

**BARBADOS**

**IN THE SUPREME COURT OF BARBADOS**

**COURT OF APPEAL**

**CIVIL APPEAL**

**COMPLAINT NO. 7 OF 2013**

**In the matter of the Legal Profession Act  
Cap. 370A of the Laws of  
Barbados.**

**And in the Matter of the Complaint of  
Ms. Ordeen Bishop-Broomes against  
Joyce Griffith AND in the matter of Joyce  
Griffith, Attorney-at-law.**

**Before The Hon. Sir Marston Gibson, K.A. Chief Justice, the Hon. Andrew D.  
Burgess, Justices of Appeal and the Hon. William J. Chandler, Justice of Appeal  
(Acting)**

**2016: 15 June**

**2017: 1 February, 9 May, 21 September**

**2019: 30 January**

**Ms. Lyngeolle Morris on behalf of the Respondent**

**Mrs. Marguerite Woodstock-Riley, QC in association with Mr. Andrew  
Brewster and Ms. Rita Evans on behalf of the Disciplinary Committee**

**Ms. Donna Brathwaite, QC amicus curiae in association with Ms. Sandra  
Rawlins on behalf of the Attorney General of Barbados**

**Mr. Patterson Cheltenham, QC with Ms. Liesel Weekes on behalf of the  
Barbados Bar Association.**

## **DECISION**

**CHANDLER JA (Acting)**

### **INTRODUCTION**

[1] Before this Court is an application by the Disciplinary Committee of the Barbados Bar Association (the Committee) for the name of the respondent, an attorney-at-law, to be removed from the roll of attorneys-at-law. The application is in respect of the Committee's finding that the respondent misappropriated funds received by her on behalf of a client, Ms. Ordeen Bishop-Broomes (the complainant), for whom she acted in the sale of property.

### **BACKGROUND**

[2] There is no divide between the parties on the salient facts of this case.

[3] The respondent was engaged by the complainant to act for her in the sale of property situate at Holetown, St. James (the property) for the sum of \$300,000.00. The sale was completed. The complainant's brother, who was jointly entitled to the proceeds of the sale with the complainant, received the sum of \$128,778.70 representing his net share of the proceeds of sale. As a result of communication between the complainant and her brother the complainant discovered that her brother had been paid whilst she had not.

The statement of account prepared by the respondent showed a net balance of purchase price of \$128,778.70 due to the complainant.

- [4] Numerous requests were made by the complainant to the respondent for the payment of the balance of the purchase price to no avail. The complainant made a complaint to the Committee (the complaint) with respect to the respondent's failure to account for the monies received by the respondent on her behalf.
- [5] The membership of the Committee comprised Mrs. Marguerite Woodstock-Riley QC (Chairman), Mr. Andrew Brewster (Deputy Chairman), Ms. Ella Hoyos, Ms. Rita Evans, Mr. Philip McWatt, Mr. Samuel Legay and Mr. Satcha Kissoon.
- [6] The complaint was duly heard on 27 and 30 January 2015 and 24 February 2015. During the course of the hearings before the Committee, promises were made by the respondent to procure and pay over the funds to the complainant. These promises came to naught.
- [7] After the hearing, but before the report was prepared, the tenure of the members of the Committee came to an end by effluxion of time. At the annual general meeting of the Bar Association on 27 June 2015, Mr. Bryan Weekes and Mr. Michael Griffith replaced Mr. Samuel Legay and Mr. Philip McWatt respectively on the Committee. Thus, at the time the report was

forwarded to the Chief Justice as required by **section 21** of the **Legal Profession Act, Chap 370 A (Cap. 370A)** the membership of the Committee comprised Mrs. Marguerite Woodstock-Riley QC, who was reappointed Chairman, Mr. Andrew Brewster Deputy Chairman, Ms. Ella Hoyos, Ms. Rita Evans, Mr. Michael Griffith, Mr. Bryan Weekes and Mr. Satcha Kisson.

[8] The report was signed by the Chairman, Mrs. Woodstock-Riley QC, and forwarded to the Chief Justice under cover of a letter dated 15 April 2016, bearing a stamp dated 22 April 2016, under the hand of the newly appointed Secretary. In the report, the Committee noted that the respondent had not contested the allegations that she had converted the complainant's monies to her own personal use and had in fact made admissions to that effect.

[9] The Committee made the following findings:

(i) that the respondent had failed to account to the complainant for the proceeds of sale of \$128,778.70 paid to her as stakeholder for the complainant's benefit; and

(ii) That the respondent admitted to converting her client's funds for her own personal use.

In the circumstances, the Committee found that the respondent had breached *rules 30, 74 and 87* of the *Legal Profession Code of Ethics, 1988 (the Code of Ethics)* and was therefore guilty of professional

misconduct. The Committee recommended that the respondent's name be struck from the roll of Attorneys-at-Law admitted to practise law.

## **THE ISSUES**

[10] The dispositive issue for our determination is what is the appropriate sanction to be applied by this Court. However, before addressing this issue, it would be convenient for this Court to dispose of the issue of procedural irregularities raised as a preliminary point by counsel for the Attorney General and the respondent in relation to the report.

### **The Procedural Irregularities Issue**

#### **(i) Composition of the committee issue**

[11] We look first at the submissions of counsel.

[12] Ms. Sandra Rawlins, counsel for the Attorney-General, in her written submissions and oral submissions, contended that the change in membership of the Committee between the last date of hearing of the complaint and the submission of the report together with the lack of a date on the report, created confusion as to whether the members of the Committee involved in the hearings were the same members who were involved in the decision making. She referred to the stamped date of 22 April 2016 on the cover letter of 15 April 2016 which enclosed the report and submitted that, since

the last date of hearing was 24 February 2015, there was doubt as to when the decision of the Committee was made.

[13] Counsel also submitted that it could reasonably be concluded that the decision making took place sometime in April 2016 since it was highly unlikely that it would have taken months to prepare and forward the report to the Chief Justice, in these circumstances it could not be determined whether the Committee that conducted the hearings was the same Committee that made the findings and authorised the report.

[14] Counsel further submitted that these alleged irregularities in procedure, negated the importance of transparency, went to the heart of jurisdiction and violated the concept of procedural fairness. Consequently, counsel maintained that the report was a nullity and ought to be set aside. She relied upon **Re: Balfour Layne** complaint No. 39 of 2004 (**Re: Balfour Layne**) (**unreported**); **Doyle v Canada (Restrictive Trade Practices Commission)** [1985] 21 DLR (4th) 366 (**Doyle**) and the opinion of Brian Harris (2011) in his text “Disciplinary and Regulatory Proceeding” (6th Edn, section 9.65, Jordan Publishing Ltd.).

[15] Ms. Lyngéolle Morris, counsel for the respondent, in her written and oral submissions argued that there were procedural irregularities relating to the change of membership of the Committee between the last hearing date and

the submission of the report. She adopted the submission of counsel for the Attorney General that the change in composition of the Committee since the Committee's last date of hearing and the submission of the report created doubt as to whether the same Committee that heard the complaint had compiled the report. Accordingly, there was doubt as to whether the principle "he or she who hears must decide" had been adhered to.

[16] She further contended that the submission of the report at a time when a new Committee had been constituted, fell outside the jurisdiction of the Committee. Counsel concluded that, in these circumstances, there was a breach of the rules of natural justice.

[17] Mrs. Woodstock-Riley QC concurred with the submission that it was a well-established principle that "He who hears must decide". She distinguished **Re: Balfour Layne** on the ground that in that case the Committee was changed whilst it was hearing the matter whereas in this case the Committee remained the same.

[18] With respect to the absence of Mr. Brewster from the hearing held 27 January 2015, counsel pointed out that the omission of his name occurred only in the heading of the minutes and that the minutes themselves at pages 14, 21, 22, and 25 showed that Mr. Brewster was present and spoke on several occasions.

[19] Mrs. Woodstock-Riley QC also submitted that, in a claim for procedural irregularity, the Court had to consider the extent to which the deficiency alleged produced overall unfairness. She proffered that no unfairness had been alleged in this case. Procedural fairness ought to take into account fairness to the complainant as well as to the respondent.

[20] Mr. Patterson Cheltenham QC endorsed the submissions of Mrs. Woodstock-Riley QC in relation to **re Balfour Layne**, he noted that, in that case, there was an egregious form of procedural error in relation to the changes in composition of the Committee during the hearings which offended the principle that he who hears must decide. Counsel submitted that this case differed from **re Balfour Layne** and that the issue here was one of fairness.

## DISCUSSION

### The Law

[21] In **re Balfour Layne**, **Simmons CJ** cited with approval at **para 23** relying upon the dictum of Pratte J in **Doyle** that:

“the rule that 'he/she who hears, must decide' establishes that only those members of a tribunal who have heard the evidence can participate in its decision. He said that the rule is more than a corollary to the *maxim audi alteram partem* in that it actually affects jurisdiction.”

[22] **Simmons CJ** continued:

“It is relevant to note that, under s.114 of the Canadian legislation, the Commission was empowered to make recommendations. Those recommendations were not without legal effect since the responsible Minister was empowered to institute, maintain or settle proceedings in the name of the company under investigation. The fact that two Commissioners were not present at all times to hear the evidence rendered the report void.”

[23] **Simmons CJ** also approved the following quote from Brian Harris in relation to the composition of a tribunal:

"If the hearing of a case has to be adjourned, the composition of the committee at the adjourned hearing should be the same as that of the original tribunal, or the case begun afresh. This can sometimes be inconvenient, for example because of the illness or death of a tribunal member. If the continued participation of a tribunal member at an adjourned hearing is not possible there is no reason why, if consistent with the rules of the particular body, the hearing should not proceed in his absence, provided only that the tribunal remains quorate. What would not seemingly be permissible is for a tribunal member, having missed one sitting, to re-appear to adjudicate at a subsequent sitting, at least if anything other than the most formal business had been contracted at the missed hearing."

## **ANALYSIS**

[24] The undated report details the dates of hearing and the events which transpired on those dates. There has been no challenge to the contents or findings of the Committee. Paragraph 1 of the report states:

“This Committee being lawfully constituted in accordance with the provisions of the **Legal Profession Act Chapter 370A** of the **Laws of Barbados**, and the rules promulgated

thereunder submits this report following a hearing of this complaint on the 27th and 30th of January 2015 and on the 24th of February 2015. On those dates membership of the Committee was comprised of Mrs. Marguerite Woodstock-Riley (Chairman), Mr. Andrew Brewster (Deputy), Ms. Ella Hoyos, Ms. Rita Evans and Mr. Philip McWatt, Mr. Samuel Legay, Mr. Satcha Kissoon.”

[25] It is convenient to dispose of the suggestion that Mr. Brewster was absent on some dates of hearings since his name did not appear in the minutes as being present on 27 January 2015. Though not fully articulated, the suggestion is that his absence on 27 January 2015 led to procedural irregularity in the making of the Committee’s final report.

[26] We have read extensively the minutes adduced in evidence and agree with Mrs. Woodstock-Riley QC that, although Mr. Brewster’s name did not appear in the list of members present on 27 of January 2015, pages 3, 14, 21, 22, 25, and 26 of the report reflect that he participated in the proceedings on that date. We note also that Ms. Rawlins accepted the explanation given by Mrs. Woodstock-Riley, QC for the omission.

[27] Having found that Mr. Brewster was present for the full hearing of the complaint and having regard to the fact that the report adumbrates the persons who compiled that report, we find that there is no evidence of such a nature, quality and kind as to displace the inference that the Committee that heard the complaint is the same Committee that

compiled the report and made the recommendation which is before us. The mere fact that there was a change in membership of the Committee after the last date of hearing does not automatically translate into a finding that the report is that of the new Committee. There are clear distinguishing facts between this case and **re Balfour Layne**. Evidence and not mere speculation is required in support of that allegation and none has been produced here.

[28] In **re Balfour Layne** the composition of the Committee changed constantly throughout the hearing. The gravamen of the decision in that case in relation to procedural fairness is contained in the findings of the Court of Appeal that “... it was improper that members of the Committee who did not participate in all of the oral hearings should have made findings and authorised the report to be sent to the Chief Justice.” The Court found that “in order to ensure that there was fair and impartial investigation of Mrs. Henry's complaint and fair and impartial findings and recommendations, the composition of the Committee should have remained constant. Unfortunately, the procedure adopted by the Committee struck at the heart of its jurisdiction and was in violation of notions of procedural fairness. The report is a nullity. We cannot act upon it. It must be set aside.”

[29] In the circumstances, there is no merit in the submission that Mr. Brewster was absent from the disciplinary hearings on any dates so as to vitiate the hearings or the report.

**(ii) The Late Submission Issue**

[30] We now examine the issue of the submission out of time of the report to the Chief Justice.

**The Submissions of Counsel**

[31] Ms. Morris counsel of the respondent submitted that the statutory requirement that the report be submitted to the Chief Justice within 21 days of the decision of the Committee pursuant to **section 21** of **Cap 370A** had not been complied with. She also submitted that the report was accompanied by a cover letter dated April of 2016 which date also fell outside the statutory time limit. Counsel further submitted that the Committee's contention that there was a backlog of complaints rendering it difficult to submit the report within an ideal time-frame, did not absolve it of its duty to provide the specific date of the decision under **section 21**. Consequently, at the date when the Report was submitted to the Chief Justice, the Committee had no jurisdiction to do so.

- [32] Counsel argued that these defects gave rise to procedural irregularities and urged this Court to hold that the report is void and ought to be set aside on the ground of procedural unfairness.
- [33] Mrs. Woodstock-Riley QC for the Committee, submitted that there was a backlog of complaints rendering it difficult for the Committee to finish its report within the statutory period. She maintained that Ms. Morris' submission in relation to the late submission of the report to the Chief Justice had already been addressed by the Court with an application for leave, presumably to submit the report out of time, which was not opposed by counsel at the first hearing of this matter in 2016.
- [34] Ms. Rawlins, counsel for the Attorney General, submitted that the report carried no date hence there was uncertainty as to whether the report complied with **section 21** of **Cap 370A** or **Rule 2** of the *Legal Profession (Disciplinary Committee Reference to the Court of Appeal) Rules, 1985 (the 1985 Rules)*. She submitted also that, if the report was deemed a nullity, this Court could remit the matter to the four members of the previous Committee who attended all the hearings to review the facts and evidence and produce a new report based on their findings pursuant to the Court's powers under **section 61(1) (b)** of the **Supreme Court of Judicature Act, Chapter 117A**. However, counsel submitted that a dismissal of the

application submitted, would result in a new hearing before a differently constituted Committee occasioning further delay.

## DISCUSSION

### The Law

[35] The relevant law is contained in **section 21** of **Cap 370A** and the **1985**

**Rules. Section 21 (1)** of **Cap 370A** provides as follows:

“Where the Committee decides after hearing an application under this Part, that a case of professional misconduct has been made out against an attorney-at-law, the Committee shall within twenty-one days of its decision forward to the Chief Justice a report signed by the Chairman, of its findings, with the reasons for its decision, and with any recommendation in relation thereto, as it thinks just, in accordance with subsection (2).

(2)...

(3) On receipt of the report, the Chief Justice shall cause the report to be set down for the consideration of the Court of Appeal.”

Rules 2 to 7 of the 1985 Rules provide as follows:

“2. Where the Committee decides after hearing an application under Part V of the *Legal Profession Act*, that a case of professional misconduct has been made out against an attorney-at-law, the Committee must within 21 days of its decision submit a copy of its report to the Registrar, the attorney-at-law against whom a case of professional misconduct has been made out, the person alleging himself aggrieved and the President of the Bar Association.

3. The Registrar shall, after consultation with the Chief Justice, cause the matter, constituting the report, to be placed on the Hearing List of the Court of Appeal.

4. The Court may, if it thinks fit, cause a copy of the Report of the Committee to be sent to the Attorney-General who may appear at the hearing as *amicus curiae*.

5. When a date has been fixed for the hearing, the Registrar must within 14 days or such shorter period as the Court allows, cause all parties concerned in the matter to be notified in writing of that date.

6. The attorney-at-law against whom a case of professional misconduct has been made out and the person alleging himself aggrieved have a right to be heard at the hearing.

7. The President of the Bar Association or his nominee may appear at the hearing as *amicus curiae*.”

## ANALYSIS

[36] **Section 21 (1)** of **Cap 370A** provides that the Committee shall within twenty-one days of its decision forward to the Chief Justice a report of its findings signed by the Chairman with the reasons for its decision and with any recommendation as it thinks just in accordance with **subsection (2)**. It is conceded that the report was not submitted within the time frame prescribed by **Cap 370A**. Here we note that Mrs. Woodstock-Riley QC submitted that this Court had made an order curing this omission. We have been unable to find such an order.

[37] The resolution of this issue depends upon whether or not the word “shall” in **section 21**, creates a mandatory requirement that the report be submitted within 21 days of its decision. In **Joseph Tudor et ux v**

**Bank of Nova Scotia (Tudor) Civil Appeal No. 5 of 2016** this Court applied the principles of law set out in **St. Hill v Attorney General et al (Unreported Civil Appeal No. 8 of 2000)**, in relation to duties imposed on public officials. The Court in **Tudor** stated:

“...the contemporary approach to finding the true meaning of the word “shall” in circumstances such as these is to pay especial regard to the consequences of non-compliance...

...

“In the majority of cases, whether the requirement is categorised as directory or mandatory, the tribunal before whom the defect is properly raised has the task of determining what are to be the consequences of failing to comply with the requirement in the context of all the facts and circumstances of the case in which the issue arises. In such a case the tribunal’s task will be to seek to do what is just in all the circumstances: see *Brayhead (Ascot) Ltd v. Berkshire C.C.* [1964] 2 Q.B. 303 applied by the House of Lords in *London and Clydeside Estates Ltd v. Aberdeen D.C.* [1980] 1 W.L.R. 182.” Lord Woolf advised that it is much more important to focus on the consequences of non-compliance. Procedural requirements are designed to further the interests of justice and any consequence which would achieve a result contrary to those interests should be treated with considerable reservation.”

[38] **Section 21** establishes the procedure for bringing matters of this nature before this Court and ensures that those persons who are responsible for the prosecution of disciplinary matters are notified in a timely manner. Having regard to the fact that disciplinary hearings of this nature involve the livelihood of members of the legal profession, the impact of alleged

misconduct on clients who are members of the public and the maintenance of public confidence in the legal profession, it seems to us that the 21 day requirement in **section 21** of **Cap 370A** is designed to facilitate an expeditious hearing in the Court of Appeal by setting time frames within which the Committee is to submit its report to the Chief Justice. The consequence of non-compliance is delay in achieving the outcomes we have stated above but there is no other prejudice to the parties. We therefore find that “shall” in **section 21** in the context of this case is to be interpreted as regulatory and not mandatory.

[39] The consequences of an administrative failure depend upon the seriousness of that failure or, where there are multiple failures, whether the cumulative effect of such failures rendered the process, as a whole, unfair. If the report was vitiated by a serious procedural irregularity or irregularities (**R (on the application of Kuteh) v Upper Tribunal Administrative Appeals Chamber and another [2012] All ER (D) 58 (Jun)**) or if the procedural irregularities are so wholesale and so fundamental that the consequence is that no true final report was ever submitted and the subsequent determinations of the appropriate authorities are as a result invalid and of no effect, the court would decline to act upon the report. (**R (on the application of Inspector Mackail and others) v Independent**

**Police Complaints Commission [2014] EWHC 3170 (Admin), CO/126/2014**, a decision of the Administrative Court of the United Kingdom, (per Davis LJ).

[40] Neither **section 21** of **Cap 370A** nor **rule 2** of the **1985 Rules**, establishes a time within which the Committee must make its decision on a complaint. It must therefore be inferred that such a decision must be made within a reasonable time, having regard to the reasons previously mentioned for the 21day time-frame for submitting the report to the Chief Justice. The undated report was forwarded to the Chief Justice under cover of a letter stamped 22 April 2016, some 14 months after the Committee had reserved its decision. In the minutes of 24 February 2015, the Chairman indicated that a decision would be delivered and set the matter down in mid-July. This did not occur.

[41] It has not been argued that the report was not submitted within a reasonable time, neither has it been contended that the time taken to compile the report was unreasonable. In the circumstances, we find that the time period within which the report was submitted, though long, was not unreasonable and we decline to hold that we have no jurisdiction to act upon it.

## **THE DISPOSITIVE ISSUE**

### **SUBMISSIONS OF COUNSEL**

[42] We now turn to the issue as to the appropriate sanction to be applied by the Court in this case.

[43] Ms. Morris for the respondent, submitted that her client had admitted to her breach of the position of trust imposed upon her by her retainer to act on her client's behalf. Counsel also submitted that the respondent had "pleaded guilty at an early stage and had not wasted the Court's time". She also submitted that, as a result of her medical condition, the respondent supplied information to the Court notifying her intention to retire from the legal profession. Counsel further submitted that, if the rationale for striking an attorney-at-law off the roll was to ensure that the wrongdoer did not repeat the offence, then the likelihood of her client repeating the wrongdoing was very slim or very unlikely due to her removing herself from the legal profession. She noted that this was the respondent's first offence and since the respondent had voluntarily removed herself from the roll, it would be excessive to strike the respondent off the roll.

[44] A medical certificate was received in evidence before this Court setting out certain medical ailments now suffered by the respondent, namely: "severe obesity, severe degenerative disease of the lower lumbar spine leading to

diminished mobility, persistent requirement for moderately strong to very strong analgesia or a chronic basis and intolerance for protracted sitting, standing or repeated bending.” The respondent was medically certified to be unfit for work with effect from 1 January 2016.

[45] Ms. Morris, relying upon this report, submitted that her client’s medical condition rendered her unfit to work. She urged the Court to take into account that the respondent had no intention permanently to deprive the complainant of her funds. She also submitted that the respondent had sought out ways to repay the complainant, but, since her property was encumbered and there was an outstanding judgment against her in favour of one of her former partners in law practice, she was unable to access funding so as to repay the complainant.

[46] Counsel urged the Court to take these mitigating factors into account in imposing a sanction. It was her further submission that the issuance of a reprimand together with an order for suspension and reimbursement of the misappropriated funds or any other sanction that the “Honourable Court” deemed fit might be more appropriate, in the circumstances, than striking the respondent’s name off the roll of Attorneys-at-Law.

[47] Mrs. Woodstock-Riley QC, accepted that this was the respondent’s first offence and that the record of the attorney-at-law were matters of mitigation

to be considered in determining the sanction. She submitted, however, that the offence itself, though the respondent's first, was a grave one. It involved funds received on a client's behalf, which were appropriated by the attorney-at-law for her own uses. Those funds have remained unpaid in spite of the respondent's promises to do so.

[48] Counsel submitted that the respondent's medical circumstances were no excuse for the offence. She noted that the respondent's voluntary retirement from the legal profession had not been formally done under the provisions of **Cap 370A** and that the respondent could restart her practice. Voluntary retirement, it was further submitted, was no substitute for the Court's duty to impose a sanction which would maintain the public's confidence in the legal profession.

[49] Mrs. Woodstock-Riley QC finally submitted that the appropriate sanction would be for the Court to strike the respondent's name off the roll of attorneys-at-law.

[50] Mr. Cheltenham QC, acknowledged that the Court was duty bound to consider that it was the respondent's first offence, along with her plea of guilty. However, the fact that over \$128,000.00 were misappropriated and not repaid in spite of promises so to do were negative factors which outweighed the mitigating factors. He submitted that the respondent's use of

client's funds for her medical expenses was no excuse for the breach of trust committed by her in misappropriating her client's funds. Counsel also submitted that the Court was enjoined to maintain the public's confidence in the legal profession. Voluntary retirement from the profession, Mr. Cheltenham QC further submitted, was not a sanction and that removing the respondent's name from the roll of attorneys-at-law was the appropriate sanction to be employed.

[51] Ms. Rawlins submitted that, notwithstanding that the respondent admitted to her wrongdoing and did not waste the Committee's or the Court's time, the withholding of client's money was a serious offence and that five years after the sale was completed no monies had been paid. There was uncertainty as to whether the respondent could repay the funds. Counsel also submitted that the respondent's intimation that she was voluntarily retiring from the profession did not address the issue of professional misconduct. With respect to the sanction, counsel submitted that the Court should order that the respondent's name be removed from the roll of attorneys-at-law and for her to repay to Mrs. Griffith the sum of \$128,887.70.

## **THE LAW**

[52] **Section 22 of Cap 370A** sets out the sanctions, which this Court may impose on the respondent. This section provides:

“22. (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 practicing 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”.

## **DISCUSSION**

[53] We begin by dealing with the respondent’s submission that it would be excessive to remove the respondent’s name from the roll of attorneys-at-law, she having agreed to voluntarily retire from the legal profession.

[54] The decision of an attorney-at-law to retire from his or her profession is a voluntary decision which may be taken for any reason. It does not preclude permanent removal from the roll. In addition, no evidence has been provided that the respondent has started the process which is set out in **section 26 of Cap 370A**. That section provides:

“26. (1) An application by an attorney-at-law to procure the removal of his name from the Roll shall be made in a summary manner to the High Court, which shall make such order thereon as it thinks fit.”

[55] In the case of voluntary removal, the attorney-at-law may apply to have his/her name restored to the roll under **section 27** of **Cap 370A**, which provides that:

“27. (1) An attorney-at-law whose name has been removed from the Roll, or who has been suspended from practicing law may, subject to subsection (2), apply to the Court of Appeal by petition to have his name restored to the Roll, or the order of his suspension withdrawn, as the case may be”.

[56] This Court is duty bound to impose one of the sanctions set out in **section 22** based on the circumstances of the case and is not bound by the voluntary acts of the respondent. The Court does not therefore accept the submissions of counsel for the respondent.

### **The Role of the Committee**

[57] We now consider the role of the Committee.

[58] The Committee is the primary finder of facts and is required by **Section 21(1)** of **Cap 370A** to forward to the Chief Justice a report containing its findings, reasons for decision and recommendations. It has done so albeit outside of the 21-day period. For the reasons set out earlier in this decision, this Court has accepted that report.

## The Role and Jurisdiction of the Court

[59] Under **section 21** of **Cap. 370A**, the Chief Justice, on receiving the report, sets the matter down for hearing before this Court. The role of this Court is to consider the report and apply any of the sanctions contained in **section 22**. We are not bound by the Committee's recommendations.

[60] The statutory and ethical context in which the Court's jurisdiction is invoked has been extensively set out by **Gibson CJ, In The Matter of the Legal Profession Act Cap 370A and In The Matter of the Complaint against Therold Fields [unreported] C.A. B'dos Complaint No 31 of 2008**. We can add very little to what was elucidated in that decision. **Cap 370A** facilitates the regulation of the members of the legal profession and provides the framework in which disciplinary proceedings are to be held. **Cap 370A** is buttressed by the *Code of Ethics*, which establishes the standards of conduct expected of members of the profession. This combination of statutory regulation and codified ethical standards is vital to achieving the goals of *rule 5* of the *Code*, namely the upholding of the dignity of attorneys-at-law and their profession as a whole. *Rule 5* provides:

“5. (1) An attorney-at-law whether in practice or not shall uphold at all times the standards set out in this Code.

(2) An 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”.

[61] The purpose of disciplinary proceedings is to demonstrate to the members of the profession and to the public at large that the profession can and will enforce standards of conduct and skill. This reinforces public confidence in the profession.

[62] In **Bolton v Law Society [1994] 2 All ER 486**, in accepting this purpose Sir Thomas Bingham said:

“It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. That requirement applies as much to barristers as it does to solicitors. If I make no further reference to barristers it is because this appeal concerns a solicitor, and where a client's moneys have been misappropriated the complaint is inevitably made against a solicitor, since solicitors receive and handle clients' moneys and barristers do not.

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.

...

If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.”

[63] This statement applies equally to the legal profession in Barbados. The statutory regime which regulates the legal profession is designed to achieve the goals set out above. Any client who is aggrieved by the actions of his attorney-at-law and who alleges professional misconduct against him/her may apply under **section 19** of **Cap 370A** to the Committee to require that the attorney-at-law answer to such allegation. The hearing is then commenced and **section 21 (1)** of **Cap 370A** is triggered where the Committee finds that the complaint is made out.

[64] This matter before this Court concerns the misappropriation of client’s funds which are defined in **Rule 2** of the ***Legal Profession (Accounts) Rules 1973 (SI 1973/107)*** 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. . .”

The duty of an attorney-at-law to pay client’s moneys into a client’s account

held separately from his personal accounts is established under **Rules 3** and **10(1)**.

[65] The purpose behind this segregation of accounts is to clearly distinguish between monies which belong to the attorney-at-law and clients' funds. This is a constant reminder to attorneys-at-law that they are duty bound not to co-mingle their personal funds with clients' funds. This duty is reinforced in **rules 70** and **87** of the **Code of Ethics**, which set out the duty of attorneys-at-law to pay over clients' funds.

**Rule 70** provides that:

“An attorney-at-law shall not retain money he received for his client longer than is absolutely necessary.”

**Rule 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.”

### **The Findings of the Committee**

[66] The Committee found that the respondent had infringed **rules 30, 74** and **87** of the **Code**. These rules provide:

“**Rule 30.** (1) An attorney-at-law shall 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.

**Rule 74.** In the performance of his duties an attorney-at-law shall not act with inexcusable or undue delay, negligence or neglect”.

**Rule 87.** Is set out at para 65 above.

[67] The clear purport of the Rules is to maintain the integrity of members of the legal profession in particular and the integrity of the profession in general. This was succinctly stated by this Court **In the Matter of Allison Alexander an Attorney-at-Law (Re Alexander) Complaint No. 42 of 2015** where **Mason JA** as she then was observed that:

“The purpose behind the regulation of the profession is to maintain a good public image, to insist that persons comply with the rules of conduct and if the circumstances should arise, to remove the deviant members of the profession.”

[68] **Mason JA** further observed that:

“an attorney is under a duty to always act in the best interest of his client, to represent him honestly, competently and zealously and endeavour to obtain the benefit of every remedy and defence authorised by law.”

[69] The removal of an attorney-at-law’s name from the roll is a sanction, which removes an attorney-at-law’s ability to earn income from his/her chosen profession. Suspension, on the other hand, removes the attorney-at-law from his/her profession for the period of time for which the suspension is imposed. These sanctions are fairly draconian in nature. Therefore, every case must be decided upon its peculiar facts.

[70] The respondent's counsel has urged this Court to have regard to all the mitigating factors including the respondent's medical ailments. In **Re Toppin (1987) 22 Barb. L.R 248**, this Court held that evidence that Mr. Toppin's consultant psychiatrist was of the 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 could not override the interests of the legal profession and of the public. Accordingly, this Court endorsed the Committee's recommendation of removal of the attorney's name from the roll.

[71] We are of the view that the respondent's medical condition, though a personal mitigating factor, cannot provide a reason or excuse for her misappropriation of her client's funds.

[72] The Court has considered all of the mitigating factors presented to it including the fact that the respondent admitted her guilt. However, we have also noted that the complainant has yet to receive her funds, despite many promises by the respondent to pay them, and the evidence shows that the respondent is not in a position to repay them.

[73] This Court has a duty to deal with cases justly. In so doing it must balance the interests of all parties and ensure that its discretion is exercised reasonably. The rule of law remains a sturdy pillar ensuring the stability of

our society and as such proportionate sanctions must be imposed in an effort to maintain public confidence in the legal profession in particular and in the legal system in general.

[74] The imposition of an appropriate sanction must be an effective individual deterrent to the respondent and a general deterrent to others in the legal profession, who by virtue of the nature of the services provided, hold positions of trust towards their clients and must not use their positions for personal gain.

[75] Our duty to sanction misconduct is critical to maintaining public confidence in the legitimate provision of legal services in this Island. We take this responsibility very seriously.

## **CONCLUSION**

[76] Having considered the relevant submissions and the uncontroverted facts, we find that, though the offence is the respondent's first and that she did admit her guilt, five years have elapsed during which the complainant has remained without the benefit of over \$128,778.70. Two promises to repay have been unfulfilled. The misconduct is therefore of a serious nature and the sanction imposed must reflect this.

## **DISPOSAL**

[77] The Court therefore orders that:

1. The name of Ms. Joyce Griffith be removed from the roll of attorneys-at-law.
2. That Ms. Griffith pays into court the sum of \$128,778.70 together with interest at the rate of 6% per annum, from August 2012 until payment into court.
3. That the Registrar shall make the appropriate adjustment to the Roll of attorneys-at-law and cause publication to be made in the Official Gazette in accordance with **section 24** of **Cap 370A**.
4. That the respondent shall pay the costs of this hearing to be assessed if not agreed.

**Chief Justice**

**Justice of Appeal**

**Justice of Appeal (Ag.)**