the appellant placed before this court an affidavit in which he alleged to have been ill and incapacitated. That affidavit appended a prescription which was purportedly

signed by a medical doctor. Even had the prescription been received into evidence, it might not have supported a conclusion that the reason for his non-attendance at the sanction hearing was “well capable of belief” because it was dated some three months prior to the first hearing date of 24 September 2016, when the appellant was present.

[32] The facts of this case are also to be distinguished from those in **Jade Hollis v The Disciplinary Committee of the General Legal Council** [2017] JMCA Civ 11. This court found that illness was a compelling reason for an adjournment and that the Committee had erred in not granting Ms Hollis’ request for an adjournment in circumstances where she had communicated to the Committee (through her attorney-at-law) that she was unable to attend the hearing due to illness. The court stated at para. [100], “it cannot be said that the principles of natural justice and [Ms Hollis’s] constitutional right to a fair hearing were not compromised, or not likely to be compromised”.

[33] The facts of the instant case do not support a conclusion that the Committee erred in proceeding with the sanction hearing in the absence of the appellant or that, as a result of the Committee’s action, the appellant was denied an opportunity to make submissions in mitigation. In the circumstances, there was no procedural unfairness or breach of any other principle of natural justice.

[34] Grounds c, d and e therefore fail.

[35] We turn now to the question of whether the sentence was harsh and manifestly excessive.

[36] An attorney-at-law who breaches Canons I (b) and VII (b) is subject to any or a combination of orders under section 12(4) of the Act. These orders include the ultimate sentence of striking off.

[37] The Committee heard and accepted evidence that the appellant had used the money for purposes other than the complainant’s, and the complainant had only been

repaid after the disciplinary hearing had commenced. That constituted dishonesty, failure in his duty to the client and failure to maintain the honour and dignity of the legal profession, as the Committee found. Accordingly, the Committee correctly characterised that conduct as “reprehensible”.

[38] On those primary findings and conclusion, the sanction of striking off was inevitable. This view is supported by dicta in **Bolton v Law Society (supra)** (a case that was relied on by the Committee and repeatedly applied in this court), particularly these observations by Sir Thomas Bingham MR at pages 491-492:

“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... The most serious involves proven dishonesty...In such cases, the tribunal has almost invariably, no matter how strong the mitigation advanced... ordered that he be struck off the Roll of Solicitors...A profession’s most valuable asset is its collective reputation and the confidence which that inspires.”

[39] In determining an appropriate sentence in the instant case, the Committee was mindful of the principles of proportionality and deterrence as well as its dual role to protect the public and the reputation of the profession (see section 3(1) of the Act, which imposes a duty upon the Committee to uphold the standards of professional conduct of attorneys-at-law). In assessing the seriousness of the misconduct, it considered the nature of the breach, the level of culpability and the harm caused to both the complainant and the profession. As regards the harm to the reputation of the profession, it stated that the misconduct was one which “put a stain on the reputation of Attorneys in general”.

[40] At page 6 of the decision, the Committee states:

“This Panel cannot excuse the behaviour of the attorney just because he eventually repaid the money to the complainant...and that if the hearing of the matter had not commenced the monies would not have been repaid...This panel must therefore act in the interest of the public to ensure

that such conduct is never repeated and that the collective reputation of the profession is maintained.”

[41] Although the appellant did not take the opportunity to appear and present any mitigating factors, the Committee did consider that he had made reparation but, in the scheme of things, correctly regarded that as having no mitigating effect.

[42] The case of **Michael Lorne** does not assist the appellant. In that case, no act of dishonesty was found to exist. The complaint was that Mr Lorne had paid over the entire net proceeds of a sale of property to one of two beneficiaries under a will, although he was aware that both beneficiaries were to share in proceeds and that he had a fiduciary duty to each.

[43] Where, however, dishonesty is found, striking off is not the unlikely outcome. In **Chandra Soares v The General Legal Council** [2013] JMCA Civ 8, which concerned misappropriation of a client’s money, the sums were repaid with interest and costs before the hearing of the complaint, but the attorney was nonetheless struck off. That decision was upheld on appeal. In **Georgette Scott v The General Legal Council ex parte Errol Cunningham** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 118/2008, judgment delivered on 30 July 2009, wherein a cheque given by Ms Scott to the complainant (for net proceeds of a sale of his apartment) was returned as dishonoured and not made good up to the time of the complaint to the disciplinary tribunal, a striking off was upheld. Panton P, writing on behalf of the court characterised Ms Scott’s conduct as “inexcusable and unacceptable” and stated that the “appropriate sanction is disbarment”.

[44] These cases affirm that an attorney-at-law who is “proved not to be trustworthy and lacking in integrity and probity” should receive the ultimate sanction.

[45] In the circumstances, it cannot be said that the Committee took into account immaterial and irrelevant matters in deciding the penalty or that the sentence was manifestly excessive. Grounds a, b and f therefore fail.

Conclusion

[46] The Committee did not err in law or in fact in proceeding with the sanction hearing in the absence of the appellant. Neither was the sentence imposed inappropriate. The appellant's conduct was sufficiently grave to warrant a striking off. The order of the court is therefore as follows:

1. The appeal is dismissed.
2. The decision and order of the Disciplinary Committee made on 4 February 2017 and 25 March 2017 respectively are affirmed.
3. Costs of the appeal to the respondent, to be agreed or taxed.