

**BARBADOS**

**IN THE SUPREME COURT OF JUDICATURE**

**COURT OF APPEAL**

**Complaint No. 31 of 2008**

**IN THE MATTER OF THE LEGAL  
PROFESSION ACT, CAP 370A of the  
LAWS of BARBADOS**

**And**

**IN THE MATTER OF THE  
COMPLAINT OF PATRICIA SIMPSON  
AGAINST THEROLD O'NEAL FIELDS**

**And**

**IN THE MATTER OF MR.  
THEROLD O'NEAL FIELDS,  
ATTORNEY-AT-LAW, Respondent**

**Before: The Honourable Sir Marston C. D. Gibson, KA, Chief Justice; The Honourable Sherman Moore, CHB, and The Honourable Sandra P. Mason, Justices of Appeal.**

**2014: April 22, 30; May 7; June 20, 27; July 8**

**2015: April 15**

**Mr. Philip Pilgrim for the Complainant**

**Ms. Debra Gooding for the Respondent**

**Mrs. Marguerite Woodstock-Riley QC and Mr. George H. A. Brewster for the Disciplinary Committee of the Barbados Bar Association**

**Mr. Barry L. V. Gale QC for the Barbados Bar Association, *amicus curiae***

**Ms. Donna Brathwaite QC, Deputy Solicitor-General, and Ms. Sandra Rawlins for the Attorney-General, *amicus curiae***

### **DECISION**

**GIBSON CJ:**

#### **Introduction**

[1] This application is based on a report referred to this Court by the Disciplinary Committee of the Barbados Bar Association (the Disciplinary Committee). On 22 April 2013, the

Disciplinary Committee issued a report recommending that Therold Fields, Attorney-at-law, be disbarred. Pending before this Court is the application of the complainant, Ms. Patricia Simpson, seeking confirmation of that recommendation disbaring Mr. Fields. The hearing took place over seven days between 6 October 2009 and 16 November 2010.

- [2] The most important issue concerns the appropriate penalty to be imposed since Mr. Fields' attorney indicated to the Court that she "could not fault" the findings of the Disciplinary Committee's Report but she has argued that her client should be suspended rather than disbarred. To this end, we set out fairly extensively the facts as revealed in the transcripts of the hearing before the Disciplinary Committee.

#### **Factual and Procedural Background**

- [3] By complaint dated 14 March 2008, supported by an affidavit sworn on the same date and submitted to the Disciplinary Committee, Ms. Simpson alleged wrongdoing by Mr. Fields in connection with the purchase by her of land situate at Lot 13, Eloise Gardens, Christ Church. The complaint was forwarded to Mr. Fields on 8 April 2008 together with a notice requesting a response.
- [4] Several letters were sent to Mr. Fields by the Secretary of the Disciplinary Committee indicating that there had been no response and informing that if a written response was received after the deadline date of 30 December 2008, an affidavit from him should be sent to the Committee requesting an extension of time within Rule 13 of the Fifth Schedule of the *Legal Profession Act, (Cap 370A)* of the Laws of Barbados. Mr. Fields never, at any time, submitted a response.
- [5] Ms. Simpson emigrated to England in 1964 with the intention of returning to Barbados on her retirement. In April 2006, she saw an advertisement in a Barbadian newspaper

regarding a plot of land for sale with dwelling house on it. She called the number in the advertisement and found out that the property in question was Lot 13 Eloise Gardens, Gibbons, Christ Church, and that the developer was Jay E. Dee Investments Ltd. She also found out that Mr. Fields was the developer's attorney.

[6] On a visit to Barbados in April 2006, Ms. Simpson met Mr. Fields at his office at Beaumont House, Hastings, Christ Church, and there she paid BDS\$5,000.00 as a holding fee for the land. She also signed a reservations agreement in the presence of a Mr. Wilfred Hayde who worked with Mr. Fields at the time. She later received a letter dated 28 July 2006 with two documents, namely the Agreement for Sale and the Building Agreement. Ms. Simpson sent a cheque dated 7 May 2006 in the sum of £20,000.00 to Mr. Fields and later she sent another cheque in the sum of £112,000.00 which was delivered to Mr. Fields by a family friend, Mr. Lester Corbin, in whose favour Ms. Simpson had executed a power of attorney. The three sums of money were all paid to Mr. Fields for the purchase of the plot of land and the construction of a house thereon. For each sum of money, she produced a receipt which was marked into evidence by the Committee. She had also dealt with a Mr. Patey at Mr. Fields' office.

[7] In answer to questions from the Chairman of the Committee, Ms. Chase QC, Ms. Simpson testified that, in conversation with Mr. Hayde and Mr. Patey from Mr. Fields' office, she had asked whether there would be a conflict of interest if Mr. Fields represented both her and Jaye E. Dee Development. She was assured by Mr. Hayde that "it can be done and it has been done" which, in her words "led [her] to believe that there is no conflict of interest, it would be okay if Mr. Fields dealt with both parties." When asked directly by

Ms. Chase QC “[w]ho was your attorney-at-law for this transaction?,” Ms. Simpson replied, “Mr. Fields.”

[8] Ms. Simpson recalled having a telephone conversation in 2007 with Mr. Julian E. Dottin, the principal of Jay E Dee Investments Ltd, the builders and owners of the property. He had asked her if she had returned the contract of sale and asked her as well to confirm what moneys she had paid. She also recalled that Mr. Dottin then told her that he had asked Mr. Fields if she had returned the contract or if she had paid in any additional moneys apart from the BDS \$5,000.00. Mr. Dottin then informed her that Mr. Fields had told him that she had not returned the contract nor paid additional money.

[9] When it became clear that the transaction for which Ms. Simpson had retained Mr. Fields had not been completed, nor her funds returned, she came down to Barbados and, with the assistance of Mr. Lester Corbin, retained Mr. Philip Pilgrim, Attorney-at-Law to represent her. She testified that Mr. Fields had sent her a letter dated 19 May 2008 but when Mr. Pilgrim attempted to have the letter marked into evidence, Mr. Fields objected on the ground that the letter had been written on a “Without Prejudice” basis. Mr. Pilgrim withdrew the letter and the Committee initially ruled that “it cannot form the basis of evidence which is before the committee.”

[10] Ms. Simpson also noted that she had received a copy of a letter dated 13 June 2008 written by Mr. Pilgrim to Mr. Fields which had no “Without Prejudice” rubric on it. She had seen as well a copy of a letter dated 20 June 2008 from Mr. Fields in response to Mr. Pilgrim’s letter of the 13<sup>th</sup> June. Mr. Fields initially objected that all of the correspondence had been written on a ‘without prejudice’ basis. The Committee later ruled that the correspondence

was admissible and the letters, both to and from Mr. Fields, were admitted into evidence. We will return to the letter of 20 June 2008 later in this judgment.

- [11] Ms. Simpson testified that she was still paying a mortgage on part of the money advanced to her for the purchase of No. 13 Eloise Gardens, and she identified a letter dated 2 October 2006 written to her by UCB Homes which showed that her mortgage payment was £1,599.38 a month. She also noted that she had commenced an action against Mr. Fields and had been granted a default judgment against him in the sum of \$601,000.00.
- [12] In the concluding segment of her examination in-chief, Ms. Simpson stated that the house had not been built nor had she been repaid any of the money which she had paid to Mr. Fields. She asked the Committee to disbar Mr. Fields from the practice of law.
- [13] Mr. Fields represented himself before the Committee and so his testimony in-chief was in the form of a narrative statement. He stated that from July 2004 to early 2008, he acted on behalf of a company known as Jaye E. Dee Investments Ltd, (“JEDI”) a development company owned by Mr. Julian Edward Dottin and his wife. JEDI owned a significant portion of land in Gibbons, Christ Church which had already been parceled off into 28 lots. Mr. Fields had been retained to sell the entire development. At the time of the application made by Ms. Simpson, lots 3 to 15 had been scheduled for sale and all payments with respect to the first six closings, all but one of which had taken place in his office, were paid to JEDI’s mortgagee, the Bank of Nova Scotia. He recalled that Christopher Patey and James Clarence Hiles had worked for Caribbean Mortgage Services, a company which assisted JEDI in procuring mortgages with regard to several lots, including Lot 13.

- [14] Mr. Fields stated that “I have yet to meet Patricia Simpson.” He stated that at no time was Chris Patey an employee of his nor was he authorized to conduct any business on his behalf. Mr. Hayde, who also assisted Ms. Simpson at his office, was hired by him but Mr. Fields denied that Mr. Hayde was authorized to collect any money on his behalf. He also stated that Mr. Chris Patey was not authorized to transact business on his behalf.
- [15] He recalled that the first time he saw Ms. Simpson was the second week of October 2008 but she had never been presented to him as a client or for consultation prior to that. His standard practice was to meet with a client and properly engage them for the purposes of any work to be undertaken by him. In most cases, the consultation would have ended with a discussion of fees and expenses, and the execution of a letter of engagement. This never happened in this case, he said, and moreover, in April 2006, it would have been impractical for him to act for both the vendors and purchasers of Eloise Gardens.
- [16] Mr. Fields further testified that there were, at that time, two junior attorneys in his office, Ms. Karin Thornhill and Ms. Deidre Gay, to whom he would have recommended Ms. Simpson. There also was another junior, Ms. Careen Byfield-Layshon, who had worked with him until October 2006. He stated that the agreements should have come through him before being sent out and they had not. Ms. Byfield-Lashon must have sent them out on her own without consulting him, he said, but he also candidly admitted that they “appear[ed]” to have been “actually executed by myself.”
- [17] Mr. Fields testified that he met with Mr. Pilgrim on 20 May 2008 because he needed confirmation as to how and when the \$5,000.00, the £20,000.00 and the £112,000.00 were paid in to him. He told the Committee that he was undertaking a review of all transactions involving Mr. Hiles, Mr. Patey, and Mr. Hayde whom he dismissed in March 2007. Up to

that date, he did not have confirmation that the moneys “alleged to have been paid by Ms. Simpson” had actually been paid to him. He stated that his unofficial audit showed that \$4,300,000 appeared to have been disbursed on behalf of JEDI, and that \$2,800,000 had been received by him on behalf of the company. He stated that he had requested an audit to determine whether or not Ms. Simpson had in fact paid in any funds and when or whether those funds were disbursed to the developer. He stated categorically that he had not used any of Ms. Simpson’s funds, “not a cent”, either for his own benefit, his own gain, or for the benefit of any third party. He stated that he was owed substantial fees and expenses from the development which he estimated at \$989,000.

[18] Under cross-examination by Mr. Pilgrim, Mr. Fields stated that he had not authorised Mr. Hayde to witness the execution of the reservation agreement. He, however, acknowledged that Mr. Hayde had closed and completed sales on his behalf. He stated that his secretary, Ms. Angela Fields, was not authorised to issue the receipt for the \$5,000.00 paid by Ms. Simpson, and that the \$5,000.00 did not come into his office. Mr. Fields added that “as far as I’m aware no funds came to Angela Fields as far as I’m aware no funds came into the office period with respect to Patricia Simpson. . .I never got it.”

[19] It was suggested to Mr. Fields in cross-examination that he “would have had to meet Ms. Simpson for you to recommend her. . . to one of the attorneys.” He responded: “I never met Ms. Simpson. I never met her, I never had a conversation with her, never interacted with her, I never exchanged, even to my recollection a hello with her.” He was then asked: “If you paid Ms. Byfield-Layshon a salary and that she was your employee and that according to you ‘the agreement should have come to me before they were sent out.’ I’m

suggesting to you that these specific factors lead me to put to you that you were in fact Ms. Simpson's lawyer. Yes or no?" Mr. Fields responded "No."

[20] He conceded that the letter dated 28 July 2006 sent out to Ms. Simpson by Ms. Byfield-Layshon with the two agreements was on the letterhead of "Fields Chambers" which were owned by him but he denied that he was acting for Ms. Simpson with regard to those agreements. Mr. Fields agreed that the £20,000.00 cheque was written to him, signed by Ms. Simpson, and that it bore a Barbados National Bank stamp. He agreed that, at the time, he had a Barbados National Bank account at Worthing, Christ Church.

[21] Mr. Fields also agreed that the receipt was issued by Ms. Debbie Fung to show that she had received the £20,000.00 but he denied that Ms. Fung was working for him when she accepted the money. When asked why Ms. Fung had signed to acknowledge receipt of the money, Mr. Fields replied, "Debbie Fung should really have been your witness. I cannot answer for Debbie Fung."

[22] Mr. Fields denied that Mr. Lester Corbin had personally given him the cheque for £112,000.00, but he acknowledged the receipt dated 27 November 2006 signed by Kelly-Ann Stoute who was his receptionist at the time. He was, however, not sure who deposited the cheque into his account but he stated that the person authorised to do so at the time was Veronica Henry, his accountant. This portion of the cross-examination ended with Mr. Fields denying that he agreed with Mr. Pilgrim to repay the three sums of money with interest.

[23] At this point, Mr. Pilgrim called Mr. Lester Corbin, who was on a short visit to Barbados from his home in England, to testify out of turn. Mr. Fields initially objected contending that cross-examination of himself by Mr. Pilgrim had ended. In fact, the cross-

examination had not ended. On Mr. Pilgrim's reminding the Committee that it could regulate its own proceedings, Mr. Fields conceded that, since Mr. Corbin had a fairly limited time on the island, his evidence could be taken. Mr. Corbin testified that Ms. Simpson had sent him through Fed-Ex a cheque made out to Mr. Fields for £112,000.00, and that he "took this cheque to Mr. Field's office."

[24] On resumption of cross-examination by Mr. Pilgrim, Mr. Fields was asked whether he sent a faxed letter to Mr. Pilgrim on 19 May 2008. He responded that the fax shown to him was not an original, he refused to read it aloud, as requested by Mr. Pilgrim, who then read it into the record. The letter is reproduced at para. [87] below.

[25] At no time during his testimony before the Committee did Mr. Fields ever admit that Ms. Simpson was his client or that he had received any money whatever from her.

### **The Disciplinary Committee Report and Recommendations**

[26] In its Report dated 22 April 2013, para [116] at p. 34, the Disciplinary Committee found that "Mr. Fields [was] not a credible witness and he prevaricated in his evidence. The Disciplinary Committee finds that funds were paid to him and that the mix up in relation to the developer is irrelevant to his obligation as an attorney-at-law to Ms. Patricia Simpson as her attorney-at-law" (*sic.*) The Committee further noted, at para [117] that "[a]lso on the evidence, it is clear that Mr. Fields purported to work for both the Vendor/Developer and Ms. Simpson as Purchaser. There is no law preventing him from doing so. However, his actions constituted a conflict of interest."

[27] The Report stated, at para [121], p. 35, that it was "not clear in the evidence why Ms. Simpson forwarded all of the moneys to Mr. Fields before being advised of a date for

completion. Her safeguard was the appointment of Mr. Corbin as her local representative.” At para [122], the Committee stated:

“According to the evidence of Mr. Fields, no account can be made of the funds paid by Ms. Simpson. He never received them neither does he attempt to do so. He cannot account for them. This state of affairs is disturbing, highly unsatisfactory and cannot meet any professional or acceptable business standards. It seems unlikely based on the evidence that Mr. Fields is willing to attempt to recover the funds for Ms. Simpson. Mr. Fields has not acted in good faith. He has not been professional. He denied meeting Ms. Simpson’s agent when he in fact did so. He made no attempt to develop a professional relationship with Ms. Simpson in spite of her efforts. He shows no sympathy for her financial plight in being requested to repay her funds for his failure to obtain title to the property at Lot 13 Eloise Gardens, Christ Church.”

[28] The Report contained the following findings at para [147], p. 40:

- a. Mr. Therold Fields received \$5,000.00, £20,000.00 and £112,000.00 from Ms. Patricia Simpson;
- b. His evidence was not credible. He produced no financial records of his dealings with the client in accordance with the Accounts Rules;
- c. Mr. Therold Fields did not carry out the instructions of Patricia Simpson his client at all material times, in relation to the moneys which she had sent to him for the purchase of Lot 13 Eloise Gardens;
- d. Mr. Therold Fields failed to account for the money paid to him in accordance with the Legal Profession (Accounts) Rules;
- e. Mr. Therold Fields showed that he had no proper system of accounts for clients’ money including the money of Ms. Patricia Simpson neither did he provide a proper system for receipts and holding and management of clients’ funds;
- f. We accept Mr. Philip Pilgrim’s submissions that Mr. Fields agreed to pay Ms. Patricia Simpson back money with interest.
- g. Mr. Therold Fields evidence regarding Ms. Patricia Simpson’s money was not credible and not supported by any documentary evidence to indicate that he had not received moneys from her;
- h. Mr. Therold Fields’s conduct amounted to gross misconduct in relation to his client’s funds, thereby causing her substantial loss and anguish.”

[29] The Report made the following recommendations:

- “1. The recommendation for this Committee to make is that Mr. Therold Fields be disbarred from the Bar and removed from the Roll of Attorneys-at-Law for thoroughly unsatisfactory conduct, a total unsatisfactory attitude and for a lack of response to the Barbados Bar Association regarding the complaint of Ms. Patricia Simpson in contravention with (*sic*) the law. This is an attorney-at-law who should not be allowed to practice law in Barbados.
2. That Mr. Therold Fields refund all sums due and payable to Ms. Patricia Simpson namely BDS \$5,000.00, £20,000.00 and £112,000.00 with interest thereon at the rate of 6%;
3. That Mr. Therold Fields pay the costs of Ms. Patricia Simpson’s application before the Disciplinary Committee including attorneys-at-law fees, the cost of her airfare to and from Barbados for the hearing and associated costs of travel such as accommodation and transportation for the hearing.”

[30] The Report stated that Mr. Field’s “conduct amounted to gross misconduct in relation to his client’s funds, thereby causing her substantial loss and anguish.” The Committee recommended that Mr. Fields should be disbarred and removed from the Roll of Attorneys-at-Law; that he should refund all sums due to Ms. Patricia Simpson; and that he pay the costs of Ms. Simpson’s application before the Committee including attorney-at-law fees, the cost of her airfare to and from Barbados as well as associated costs of accommodation and transportation.

### **The Hearing in this Court**

[31] The Disciplinary Committee, as required by **section 21(1)** of the *Act*, forwarded to the Chief Justice the Report containing its findings, reasons for decision and recommendations, and the matter was set down for the consideration of the Court under **section 21(3)**.

[32] It would, however, be remiss of this Court if we did not indicate the challenges we faced in trying to bring this matter to a hearing. Why this is mentioned is simply because the first

page of this judgment gives the impression of multiple hearing days. In truth, there was only one real hearing day, but we received serial medical certificates from Mr. Fields as a basis for his inability to attend the hearing dates. Typically, the certificate and request for adjournment would come on the day before the hearing date, except for the 22 April 2014 hearing when they came the same day.

[33] The Court therefore summoned the two doctors who issued the sick certificates to inquire of them whether the illness suffered by Mr. Fields was such as to preclude him from either participating in or even attending the proceedings before this Court. The doctors testified on 7 May 2014. One of the doctors testified that Mr. Fields complained of exhaustion and she had granted him a week's leave. However, when she was informed by Mr. Pilgrim that on the dates that he sought medical certificates, Mr. Fields had disciplinary hearings scheduled in this Court, the doctor indicated that Mr. Fields had never told her this. Moreover, when informed that Mr. Fields had come into the Court building to file documents on 23 April 2014 while complaining of exhaustion, the doctor candidly stated that she would never have issued Mr. Fields a sick certificate if she had known that he was doing Court work and she would have considered that he was fit to attend Court.

[34] The doctors' testimony convinced us that Mr. Fields was not so unwell as to be unable to attend the hearing. We therefore set the matter down for hearing on the 27 June 2014. On that date, we were informed for the first time that Mr. Fields was no longer representing himself but had retained Ms. Debra Gooding. We gave Ms. Gooding until 4 July to file and serve her submissions, which she did with commendable promptitude.

### **The Submissions**

- [35] Mr. Pilgrim for the applicant supported the recommendation of the Disciplinary Committee that Mr. Fields should be disbarred. Citing the decision of the New South Wales Court of Appeal in *Re Hodgekiss (1962) 62 SR (NSW) 340, 343*, he contended that the Court of Appeal, in reviewing the determination of the Committee, should be slow to differ from the Committee's decision and should give great weight to it. Mr. Pilgrim argued that the Court had to take into account the evidence adduced before the Disciplinary Committee in determining the proportionate sanction to be applied.
- [36] In her written submissions dated 4 July 2014, Ms. Gooding conceded that, "[h]aving read the transcripts of the hearings before the Committee, fault cannot be found with the report as submitted." Before this Court she noted that her client had represented himself before the Disciplinary Committee and she observed that it was impossible to represent oneself with the proper level of objectivity required. She stated that Mr. Fields admitted that there had been an "error" and other issues which could have been ventilated but the advice had not been available to him.
- [37] Ms. Gooding contended that the appropriate penalty should be a suspension, rather than disbarment. She argued that there was no evidence before the Committee or the Court that Mr. Fields had applied the funds for his personal use. Citing this Court's decisions in *Re Clarke, 73 WIR 43 ("Re Clarke")*, *Re Jules; Re Medford (1997) 33 Barb L.R. 112*, and *Re Eastmond, (1995) 50 WIR 76*, Ms. Gooding submitted that the Court ought not to affirm the recommendation of the Disciplinary Committee.
- [38] In response, Mrs. Woodstock-Riley QC, Chairman of the Disciplinary Committee, argued in support of disbarment. She stated that under **section 22** of the *Act*, the maximum period of suspension was three years and she queried whether, in light of the facts of this

case, that penalty was proportionate. Mrs. Woodstock-Riley QC noted that the suspension imposed in *Re Clarke* was conditional on his repaying all the outstanding sums failing which disbarment would follow. She also referred to *Re Toppin, (1987) 22 Barb. L. R. 248* where the Committee's recommendation that an attorney should be struck off the Roll of Attorneys-at-Law was endorsed by this Court.

[39] Recalling the position of this elderly Barbadian woman who was only seeking to buy a home to retire to Barbados, Mrs. Woodstock-Riley QC forcefully argued, however, for a move away from *Re Clarke* where repayment appeared to be a condition precedent of suspension rather than removal. She contended that repayment did not take away the fact that the attorney had been guilty of serious professional misconduct and "would remain out there to be doing the very same thing to another client." Mrs. Woodstock-Riley QC deprecated the use of the Disciplinary Committee, which "had a lot on its plate", as a collection agency whereby the complainants withdrew their complaints once their moneys had been repaid. Referring to the provision in the *Act* permitting a disbarred attorney to apply to be placed back on the Roll of Attorneys-at-Law, she stated that suspension would not do justice in this case.

[40] Mr. Barry Gale QC, as *amicus curiae* on behalf of the Barbados Bar Association, supported the position of Mrs. Woodstock-Riley QC that there should be a move away from the idea of repayment and suspension. He stated that the reputation of the whole legal fraternity was at stake in cases of attorney dishonesty and stated that he could find no mitigating circumstances but, rather, only aggravating circumstances. Mr. Gale QC noted that Mr. Fields, in contrast to Mr. Clarke, who had admitted his guilt, denied receiving any money before the Committee. He had also, relying on "Without

Prejudice” privilege attempted to prevent the letters, in which he had admitted receiving the money and in which he had itemised the three separate sums of money, from being admitted into the record. He tried to protect himself from the consequences of his own dishonesty and that, to Mr. Gale QC, was an aggravating circumstance.

[41] Mr. Gale QC next looked at the issue of the amount of money involved, which at the hearing amounted to some \$800,000.00 inclusive of interest. But, he said, it should not matter whether it is five cents or \$1 million. It was dishonesty, pure and simple and he urged the Court against setting a precedent that, under a certain amount, the penalty should be suspension and not removal. The Court, he said, must send a message of zero tolerance to any form of attorney dishonesty and the ultimate sanction should apply in such cases. Mr. Gale QC also noted that Mr. Fields had not expressed remorse to the Committee nor to the Court, nor even to the complainant. He referred to the complainant’s hardship in not having received a cent of her money back from Mr. Fields.

[42] Ms. Brathwaite QC, representing the Attorney-General as *amicus curiae*, reminded the Court that Ms. Simpson had been without her funds since 2006 and that, until just before the hearing in this Court, Mr. Fields had not only denied receiving any of the money but at one point in the Committee hearing had questioned whether Ms. Simpson could properly be considered his client. She asked that when the Court was taking into consideration the appropriate penalty, it should be mindful of the public interest because public confidence in the profession must be maintained. Ms. Brathwaite QC also took the view that suspension for three years would not be appropriate in this case.

### **The Issues**

[43] There are three issues which arise for discussion, namely (1) how should the Court regard the recommendation of the Disciplinary Committee; (2) whether the amount involved, or the attorney's claim not to have spent the money on himself, is relevant to the Court's decision; and (3) what is the appropriate penalty to be imposed by this Court in these circumstances.

#### **The Relevant Provisions of the Legal Profession Act and Rules**

[44] Before we launch into the discussion of the issues, it will help, we believe, to frame the context in which we operate by setting out the statutory and ethical rules which are relevant to the disposition of this matter. Discipline of attorneys-at-law is dealt with in **Part V** of the *Act*. The Disciplinary Committee of the Bar Association is established under **section 18(1)** of the *Act* which also charges the Committee with the duty of upholding standards of professional conduct. **Section 19** permits a client alleging himself or herself aggrieved by an act of professional misconduct, including any default on the part of an attorney-at-law, to apply to the Committee to require that attorney-at-law to answer such allegation.

[45] **Section 21 (1)** provides that where the Committee decides, after a hearing, that a case of professional misconduct has been made out against an attorney-at-law, the Committee shall, within 21 days of its decision, forward to the Chief Justice a report signed by the Chairman of its findings together with the reasons for its decision and with any recommendation in relation thereto. **Subsection (2)** states that the Committee may, in its report, make any recommendation as to (a) removing from the Roll the name of the attorney-at-law; (b) suspending the attorney-at-law from practice; (c) imposing on the

attorney-at-law such fine as it thinks proper; (d) subjecting the attorney-at-law to a reprimand.

[46] **Section 22(1) and (2)** of the *Act* provide:

- “(1) The Court of Appeal on the consideration of any report submitted by the Committee may –
- (a) dismiss the application;
  - (b) order the name of the attorney-at-law to be removed from the roll;
  - (c) order that the attorney-at-law be suspended from practising law for such period not exceeding three years as it thinks fit;
  - (d) impose on the attorney-at-law to whom the report relates such fine as it thinks proper; or
  - (e) reprimand the attorney-at-law; and
  - (f) make such order as to costs as it thinks fit, and in addition, except where the application is dismissed, the Court may order the attorney-at-law to pay the applicant or person aggrieved such sum by way of compensation and reimbursement and such further sum in respect of expenses incidental to the hearing of the application and the consideration of the report as it thinks fit.
- (2) An order made under paragraph (b) or (c) may contain such provisions as the Court thinks fit for the custody of any deeds, documents or papers in the possession of the attorney-at-law to whom it relates.”

[47] **Rule 2** of the **Legal Profession (Accounts) Rules 1973 (SI 1973/107)** defines “client’s money” as “money held or received by an attorney-at-law on account of a person for whom he is acting in relation to the holding or receipt of such money, either as an attorney-at-law or in connection with his practice as an attorney-at-law, as agent, bailee, stakeholder or in any other capacity. . .” **Rule 3** provides that “[a]n attorney-at-law who holds or receives client’s money, or money which under these rules he is permitted and

elects to pay into a client account, shall as soon as practicable thereafter pay that money into a client account.”

[48] **Rule 10(1)** provides as follows:

“For the purposes of these rules, an attorney-at-law shall at all times keep properly written up such accounts as are necessary -

- (a) to show his dealings with –
  - (i) client’s money which is received, held or paid by him; and
  - (ii) any other money which is dealt with by him through a client account;
- (b) to show separately in relation to each client all money of the categories specified under paragraph (a) and to distinguish all such money from any other money received, held or paid by him.”

[49] *The Legal Profession Code of Ethics* (“*Code of Ethics*”) was promulgated on 12 December 1988. Paragraph 5(1) of the *Code of Ethics* provides that “[a]n attorney-at-law whether in practice or not shall uphold at all times the standards set out in this *Code*.” Paragraph 5(2) provides that “[a]n attorney-at-law shall maintain his integrity and the honour and dignity of the legal profession and of his own standing as a member of it and shall encourage other attorneys-at-law to act similarly both in the practice of his profession and in his private life and shall refrain from conduct which is detrimental to the profession or which may tend to discredit it.”

[50] Paragraph 24(1) requires the attorney-at-law to “act in the best interests of his client, represent him honestly, competently and zealously and endeavor by all fair and honourable means to obtain for him the benefit of any and every remedy and defence which is authorised by law, steadfastly bearing in mind that the duties and responsibilities of the attorney-at-law are to be carried out within and not without the bounds of the law.”

Paragraph 24(2) provides that “[t]he interests of his client and the exigencies of the administration of justice should always be the first concern of an attorney-at-law and rank before his right to compensation for his services.”

[51] Paragraph 30(1) requires the attorney-at-law to “deal with his client’s business with all due expedition and shall, whenever reasonably so required by the client, provide him with full information as to the progress of the client’s business.” Paragraph (2) declares it “improper for an attorney-at-law to accept instructions in a matter unless he can handle it without undue delay.”

[52] Paragraph 70 provides that “[a]n attorney-at-law shall not retain money he received for his client longer than is absolutely necessary.” Paragraph 87 provides that “in pecuniary matters, an attorney-at-law shall be most punctual and diligent, he shall never mingle funds of others with his own and *he shall at all times be able to refund money that he holds for others.*” (Emphasis added).

We turn now to consider the issues raised in this matter.

#### **A. The Disciplinary Committee’s Report and Recommendations**

[53] As is clear from the discussion above, the issue which divided Mr. Pilgrim and Ms. Gooding, was the extent to which the Disciplinary Committee’s recommendation should influence the Court’s final determination. In *Re Niles*, 47 WIR 38, 43, *Sir Denys Williams, CJ* observed that “the Committee is charged by **section 18(1)** of the statute with the duty of upholding standards of professional conduct of attorneys-at-law and this

Court is disinclined to act against the recommendation of the Committee in a matter such as this.”

[54] In *Re Hodgekiss*, (1962) 62 SR (NSW) 340, 343, *Owen, J* in the Court of Appeal of New South Wales described the best approach in such cases:

While an appeal from [the Committee’s] decision to the Court of Appeal is in the nature of a rehearing, *the Court should give great weight to and be slow to differ from the Committee’s opinion* that particular acts or omissions by a solicitor do or do not amount to professional misconduct, and the Court should attach the same weight to a decision of the Committee as to the appropriate order to be made in a particular case. . .In determining, however, what are the facts on which a finding of professional misconduct has been based, *the findings of the Statutory Committee should be regarded by the Court in the same way as are those made, for example, by a judge sitting without a jury.* The Committee may, and frequently does, have the opportunity, which is denied to the Court, of seeing and hearing the witnesses, and when the Court comes to consider and decide, for itself, what are the facts established by the evidence, that is a consideration which must be borne in mind. *But it is for the Court to make up its own mind what facts are proved by the evidence and what inferences should be drawn from those facts, and it would not, in my opinion, be proper for it merely to satisfy itself that there is evidence which could satisfy the findings against which the appeal is brought. It must make up its own mind what the facts are.* To do otherwise would be to disregard the legislative direction that the appeal shall be in the nature of a rehearing. It is with these considerations that I approach this case.” (Emphasis added)

[55] *Re Clarke*, a case cited to us by all the attorneys in this case, is a decision in which this Court rejected the recommendation of the Committee. The facts were these: sometime in 1999, the complainant, Mr. Atkins, a Barbadian who lived in England and wished to purchase a property at Lot 1, Maxwell Coast Road, Christ Church, retained Mr. Clarke to represent him. The agreement for purchase and sale was prepared, and the complainant gave to Mr. Clarke \$20,000.00 to be transferred to the seller’s attorney as a deposit on the purchase price of \$150,000.00. Expecting the transaction to be completed by September 2001, the complainant remitted to Mr. Clarke two further sums of \$55,690 later in 1999,

and \$75,000 in 2000. Mr. Clarke sent to the complainant a conveyance to be signed. It turned out to relate to a transaction involving another person, not the complainant. The complainant was able to locate the other addressee and, after they exchanged conveyances, the complainant signed and returned the conveyance to Mr. Clarke, who purported to render a “completion statement.” However, the transaction had not been completed.

[56] The complainant came down to Barbados and, on discovering that the balance of the purchase price had, in fact, not been paid to the vendor’s attorney, he reported the matter to a sergeant in the Royal Barbados Police Force. He later made an arrangement with Mr. Clarke that he would ask that the police action be suspended if Mr. Clarke repaid to him the \$130,000 balance on the purchase price, \$10,000 interest on the \$150,000, and compensated him \$2,400 in expenses incurred in travelling to Barbados. When Mr. Clarke failed to make the payments, the complainant filed a complaint with the Disciplinary Committee. It appeared that Mr. Clarke was able to raise the \$130,000 balance of the purchase price and the purchase was completed by another attorney-at-law in 2002. However, the complainant still sought interest in the sum of \$41,000 and by the date of the Disciplinary Committee hearing and report, some \$35,000 was still owing to the complainant.

[57] The Disciplinary Committee’s report recommended that Mr. Clarke be reprimanded because of his open admission in evidence that he misappropriated the funds but had subsequently replaced them; and his admission in writing that he was indebted to the complainant for the interest and expenses and his intention to pay them. Before this Court, Mr. Smith QC for Mr. Clarke described the Committee’s findings as “sound” and

submitted that the Court should accept the Committee's recommendation of a reprimand but should order Mr. Clarke to pay the sum owing by a certain date failing which, the matter should be remitted to the Court to be dealt with as a violation of its order. Ms. Chase QC, a member of the Committee and, coincidentally, the Chairman of the Committee in the instant case, supported a reprimand because of Mr. Clarke's "forthrightness and cooperation" with the Committee. Ms. Brathwaite on behalf of the Attorney-General as *amicus curiae*, as she is here, agreed that Mr. Clarke should be reprimanded and ordered to pay the interest and expenses outstanding. However, Mr. Abrahams, the President of the Bar Association, also appearing as *amicus curiae*, had another view. He contended that the interests of the Committee and the Bar Association were different, and stressed that the interests of the public and the legal profession had to be protected.

[58] The response of *Simmons, CJ* repays full quotation:

[38] Mr. Smith makes three points by way of mitigation. First, he asks us to take into account the two factors referred to in the Committee's report. Secondly, he says that Mr. Clarke had no dishonest intention to deprive Mr. Atkins of his money. Thirdly, he submitted that there was "no distinct evidence" that he used Mr. Atkins' money for personal gain. The only evidence is that he could not repay the money. We have taken fully into consideration Mr. Clarke's ready confession before the Committee that he misappropriated the finds entrusted to him but subsequently replaced them, as well as his acceptance of liability for outstanding interest and expenses. We make no finding on the question of dishonesty except to say this. Even if it could be thought that Mr. Clarke "borrowed" his client's funds, such an act is not an incident of the normal attorney-at-law/client relationship. The situation in this case should never have arisen if Mr. Clarke had strictly complied with Rule 3 of the Legal Profession (Accounts) Rules, 1973. Rule 3 is in these terms:

"3. An attorney-at-law who holds or receives client's money, or money which under these rules he is permitted and elects to pay into a client account, shall as soon as practicable thereafter pay that money into a client account."

[39] With respect to Mr. Smith's third point, the Committee expressly found, and we accept, that Mr. Clarke used his client's funds "for his personal use". . . It seems to us that Mr. Clarke disregarded Rule 88(1) of the Code of Ethics.

"88.(1) An attorney-at-law shall keep such accounts as clearly and accurately distinguish the financial position between himself and his clients as and when required."

That requirement for segregation of accounts implies that an attorney-at-law's clients' accounts must not be used as the attorney-at-law's personal bank account and the attorney-at-law must always be able to account to clients for their money.

[40] We have taken into account extenuating circumstances not urged by counsel. In correspondence written by Mr. Clarke and included in the Committee's report, he referred to problems in his office, his wife's ill-health and the stress of this matter on his family. Those circumstances, painful as they may be, do not explain and certainly do not excuse the misappropriation of his client's funds.

[41] While we make allowance for those extenuating circumstances which may have had an impact on Mr. Clarke's conduct, it is impossible to overlook the nature and extent of that conduct. There has been a course of misconduct stretching over 9 years. Mr. Clarke's misconduct is of sufficient gravity to make reprimand an inappropriate penalty. A fine would only add to his obvious financial difficulties and, in any event, would not adequately reflect the seriousness of his misconduct. His conduct fell below the high standards to be expected of an attorney-at-law. Whereas he may have succumbed to temptations induced by his personal and financial circumstances, it is undeniable that his misconduct has been prolonged and caused significant loss and much distress to his former client.

[42] We think that Mr. Abrahams' contention for suspension of Mr. Clarke more nearly meets the justice of this case. Two considerations are stark. First, Mr. Clarke's misconduct has the potential, if not dealt with severely, to tarnish the reputation of the legal profession collectively and bring it into disrepute. As Rule 5(2) of the Code of Ethics states in part, an attorney-at-law "shall refrain from conduct which is detrimental to the profession or which may tend to discredit it". This Court has to assist in maintaining the reputation of the legal profession and sustain public confidence in the integrity of the profession.

[43] Secondly, this Court has an inescapable duty to protect the public interest. The public must not be led to believe that misappropriation of

clients' funds and failure to honour promises to repay are matters to be tolerated. In paying due regard to the public interest, it is important that punishment be appropriate and proportionate. In our view, the protection of the public requires a penalty whose objectives include specific and general deterrence and whose imposition gives an assurance to the public that certain misconduct by attorneys-at-law will be met with appropriate sanctions. Mr. Clarke's misconduct seems to us to be altogether more serious than the misconduct in the cases cited by Ms. Brathwaite and warrants a more severe penalty.

Disposal

[44] One way in which this Court may best serve and protect the public interest is to ensure Mr. Clarke's absence from the practice of law for a reasonable time. The order of this Court is that Mr. Clarke be suspended from practice for nine (9) months.

[59] There have also been several other instances where this Court, led by *Simmons, CJ*, has rejected the Committee's recommendations on various grounds. In *Re Jackman*, (unreported, *Carilaw BB 2003 CA 14*) the Committee's report contained no summary of the evidence. Upon perusing the hearing minutes, this Court found that the Committee had failed to address its mind to the attorney's evidence or his defence, and had not resolved any of the disputed issues of fact between the attorney and the complainant. *Simmons, CJ* concluded, (para [14]) that "this report is an altogether unsatisfactory document upon which this Court should be asked to uphold a recommendation for the disbarment of an attorney-at-law."

[60] Similarly, in *Re Layne*, (unreported; *Carilaw BB 2009 17*) the Committee had recommended the reprimand of an attorney-at-law for failure to file an action within what the Committee thought was a one-year limitation period for a negligence action. However, on examination of the *Limitation Act 1997, Cap. 231*, *Simmons, CJ* observed that the relevant limitation period was not one, but three years, which meant that, contrary to the Committee's decision, the attorney had not, in fact, violated any of the

ethical rules. Further, his Lordship noted that the membership of the Committee had changed during the course of the hearing so that there were members who had participated in the Committee's deliberations, but had not been present for the hearing, thus offending the principle that "he who hears, must decide."

[61] No clearer description of the true interrelationship between the Committee and this Court can be found than in the seminal language of *Simmons, CJ in Re Niles (No. 2)*, **66 WIR 64, para [40]** at p. 78:

The powers of the Committee are purely *recommendatory*. It can impose no sanctions. These are within the province of the Court of Appeal which makes the final decision. Contrary to the usual procedure where "he who hears, decides", the statute deliberately splits the functions as between the Committee and the Court of Appeal. The former investigates the complaint and makes a preliminary determination whereas the Court of Appeal makes the final decision and imposes a sanction where appropriate. Delegated hearings are not unusual and the propriety of these types of hearing was approved by the Privy Council in *Jeffs v. New Zealand Dairy Production and Marketing Board [1966] 3 All E.R. 863*. In that case the Privy Council held that the dairy board, in making orders affecting milk producers, could appoint a person to receive evidence and submissions from interested parties; and if, before deciding to make an order, the board was fully informed of the evidence and submissions, there would be no breach of natural justice. . .

The decisions of the Committee *do not finally determine* rights and obligations even though it is undoubted that its recommendations may adversely affect an attorney-at-law. But the proceedings before the Committee are only *a stage* in the process involving a determination of rights and obligations. It is at the Court of Appeal stage that those rights and obligations are finally determined.

[62] Therefore, while this Court will carefully consider the recommendations of the Disciplinary Committee, the determination affecting the attorney-at-law, whether adversely or not, is ultimately one for this Court.

**B. The amount of money and whether the attorney benefitted from its use**

[63] Much was made by Mr. Pilgrim, understandably, about the large amount of money, which has been lost and the fact that none of it has been repaid to Ms. Simpson. Both before the Committee and this Court, Mr. Fields contended that he had not spent any of the money for his personal use. However, neither the amount of money nor the use to which it was put is a consideration which should detain this Court in its determination of the appropriate discipline to be applied.

[64] As to the amount of money, we agree with Mr. Gale QC that whether the amount is 5 cents or \$1 million, the dishonesty of any attorney brings opprobrium to the entire profession against which the Bar Association must react. In *Re Alleyne*, (unreported; *Carilaw BB 1994 CCA 9) Husbands, JA* (as he then was) stated:

“In any climate and in the present climate of public opinion it seems to me that the Bar Association, which is granted self regulatory powers by statute, cannot appear to condone or be indifferent towards any perceived act of professional misconduct by any one of its members.”

[65] In *Re Toppin*, (1987) 22 Barb. L. R. 248, the attorney had been retained by a couple for the purchase of a dwellinghouse in Dover, Christ Church. The Disciplinary Committee found that, on 8 October, 1985, the female complainant had paid the attorney-at-law \$1,500.00 by cheque, and on 16 October, 1985, she had paid him a further \$11,810.08 by cheque, for a total of \$13,310.08. The attorney-at-law never paid the sum over to the vendors of the Dover property and never accounted to the complainants for the moneys which were paid to him. The Committee found that the attorney-at-law had misappropriated the funds of his clients and was therefore guilty of gross professional misconduct. The Committee recommended that the attorney’s name be removed from the Roll of Attorneys-at-Law and the recommendation was supported by the Attorney-General and the President of the Bar Association who appeared as *amici curiae*.

[66] The attorney's counsel tendered in mitigation reports on the attorney's background showing that he had sought the assistance of a consultant psychiatrist who was of opinion that the attorney had good strengths and was willing and able to accept long term therapy as an aid to the rebuilding of his life. Neither this nor the insubstantial amount of money, however, deterred this Court (*Williams, CJ, Husbands* and *Rocheford, JJA*) from endorsing the Committee's recommendation of disbarment. The Court stated at para 25:

“The Committee's finding of gross professional misconduct is clearly justified. Sympathy cannot be allowed to override the interests of the legal profession and of the public interest and it is our view that in this case the recommendation of the Disciplinary Committee should be endorsed.”

[67] On the issue of how the attorney dissipated the money, in two cases before this Court, *Douglas, CJ* emphasised the principle that it matters not whether the attorney expended the client's money for his own purposes or how the money, after being entrusted to him, was spent. In *Re Haynes, 21 Barb L. R. 23*, the attorney was acting for the vendor of a piece of land and had received \$38,871.16 on behalf of his client in March 1983. When he appeared before the Disciplinary Committee in September 1985, he admitted that the sale had been closed but that he had not turned over any of the money to his client. *Douglas, CJ* cited with approval the *dicta* of *Lord Langdale, MR* in *Re Martin (1843) 6 Beav. 337, 341*, that “[i]t is undoubtedly the duty of the Court to protect solicitors in the fair and honest discharge of their difficult and delicate duties; but when a solicitor is found to have availed himself of his honourable and confidential position, for the purpose of taking advantage of and defrauding his clients, it is not less the duty of the Court to withdraw from him those privileges, and that certificate of character, which are afforded by his being permitted to remain on the Roll of Solicitors.”

[68] *Douglas, CJ* continued:

“It is not suggested that the instant case is one in which the attorney-at-law deliberately set out to defraud his clients. Mr. Haynes' fault, as Mr. Forde admits, is that he used one client's funds to pay off other clients, and counsel states that he has no resources (other than his dwelling house which is mortgaged) to repay money with which he was entrusted. The result is that Mr. Haynes has improperly deprived the applicants of their money and the possibility of their recovering any of it is extremely remote. Mr. Haynes' conduct in regard to the applicants' funds shows that he is unfit to be entrusted with clients' money and is inexcusable and deplorable. The Disciplinary Committee's findings of gross negligence and professional misconduct are in the opinion of the Court amply justified.

In considering the Disciplinary Committee's recommendations, the Court must also take the public interest into account, because public confidence in the profession must be maintained. Mr. Haynes' conduct falls so far below the standard expected of an honorable profession that both in the interest of the legal profession and in the public interest his name must be removed from the Roll of attorneys-at-law in accordance with the provisions of paragraph (b) of section 22 (1) of the *Legal Profession Act*.”

[69] In *Re Browne, (1972) 7 Barb. L. R. 62*, (“*Re Browne*”) there were two complaints against the attorney. In the first, Mr. Browne had acted for the purchaser of a parcel of land. The purchaser had paid over to Mr. Browne \$2,500 and the purchaser had requested repayment of his money. Mr. Browne had made promises to repay but never did. In the second complaint, the attorney had been retained by the estate of a decedent with regard to the sale of land owned by the deceased. The sum of \$16,000 was paid to the attorney on behalf of the estate and after deduction of fees and expenses, the estate was to receive the sum of \$15,772.80. Mr. Browne never paid any of the money to the estate. *Douglas, CJ* observed:

“Mr. St. John contends that the affidavits do not allege that the particular money was used by the respondent. They do not. Indeed it is a matter for complaint that the respondent gave no explanation to his clients about what had become of their money. In argument Mr. St. John suggested that the affidavits support an inference other than that the respondent had misappropriated his clients' money. It is to be recalled that the only

evidence before me is that contained in the affidavits of Mr. Payne and Mr. Daniel. The evidence is that the respondent alone dealt with their business and there is no evidence whatever that Mr. H.A. Husbands, the respondent's partner at the time, was in any way involved in the failure to pay over the amounts belonging to Mr. Payne and Mr. Daniel.

I hold that the respondent was under a duty to pay over to his clients the amounts set out in the notice of motion. Further, the uncontroverted facts contained in the affidavits show that he had no valid claim to the money. His failure to pay over after numerous requests, his unfulfilled promises to pay, the absence of any explanation, either to his clients or in this Court, all go to show that the only logical inference to be drawn in this case is that the respondent either used the money himself, or if he still has it, he has refused to pay it over.”

[70] What is clear from *Re Haynes* and *Re Browne* is that the Court does not concern itself with what happened to the money entrusted to the attorney by the client. All that is necessary, as *Douglas, CJ* pointed out, is to show that the attorney is either unwilling or unable to repay the money. Hence, it is irrelevant that Mr. Fields never used the money for his own personal use.

#### **D. The Appropriate Penalty**

[71] Ms. Gooding, in her submissions in support of a suspension rather than disbarment as the appropriate punishment for Mr. Fields, cited *Re Clarke*, *Re Eastmond* and *Re Jules*. In *Disciplinary and Regulatory Proceedings, 7<sup>th</sup> edn, para 14.10 at p. 276*, the authors *Harris, QC* and *Carnes* observe that “the proper approach to the application of sanctions on lawyers which also describes the proper approach to disciplinary sanctions in a way which is relevant well outside the solicitors’ profession”, was laid down in *Bolton v The Law Society [1994] 2 All ER 486* by *Sir Thomas Bingham, MR* where his Lordship stated:

“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. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty has been established, even after a passage of years, and even where the solicitor has 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 on trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or 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.

It is important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is in some of these orders a punitive element: a penalty might be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor who has tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly this is so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need and it would be unjust to punish him again. 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, maybe 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 readmission. . . A profession's most valuable asset is its collective reputation and the confidence which that inspires."

[72] Pivotal to this Court’s duty is the need both to protect the public and to maintain trust and confidence in the legal profession. The enforcement of the rights of the client is a further consideration. This makes understandable the *cri de coeur* of Mrs. Woodstock-Riley QC that complainants sometimes use the Disciplinary Committee as a debt collection agency seeking only to recover their money and withdrawing the complaint when that recovery is successful. In *Re Browne, Douglas, CJ* cited the *dicta* of *Lord Esher, MR* in *Re Grey [1892] 2 QB at 443*, explaining the duty of the Court in regard to solicitors in such circumstances:

“[T]he Court has a punitive and disciplinary jurisdiction over solicitors, as being officers of the Court, which is exercised, not for the purpose of enforcing legal rights, but for the purpose of enforcing honourable conduct on the part of the Court’s own officers. That power of the Court is quite distinct from any legal rights or remedies of the parties, and cannot, therefore, be affected by anything which affects the strict legal rights of the parties. . . But the two things, the breach by the solicitor of his duty as such, and the legal right of the client, are quite distinct. The client had a right to the money, but the Court has a right to see that its own officer does not act contrary to his duty.”

[73] Similarly, in *Re Clarke*, at *para [42]*, *Simmons, CJ* stated that “[t]his Court has to assist in maintaining the reputation of the legal profession and sustain public confidence in the integrity of the profession.” And we have already quoted, at *para [46]* above, his Lordship’s *dicta* that “this Court has an inescapable duty to protect the public interest” and to ensure that the public is not “led to believe that misappropriation of clients’ funds and failure to honour promises to repay are matters to be tolerated.”

[74] We find that the best approach to our duty is to have some regard to the positions taken by Mr. Fields in the hearing before the Committee which, as we shall show, stand in stark contrast to the positions taken by the attorneys in the three cases cited by Ms. Gooding, namely *Re Clarke*, *Re Eastmond* and *Re Jules*, in all of which the penalty of suspension

was imposed. We have already discussed *Re Clarke* at length, and suffice it to say that Mr. Clarke from the very beginning admitted to the Committee that he had misappropriated the money but he stated that he had already repaid the principal. The only issue before the Committee was the outstanding amounts for interest and fees. In *Re Jules; Re Medford*, Mr. Jules had conceded before the Committee that he had received the money from his client Ms. Medford. Again, the only issue was Mr. Jules' failure to abide with his undertaking to repay, on the several dates agreed to by him, the funds which he had admittedly received.

[75] In *Re Eastmond*, the facts were that the 73 year-old client had retained Dr. Eastmond to represent him in a personal injury action. A settlement was arrived at and the client was initially led to believe that the entire settlement was only \$10,000, which he received, with \$1,000 being paid to Dr. Eastmond as and for his fee. The client later learned from the insurance company that the total settlement was in fact \$80,410 of which \$7,310 in fees had been paid directly by the insurance company to Dr. Eastmond. After the client made a report to the police, Dr. Eastmond requested that the client come to his office where he was paid a further sum of \$30,000 in one hundred dollar bills and fifty dollar bills. The client was also asked to sign a release indicating that there was no further liability from Dr. Eastmond.

[76] Before the Committee, Dr. Eastmond testified that there was an arrangement between him and the client that "anything we get, we will split in half." He further stated that, after the settlement funds were received from the insurance company, he deposited the cheque and gave the client \$10,000.00. He testified that he and the client had another arrangement under which the client loaned him the balance of the settlement because he had a major

expenditure to make. The agreement, which was attached to the record submitted to this Court, indicated that the sum of \$30,000.00 was due from Dr. Eastmond to the client with interest at 8% payable in half-yearly intervals. The evidence also revealed that a release was subsequently executed by the client which purported to cancel the debt of \$30,000 owed by Dr. Eastmond to the client.

[77] The Committee recommended that Dr. Eastmond be suspended for six months. But what is important is that, as soon as Dr. Eastmond became aware of the client's claim, he repaid to the client what he thought was due, namely the \$30,000.00 which he had borrowed, but he kept some \$29,100 as his fee for services for a matter involving a settlement of \$73,100.00.

[78] Observing that Dr. Eastmond was very fortunate to have received a recommendation of suspension from the Committee, this Court (*per Husbands, CJ (Ag.)*) adopted the recommendation. Noting that \$29,100 could in no wise be a reasonable fee for a matter worth \$73,100, when he had already received \$7,300, the Court, in addition to the suspension, ordered Dr. Eastmond to repay the \$29,100 with interest at 8%.

[79] If those cases show some form of contrition before the Committee or, at least, an admission of guilt with an offer to repay and make the client whole, in this case nothing could be further from the truth. For Mr. Fields admitted to nothing before the Committee. We are mindful of Ms. Gooding's contention that Mr. Fields represented himself before the Committee and could not be expected to maintain the appropriate level of objectivity. We are, however, less concerned about his level of objectivity than with his level of honesty, and with his obviously condescending and disdainful approach to Ms.

Simpson, who only sought a return of her money, and even to the Committee, whose duty it is to uphold standards of professional conduct.

[80] A flavor of Mr. Fields' attitude can be gleaned from his testimony set out at paras [12]-[18] and [20] above. But it was in his cross-examination of Ms. Simpson that Mr. Fields continued his denial of ever receiving the money. He began his cross-examination in this way:

“Q. You are Patricia Simpson, correct?

A. Yes, I am.

Q. Did you give this tribunal some evidence that you are Ms. Patricia Simpson?

A. I wasn't told to bring - I've got my passport but I haven't got it on me.”

[81] After her testimony on cross-examination that she paid the \$5,000.00 at the same time that she signed the reservation agreement and that Mr. Hayde was in the room with her when this occurred, the following exchange ensued:

“Q. For the avoidance of doubt could you describe the person you think is Mr. Hoyte or Mr. Hade? Anything about him that you remember?

A. If he was in a line-up, I would recognise him, yes.

Q. But there is nothing about him that you remember?

A. I didn't expect it would come to this otherwise I certainly would have paid more attention.

Q. Is there anything about him that you recognise was he black, was he white, was he yellow?

A. He was black.”

[82] Mr. Fields asked Ms. Simpson about having met Mr. Chris Patey in Mr. Fields' office. She stated that she was under the impression that Mr. Patey worked in Mr. Fields' office. Asked whether Mr. Patey “appear[ed] to be a Barbadian to you?” Ms. Simpson answered that “[h]e is a white man.”

[83] Mr. Fields then asked her whether she had any evidence that the \$5,000.00 cheque had cleared from her receiving bank. She replied that she had her bank statement but not with

her, that cheques were not returned unless requested from the bank, and that she had not requested it. At another point, Mr. Fields asked Ms. Simpson whether she would be able to generate any evidence whatsoever of her payments of £20,000 and £112,000 into his office.

[84] Mr. Fields' cross-examination of Ms. Simpson ended in the following exchange:

- “Q. Just very quickly since we're there. Did you ever formally meet me, Ms. Simpson?  
A. Yes, I have.  
Q. When was that?  
A. That was on the day that I paid in the \$5,000.00.  
Q. How did you meet me?  
A. Mr. Hayde got you from your office brought you along the corridor, you came over for about a second, “Hello, Ms. Simpson, nice to meet you sorry I can't spend any time with you I have clients waiting.” And you disappeared. That was my first meeting with you.  
Q. Any meetings after that?  
A. No.”

[85] Amazingly, Mr. Fields even challenged the jurisdiction of the Deputy Chairman of the Disciplinary Committee, Mr. Andrew Brewster, Attorney-at-law, in the following exchange:

- “MR. BREWSTER: Just as an aside, how do you deal with faxes?  
MR. FIELDS: A fax must always be an original.  
MR. BREWSTER: How can I have an original signature, Mr. Fields?  
MR. FIELDS: Before we get there, Mr. Brewster, are you properly constituted to sit in this matter?  
MS. CHASE, QC: Mr. Fields.  
MR. FIELDS: I just couldn't remember.  
MS. CHASE, QC: Mr. Fields, if you have a problem with a procedure or if there is an irregularity which you wish to question please address it to the Chair.  
.....  
MR. FIELDS: Just very quickly. These two matters got called at the same time; it was this matter and the matter of Marguerita Thompson. I recall that Mr. Brewster was in one matter and not in the other, just for my own

purposes. It's just for my own peace and clarity of mind I just want to make sure that he is properly constituted in this matter.

MS. CHASE, QC: And if I may respond to you, Mr. Fields, yes, Mr. Brewster is properly constituted as a member of the Disciplinary committee in the first instance as Deputy Chairman and secondly as a member of this specific hearing.

MR. FIELDS: I'm sorry, Mr. Brewster, no disrespect to you. I'm sorry, ma'am."

[86] It is clear from the above extracts from the transcript that Mr. Fields displayed neither penitence nor contrition, and never admitted that he had received any money. Moreover, Mr. Fields sought to assign blame to everyone other than himself. He blamed the junior attorneys in his office and suggested that the agreements signed by Ms. Simpson must have been sent out of the office without his approval, even though he also admitted signing them himself. And he blamed the secretaries who received the money and issued receipts. Hence, if for no other reason, the three cases which he cites, *Re Clarke*, *Re Jules* and *Re Eastmond* are inapplicable.

[87] But there is another reason why those cases are inapposite. On 20 May 2008, there was a meeting between Mr. Fields and Mr. Pilgrim regarding the repayment of the funds to Ms. Simpson. Mr. Fields wrote a letter erroneously dated 19 May 2008 which memorialised the meeting as follows:

"Dear Sir,

Re: Lot 13 Eloise Gardens, Christ Church Jaye E Dee Investments Limited to Patricia Simpson

I refer to the above and to our meeting of May 20<sup>th</sup> 2008 with respect to same.

As I have indicated and subject to my own confirmation I write to confirm as follows:

1. That this matter was originally referred by Caribbean Property Search per J.C. Hiles and C. Patey;

2. It is likely that Careen Byfield-Leyshon who was working in my chambers at the time would have taken the first set of instructions in this matter. *You need confirmation from your client as to whether an engagement letter was ever signed by the client to handle this purchase.*
3. *I can confirm that the following sums appear in my records as having been sent by your client:*
  - a. *\$5,000.00 paid on 11<sup>th</sup> April 2006 by virtue of receipt 135 (signed by Angela Fields); please confirm the manner in which these funds were paid to my office.*
  - b. *£20,000 paid on the 15<sup>th</sup> May 2006 by virtue of receipt 148 (signature to be verified); please confirm the manner by which these funds were paid to my office;*
  - c. *£112,000 paid on the 27<sup>th</sup> November 2006 (Bds equivalent \$431,376.29) (signed for by Kelly A. Stoute); I have a record of how these funds were paid into my office;*
4. You should know that any transactions which bear the names of Clarence Hiles, Chris Patey, Caribbean Mortgage Services, Caribbean Property Search or Susan Barnett have been declared suspect and subject to a specific audit and this matter falls under that category. I will be very interested to hear (sic) your client's account of how and when this property was offered to her. This accounts for my request for time to review this matter. It would appear that funds paid in by your client were allocated to the Vendor's account with the office, a process I am now working hard on to rectify.

Notwithstanding the above *I write to confirm and reiterate that I am prepared to take responsibility for any internal problems or errors which have occurred in this matter. I will need sufficient time to complete my audit and investigation and write to confirm as follows:*

1. *That the full agreed sum which I have received on your client's behalf will be paid back to your client as agreed;*
2. *That interest at the local bank rate will be paid to your client in addition to (1) above;*
3. *That subject to my own investigation in this matter that this matter complete on or before 30<sup>th</sup> June 2008; (sic)*

If you require any further information on this matter do not hesitate to contact me and I look forward to hearing from you viz; (sic) 3(a) – (c) above.

Yours faithfully,  
Therold O’N Fields  
Attorney-at-Law”

[Emphasis added]

[88] The letter, which evinces the only admission by Mr. Fields of having received money from Ms. Simpson, prompts several comments. First, Mr. Fields does not appear to have maintained any record of an engagement letter or retainer agreement regarding this client from whom he received \$5,000.00 and £132,000.00, and was seeking this information from Mr. Pilgrim. Secondly, while from his testimony regarding his retainer by JEDI to sell the entire development, he could state with some certainty that he was owed nearly \$1 million on account, he could not produce a single financial record of “the manner” in which the various sums were paid in to his office. The absence of such records was a clear violation of **Rules 3 and 10(1)** the *Legal Profession (Accounts) Rules 1973*. Moreover he was not, and in fact has never been, in a position to refund Ms. Simpson her funds, in violation of paragraphs 70 and 87 of the *Code of Ethics*.

[89] But what is very clear is that, when Mr. Fields denied under oath at the Disciplinary Committee hearing on 12 November 2009 that he had received any funds from Ms. Simpson (“as far as I’m aware no funds came into the office period with respect to Patricia Simpson. . .I never got it”; see para [19] above), his testimony was at variance with his May 2008 letter written 18 months previously *admitting* to having received the money, based on the receipts which had been marked into evidence acknowledging that the funds had come into his office. Further, when Mr. Fields denied that he had agreed with Mr.

Pilgrim to repay the three sums of money, he was being untruthful since his testimony contradicted the letter.

[90] It is obvious that Mr. Fields gave false testimony to the Committee. In so doing, he violated paragraph 74 the *Code of Ethics*, which provides that “[a]n attorney-at-law shall not knowingly make a false statement of law or fact.”

[91] This case presents the clearest example of the “inescapable duty” of the Court to protect the public interest from an attorney-at-law who not only fails to maintain records and fails to account to his client for funds received, but who also testifies falsely about the entire matter to the Disciplinary Committee while under oath. This constitutes gross professional misconduct of a particularly egregious kind.

[92] We take the opportunity to draw attention to the existence of other rules which permit investigation by the Bar Council of alleged financial irregularities by attorneys-at-law.

Paragraph 25 of the *Legal Profession (Accounts) Rules 1973* provides:

“25 (1). For the purpose of ascertaining whether or not these rules are being complied with, the Council of the Bar Association acting on either

- (a) its own motion; or
- (b) a written complaint filed with it by a third party,

may by notice under the hand of the secretary of the Association and served on an attorney-at-law require the attorney-at-law to produce at a time and place to be fixed by the Council all books of accounts, records of accounts, including bank pass books and any other necessary documents, for inspection by such person as that body designates, and to supply to that person any necessary information and explanations.

(2) Upon being required to do so, an attorney-at-law shall produce such books or documents and supply such information or explanations as are necessary under this rule.

(3) The person designated by the Council of the Bar Association shall within 21 days of the conclusion of the inspection forward to the Council a signed report of his findings.

(4) No inspection shall be instituted upon the written complaint of a third party, unless the Council of the Bar Association is satisfied upon *prima facie* evidence that a ground of complaint exists, and the Council may require payment to be made to it by the third party of a reasonable sum to be fixed by the Council to cover the costs of the inspection and the costs of the attorney-at-law against whom the complaint is made.

(5) The Council may deal with any sum paid under paragraph (4) in such manner as it thinks fit.”

[93] Hence, while the Disciplinary Committee is the organ of the Bar Association “charged with the duty of upholding standards of professional conduct” under **section 18(1)** of the *Act* and the Committee investigates allegations of misconduct of every type, including those involving clients’ funds, *the Legal Profession (Accounts) Rules* confer on the Bar Council a separate jurisdiction to investigate allegations of financial irregularities. Moreover, while the Disciplinary Committee can act only upon the complaint of a client (see, **section 19(1)** of the *Act*), and the *Disciplinary Proceedings Rules* provide the form which the complaint must take (see, the *Legal Profession (Disciplinary Proceedings Rule 1972)* under the *Accounts Rules* the Bar Council can act on “its own motion” or “a written complaint.”

[94] These Rules provide an additional mechanism to the Bar Council to conduct such investigations while freeing the Disciplinary Committee to do the work which it is mandated to do under the *Act*. They also make clear that the Bar Council is not required to wait upon the Disciplinary Committee. The use of these Rules should go a long way towards giving the public another method of seeking redress in cases of dissatisfaction with the conduct of attorneys-at-law in financial matters.

## **Disposal**

[95] We make the following order:

- (a) that Mr. Therold Fields be struck off the Roll of Attorneys-at-law pursuant to **section 22 (1)(b)** of the *Legal Profession Act, Cap. 370A*.
- (b) that Mr. Fields pay to Ms. Simpson the sum of \$601,000.00 together with interest at the rate of 8% from the date of 17 October 2008 until judgment is satisfied; and that Mr. Fields pay the costs of Ms. Patricia Simpson's application before the Disciplinary Committee and this Court, including attorneys-at-law fees, the cost of her airfare, accommodation and transportation.
- (c) that the Registrar make the appropriate entry on the Roll of Attorneys-at-law and cause publication to be made in the Official Gazette in accordance with **section 24** of the *Legal Profession Act, Cap. 370A*.
- (d) that the Registrar shall summon Mr. Fields, the President and the Secretary of the Bar Association to a meeting within 14 days of the date of this Order to make satisfactory arrangements for the handling and completion of all legal matters currently being dealt with by Mr. Fields.
- (e) That the formal order of this Court be drawn up, settled and signed by the Registrar pursuant to **section 22(3)** of the *Legal Profession Act, Cap. 370A*.

**Chief Justice**

**Justice of Appeal**

**MOORE JA:**

[96] I have read the decision of the learned Chief Justice. He has set out the contents of the Committee's report in extenso. As a result I need say nothing further about the report. I agree that the name of Mr. Therold Fields should be struck from the roll of attorneys-at-law. However, I make the following remarks.

[97] Mrs. Simpson, the complainant left Barbados in 1964 to seek her fortune in the United Kingdom. In 2006 she sought to buy a property in Barbados in order to resettle here. She had the misfortune of choosing Mr. Therold Fields as her attorney-at-law. The outcome for her has been disastrous.

[98] Mr. Fields denied all knowledge of Mrs. Simpson and distanced himself from his staff and also denied their authority to receive money on his behalf. Like Pilate he washed his hands of the whole affair. His conduct has been most reprehensible. He sought to avert the consequences of his egregious behaviour by lying on his health. Whenever this matter came on for hearing Mr. Fields would send a medical certificate testifying to his inability to attend court. The doctors were summonsed before the court and they gave the lie to his story.

[99] Miss Gooding, counsel for Mr. Fields, was honest and forthright about his grave misconduct in this matter and the abuse of trust Mrs. Simpson had placed in him. She acted with commendable propriety. Yet she sought for Mr. Fields such leniency as this Court could extend to him having regard to the gravity of his misconduct which is compounded by his callous disregard for the plight of the unfortunate Mrs. Simpson who is now left to repay a loan of £132,000 and still hath no place to lay her head.

[100] Throughout this whole episode Mr. Fields has shown no remorse. I cannot find a single redeeming factor in his favour.

### **Justice of Appeal**