

**SANCTION DECISION OF THE DISCIPLINARY COMMITTEE OF THE
GENERAL LEGAL COUNCIL**

COMPLAINT NO. 117/2023

In the Matter of VIVIAN EMANUEL
ROBINSON, ANDIE EMANUEL
ROBINSON and MICHAEL BROWN, an
Attorney-at-Law.

AND

In the Matter of the Legal Profession Act,
1971

Panel: Daniella Gentles-Silvera, KC - Chairman
Ursula Khan
Delrose Campbell

Appearances: The Complainants, Vivian Emanuel Robinson, and Andie Emanuel Robinson,
represented by Guarica Makhijani, and Britaney Lee Johnson, Attorneys-
at-Law instructed by Makhijani & Johnson, Attorneys-at-Law.

The Respondent, Michael Brown, appeared in person.

Hearing: 11th January 2025 and 13th May 2025

COMPLAINT

1. On the 23rd of November 2024, we found Michael Brown (“the Attorney”), guilty of professional misconduct he having breached the following canons of the Legal Profession (Canons of Professional Ethic) Rules (“The Canons”):
 - a) Canon IV (s)-The Attorney has acted with inexcusable or deplorable negligence or neglect.
 - b) Canon IV (r)-, The Attorney has not dealt with his client’s business with due expedition and has failed to provide Vivian Robinson (the “Complainant”) with

all the information as to the progress of his business with due expedition when reasonably required to do so.

- c) Canon I(b)- The Attorney has failed to “*maintain the honour and dignity of the profession and has not abstained from behaviour which may tend to discredit the profession of which she is a member.*”

2. A sanction hearing was held on the 11th of January 2025. The Attorney urged the Committee to have leniency and to take into account that he had worked on the matter. Within a month of receiving instructions, he sent a letter to the insurance company for the third party and also applied for a police report. Further, this was the first time that the Attorney had ever been found guilty of professional misconduct. The Attorney submitted that we should have regard to the nature of the offence and the manner in which it was committed in determining what was the appropriate sanction. He has four children, one of whom is still in high school and another in university. The other two are adults. He is financially responsible for his father, who is ill. Finally, since the finding of the Committee that he is guilty of professional misconduct, the Attorney has put in place a system at his office to better deal with communication. Miss Makhijani, counsel for the Complainant, also made submissions on sanctions. She submitted that the Committee should consider the following in determining what was an appropriate sanction:

- a) the Attorney has not expressed any form of apology or remorse;
- b) the Attorney has made no attempts to settle the matter having been found guilty of professional misconduct;
- c) the Complainant is a sixty-seven (67) years old man in need of medical treatment as a result of the accident;
- d) the Complainant is dependent on his family to pay for his medical treatments;
- e) the Complainant is a victim as his life has so drastically changed and he has been shut out from bringing a claim.

3. Miss Makhijani invited the Committee to take a similar approach as in the cases of Yohan Davidson v Sean Kinghorn (Complaint No 190/2020) and Leonard Wellesley v Lyndell Wellesley (Complaint 25/2009), where similar breaches had been committed as in the present complaint. The Disciplinary Committee in those complaints looked at the matter using a compensatory element, as contemplated under section 12 of the Legal Profession Act, and imposed a fine against the attorney and ordered that it be paid to the complainant in satisfaction of any damage caused to the complainant. She invited us to start with the figure of \$11,595,636.70, which is the amount which she quantified would be fair and reasonable to compensate the Complainant and then reduce it by 50%. Miss Makhijani pointed to the fact that both herself and the Attorney followed a similar procedure in assessing the damages to compensate the Complainant and in fact had relied on the same case of Horace Allen v Eastern Banana Estates Limited (Volume 5 Khan page 56). The Attorney had sent a letter in 2018 to the insurance company, British Caribbean Insurance Company (“BCIC”), in which he made a claim on behalf of the Complainant and Miss Makhijani sent a letter of demand dated 31st January 2023 to the Attorney before this complaint was laid.
4. In determining what sanction is appropriate we rely on the case of Fuglers LLP et al v Solicitors Regulate Authority [2014] EWHC 179 (applied by our Court of Appeal in Minett Lawrence v GLC (Exp Kaon Northover [2022] JMCA Misc 1), which addressed the correct approach to sanctioning a solicitor by The Solicitors Disciplinary Tribunal in the United Kingdom. The Court of Appeal in Minett Lawrence supra, referred extensively to the decision of Popplewell J in Fuglers supra at paragraphs 109-113. In Fuglers, the court said there are three stages in addressing sanctions which the tribunal must consider:
- a) assess the seriousness of the misconduct;
 - b) keep in mind the purpose for which sanctions are imposed;
 - c) choose the sanction that most appropriately fulfills that purpose for the seriousness of the offence.

5. With respect to the first stage, that is, assessing the seriousness of the misconduct, the most important factors to take into account are:
- a) culpability for the misconduct;
 - b) harm caused by misconduct, which is not measured wholly or even primarily by financial loss caused to any individual or entity. The impact of misconduct upon the standing and reputation of the profession as a whole.
 - c) aggravating factors, for example, previous disciplinary matters; and
 - d) mitigating factors, for example, admission of guilt at an early stage or making good any loss.

6. With respect to the second stage (i.e purpose), Popplewell J **Fuglers** said that:

“[30] At the second stage, the Tribunal must have in mind that by far the most important purpose of imposing disciplinary sanctions is addressed to other members of the profession, the reputation of the profession as a whole, and the general public who uses the services of the profession, rather than the particular attorney-at-Law whose misconduct is being sanctioned”.

7. The Court in **Minett Lawrence** summarised the purposes of sentencing established by Sir Thomas Bingham MR in **Bolton v Law Society [1994] 1 WLR 512** as follows:

- (a) punishment;
- (b) personal and general deterrence;
- (c) removal of the risk of re-offending;
- (d) maintaining the reputation of and public confidence and trust in the legal profession.

SERIOUSNESS OF MISCONDUCT

8. The Attorney is a legal practitioner who has been in practice for over thirty (30) years at the Bar. He was retained in 2014 to represent Vivian Robinson who had been involved in a motor vehicle accident on the 24th March 2014. He represented Vivian until 2021 when

his services were terminated. During that period, he was given three (3) medical reports and had sufficient information to enable him to file suit; yet he did not do so, resulting in the Complainant's claim being statute-barred on the 24th March 2020. Consequent upon the Attorney's negligence, the Complainant has lost his opportunity to make a claim for compensation arising out of his involvement in a motor vehicle accident, which resulted in him sustaining injuries which are serious; and in fact, he has a leg ulcer which has become chronic. The conduct of the Attorney is even more deplorable when one considers that the Complainant came to him the very year of the accident, and the Attorney represented him over a span of seven years.

9. In addition to the loss to this Complainant, his conduct, which involves inexcusable and deplorable negligence, can only diminish the trust and confidence placed in the profession and serve to lower the reputation of the legal profession by members of the public.
10. We have taken into account that this is the first time that the Attorney has been found guilty of professional misconduct, and this complaint does not involve dishonest misconduct. That said, we cannot help but note that the Attorney (as Miss Makhijani highlighted), expressed no remorse, nor did he in our presence apologise to the Complainant and his family. He said he has taken steps to ensure that this does not happen again at his office, but he did not elaborate on what those steps are. He had an opportunity to make good on his deplorable negligence but did nothing. Miss Makhijani sent him a letter dated 31st January 2023 inviting him to settle the matter. She sent him an email on the 27th February 2023 reminding him to let her have a response to her letter of demand dated 31st January 2023. Subsequently, by email sent on the 31st March 2023, Miss Makhijani wrote to the Attorney and referred to a telephone conversation with the Attorney and recorded in that email that "*Mr. Brown communicated for the first time that he will be defending any claim brought against him*".
11. Given the facts of this case, we believe it would have been enured to the benefit of the Attorney had he perhaps pleaded guilty in the beginning to avoid the time spent on this matter by all concerned or at the very least made attempts to negotiate a settlement with the Complainant; but when an olive branch was extended to him with a proposal for

settlement, as contained in a letter dated 31st January 2023 from Miss Makhijani, the Attorney instead, doubled down and expressed that he would be defending the complaint. Based on the facts of this case, it is remarkable that the Attorney thought his conduct was defensible. Further, we observe that even after having been found guilty of professional misconduct in November 2024, and up to the date of the sanction hearing in January 2025, the Attorney took no steps to make good on any loss suffered by the Complainant.

PURPOSE OF SANCTION

12. As a Tribunal, we are aware of what the purpose of the sanctions are and therefore, whatever sanction we impose, it must:
 - a) punish the Attorney for his misconduct;
 - b) act as a deterrent individually with respect to this Attorney and generally with regards to other members of the profession;
 - c) remove the risk of offending;
 - d) maintain the reputation of public confidence and trust in the legal profession.

13. The Complainant came to the Attorney and asked him to represent him with a view to obtaining compensation for injuries he sustained in a motor vehicle accident. He placed his trust and confidence in the Attorney. These injuries were not minor but included a fracture of the femur and fibula for which the Complainant underwent surgery and has since then had a chronic leg ulcer, which will require skin grafts. The Attorney failed to adequately represent the Complainant, his client, which has resulted in the Complainant not being able to make a claim for compensation for his injuries and losses sustained consequent on the motor vehicle accident. The misconduct and consequences of same on the Complainant is serious and justifies a sanction which will send a clear message and deter this Attorney from ever engaging in such conduct but also deter similar conduct by other attorneys in the future. Members of the public must feel confident that when they engage attorneys to represent them, they can rest assured that their interests will be protected and that those attorneys who fail in this regard must be punished so that they learn a lesson and other attorneys looking on appreciate that such actions have consequences.

APPROPRIATE SANCTION

14. In view of the conduct of the Attorney and the consequences to the Complainant, a reprimand would not be sufficient. We accept, however, that in light of the facts of this case, the protection of the public and the reputation of the legal profession does not justify a suspension or striking off, as matters complained of do not involve any dishonesty or moral turpitude. We believe, however, that the circumstances justify the Attorney being fined with a direction that pursuant to section 12 (5) of the Legal Profession Act, the fine be paid to the Complainant in satisfaction of any damage that was caused to him as was done in Leonard Wellesley v Lynden Wellesley-Complaint No. 25/2009. In determining the amount of the fine, we start by taking the figure of \$11,595,636.70, which was proposed by Miss Makhijani to the Attorney. Based on the response from the insurer, BCIC, to the Attorney by letter dated 22nd January 2015 (exhibit 15), who suggested that the Complainant may have been contributorily negligent and therefore liability should be equally apportioned, we believe that it is reasonable to reduce this amount by 50%, leaving \$5,797,818.35. We have further discounted the figure by 35% for other contingencies of litigation, leaving \$3,768,581.93.
15. In light of the overall conduct of the Attorney in particular his failure to engage with the Complainant's Attorney in circumstances where he was clearly wrong brings to the fore the question of costs and whether or not we should order that he pays a reasonable contribution towards the Complainant's costs. We rely on our reasoning above which formed the basis of our ordering the Respondent Attorney to pay a fine at paragraphs 8 to 14 to support our decision that the Attorney should pay costs to the Complainant and also the General Legal Council. To those reasons we also add that consequent on the Attorney deciding to defend this matter the Complainant had to hire an attorney to represent him, no doubt as some costs, and the General Legal Council incurred administrative costs in the complaint being set down and heard over days. Accordingly, we hereby order that:
- a) The Attorney pays a fine in the amount of \$3,768,581.93, which is to be paid to the Complainant in partial satisfaction of any loss he may have sustained due to the misconduct of the Attorney. This amount should be deducted if the Complainant

obtains an order from the Court for the Attorney to pay any damages consequent upon his legal representation of the Complainant.

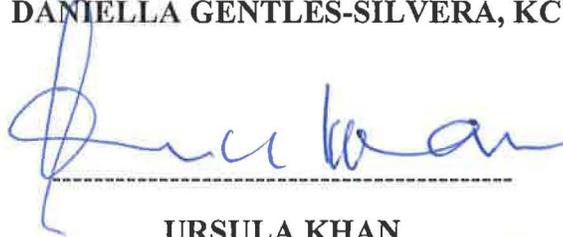
- b) The Attorney is to pay Costs in the amount of \$300,000.00, of which \$250,000.00 is to be paid to the Complainant and \$50,000.00 to the General Legal Council.
- c) The amounts at paragraphs (a) and (b) above are to be paid on or before 13th August 2025

16. This decision is to be read and treated as one with our Decision given on the 23rd November 2024.

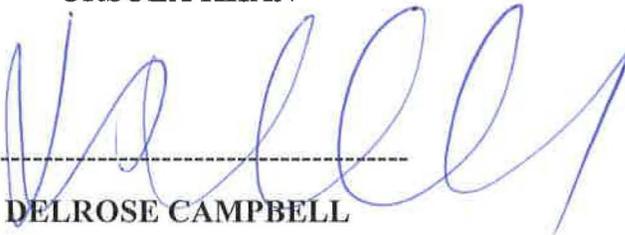
Dated the 13th day of May 2025



DANIELLA GENTLES-SILVERA, KC



URSULA KHAN



DELROSE CAMPBELL