

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 82/06

BEFORE: THE HON. MR. JUSTICE PANTON, P.
THE HON. MR. JUSTICE HARRISON, J.A.
THE HON. MRS. JUSTICE HARRIS, J.A.

BETWEEN ANTOINETTE HAUGHTON-CARDENAS — APPELLANT
AND THE GENERAL LEGAL COUNCIL RESPONDENT

Paul Beswick, instructed by Ballantyne, Beswick & Company, for the
appellant

John Vassell, Q.C., for the respondent

5th November & 20th December, 2007

PANTON, P.

1. This appeal arises from a challenge by the appellant in respect of the assumed right of the General Legal Council (the GLC) to make regulations requiring attorneys-at-law to submit accounts or accountants' reports to the GLC. In that regard, the appellant seeks an order that regulations 16 and 17 of the Legal Profession (Accounts and Records) Regulations, 1999, are *ultra vires* the Legal Profession Act.

2. On May 20, 2006 the appellant appeared before the Disciplinary Committee of the GLC which then heard evidence from Michael Hylton, Q.C., a

member of the GLC. Mr. Hylton testified that it had come to his attention as a member of the GLC that the appellant had been involved in conduct which might be in breach of the Legal Profession (Canons of Professional Ethics) Rules and the Legal Profession (Accounts and Records) Regulations, 1999. The conduct was her failure to submit an accountant's report in respect of the years 1999 and 2000. It should be pointed out that she had produced reports for 2001 to 2004 inclusive. Those reports were admitted into evidence and the proceedings were then adjourned to July 24, 2006, when counsel now appearing for the appellant appeared before the Disciplinary Committee and submitted that the GLC had no power to make regulations requiring attorneys-at-law to deliver accounts or accountants' reports to the GLC. The Committee rejected this submission, whereupon the appellant chose to seek relief from this Court.

3. The following provisions of the Legal Profession Act are relevant. They formed the basis of the submissions before the Disciplinary Committee as well as before us, and so must be set out.

" PART IV. Discipline

11. – (1) The Council shall....

12.-(1) Any person alleging...

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) The Council may –

(a) prescribe standards of professional etiquette and professional conduct for attorneys and may by rules made for this purpose direct that any specified breach of the rules shall for the purposes of this Part constitute misconduct in a professional respect;

(b) prescribe anything which may be or is required to be prescribed for the purpose of this Part."

" PART VII. Keeping of Accounts

35. – (1) The Council may make regulations requiring attorneys -

(a) to open and keep separate bank accounts of clients' moneys and containing provisions as to the manner in which such accounts may be operated; and

(b) to keep accounts containing particulars and information as to moneys received, held or paid by them, for or on account of their clients.

(2) The Council may take such action as may be necessary to ascertain whether or not the regulations are complied with.

36.- (1) If a person fails to comply with any of the regulations made under section 35 any person may make a complaint in respect of that failure to the Disciplinary Committee.

(2) The provisions of Part IV shall apply in relation to complaints under this section as they apply in relation to applications to the Disciplinary Committee under that Part."

4. The regulations which are being challenged by the appellant read thus:

"Accountant's report

16. – (1) Every attorney shall, not later than six months after the commencement of any financial year (unless he or she files a declaration in the form of the First Schedule which satisfied the Council that owing to the circumstances of his or her case it is unnecessary or impractical for him or her to do so), deliver to the Secretary of the Council an accountant's report in respect of the financial year next preceding that year.

(2) Every attorney shall produce or cause to be produced to the accountant whose accountant's report he or she proposes to deliver to the Secretary of the Council pursuant to paragraph (1) all books, records and accounts required by Regulation 6 to be kept by him or her and, in addition, any files or other documents connected with, or related to, or explaining or throwing any light on, anything in those books, records and accounts.

(3) ...

Disciplinary offences

17. Failure by an attorney to comply with any of the provisions of these Regulations shall constitute misconduct in a professional respect for the purposes of section 12 of the principal Act."

5. Mr. Beswick submitted that the words "take such action" etc. in section 35 (2) do not authorize the GLC to make regulations. The power to make regulations is proscribed by section 35 (1) (a) and (b). He further contended that section 12 falls under the part of the Act dealing with discipline and so it cannot be used to make regulations that relate to activities under Part VII relating to accounts, under which section 35 falls. He concedes though that

section 35 (2) enables the GLC to enter the offices of an attorney and demand sight of the accounts as well as to even remove for examination the books being maintained by the attorney. He urged the Court to follow the rules of interpretation of statutes as strictly as possible, thereby setting its face against the construction that the respondent has put on the words in section 35(2), and on the Act generally. The Court, he said, should not fill in any gap in the legislation so as to permit the GLC to make the request that has aggrieved the appellant.

6. Mr. Vassell, Q.C., submitted that the interpretation suggested by the appellant is in obedience to the literal rule which, he says, has now been superseded by the purposive approach. Parliament, he said, intended to give, and did give, the GLC the authority to deal with attorneys. The legal profession, he said, is self-regulated and the Legal Profession Act and the regulations give the GLC the necessary powers for such self-regulation. The question of integrity in the handling of clients' monies is crucial, he said, and the regulations are aimed at protecting that. He submitted that the words "take such action" in section 35(2) are wide enough to include the power to make rules or regulations.

7. Mr. Vassell placed reliance on several authorities, the most important of which is the English case *Parry-Jones v The Law Society And Others* [1968] 1 All E.R. 177. There, the Court held that the rules in question permitted the disciplinary body to request of a solicitor production of documents that were

subject to legal professional privilege. The relevant statute in *Parry-Jones* was the Solicitors Act, 1957. Section 29 thereof provides:

“(1) The Council shall make rules-(a) as to the opening and keeping by solicitors of accounts at banks for clients’ money; (b) as to the keeping by solicitors of accounts containing particulars and information as to moneys received, held or paid by them for or on account of their clients; and (c) empowering the council to take such action as may be necessary to enable them to ascertain whether or not the rules are being complied with: ...”

8. It is obvious that the Jamaican legislation was patterned off the English Act. However, there is a significant difference in the drafting. Section 29 of the Solicitors Act specifically provides for the making of rules in three respects—

- (i) as to the maintenance of clients’ accounts at banks;
- (ii) as to the keeping of detailed accounts as to money transactions for or on account of clients; and
- (iii) as to empowering the council to take any necessary action to ascertain whether the rules were being observed.

In contrast, section 35(1) of the Legal Profession Act provides for the making of regulations in two, not three, respects. The two are:

- (i) as to the maintenance of clients’ accounts at banks; and
- (ii) as to the keeping of detailed accounts as to money transactions for or on account of clients.

9. By providing in a separate subsection for the taking of “such action as may be necessary to ascertain whether or not the regulations are being complied

with”, the legislature has clearly demonstrated that the authority to make regulations does not go beyond the maintenance of clients’ accounts at banks and the keeping of a record of money transactions for or on account of clients. If the legislature had intended the Council to have the power to make regulations other than in relation to the two areas mentioned, it would have said so in section 35(1). Indeed, it would have followed section 29 of the Solicitors Act in every respect. The power to make regulations is a power that has to be specifically provided for. It cannot be a matter of inference. In the Legal Profession Act, wherever it was intended to give the GLC power to make regulations, the legislature has specifically so stated. The words “taking such action as may be necessary” [section 35(2)] do not embrace or include the power to make regulations.

10. In the circumstances, I have no doubt whatsoever that the GLC was, and is, not generally authorized to request attorneys-at-law to produce accountants’ reports each year, in a situation where there is no allegation by, or complaint from, a client. It should not, however, be lost on attorneys-at-law that it may ultimately be in their own interest to voluntarily supply that which is requested of them by the GLC. An attorney-at-law who submits a yearly accountant’s report to the GLC is hardly likely to have any sleepless night in respect of allegations by clients in relation to funds being kept or managed by such attorneys-at-law. Furthermore, it would spare them the inconvenience of the GLC disrupting their practice by sending in its own accountants, or demanding the handing over of

books and accounts in fulfilling its mandate to ensure compliance with section 35(1).

11. In view of the foregoing, I would allow the appeal and award costs to the appellant, such costs to be taxed if not agreed.

HARRISON, J.A.

I agree.

HARRIS, J.A.

I agree.

PANTON, P.

ORDER

The appeal is allowed, with costs to the appellant to be agreed or taxed.