

DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL

IN THE MATTER of Rudolph Brown and
Kenneth McLeod, an Attorney-at-Law

A N D

IN THE MATTER of the Legal
Profession Act.

Before: Mrs. Pamela Benka-Coker, Q.C.
Mr. Allan Wood
Mr. David Batts

Mr. Vernon Ricketts and
Mr. Leonard Green for Mr. Kenneth McLeod

Complainant - Rudolph Brown in person

1. In this matter the Committee heard evidence on the 16th March, 2002, 11th May, 2002, 8th June, 2002 and 25th July, 2002.
2. The Form of Application against attorney-at-law in this matter alleges that Mr. Kenneth McLeod's conduct constitutes conduct unbecoming his profession. The Affidavit of Mr. Rudolph Brown, the Complainant states as the ground of complaint that Mr. McLeod has not accounted for all money in his hands for Mr. Brown's account or credit although reasonably required so to do.
3. On the 16th March, 2002 and before evidence commenced in this matter the complainant, Mr. Rudolph Brown disclosed that the principal had been fully repaid and that some interest thereon had also been repaid by Mr. Kenneth McLeod. There was he stated an outstanding amount representing interest on \$85,000.00 from the year 2000. Mr. Vernon Ricketts who represented Mr. Kenneth McLeod indicated that he had the outstanding balance. Mr. Ricketts also on that occasion tendered a medical report on behalf of Mr. Kenneth McLeod who was absent.

The Chairman of the Panel stated,

“For my part I do not think payment means the end of a complaint. I don’t know how my colleagues feel. This matter came up before the panel on the 30th September, 2000. Mr. McLeod appeared in person and it was made clear to him that we do not sit to adjudicate as debt collectors. We are a Disciplinary body. Serious allegations of professional misconduct have been raised. The matter has been languishing before us for the past two years. We are going to commence taking his evidence and we have already decided to commence the matter”.

On the 20th April, 2002 Mr. Leonard Green who then appeared for Mr. Kenneth McLeod stated that all outstanding interest payments had been made. The Complainant stated that \$28,500.00 inclusive of costs was agreed upon as the balance now outstanding and he accepted Mr. Green’s promise to pay it by Wednesday of that week.

4. We recount these developments because they were told to us by the complainant and the respondent attorney-at-law and his representative. However, this Committee did not participate in or encourage any such arrangements. At all material times it was made clear that the hearing on the question of Professional standards and the conduct of the attorney, Mr. Kenneth McLeod would proceed.

5. Insofar as the evidence is concerned the Committee heard from the Complainant, the Attorney and a witness for the Attorney.

6. The Complainant stated that he and his sister Bernita Prince were introduced to a house in Ironshore, St. James by a Real Estate agent, Roy Roman. This occurred in 1997. The purchase price was \$7 Million and the vendor was one Mr. Goodall. Both attended upon their attorney in Kingston, Mr. Patrick Bailey, and gave him \$1,065,000.00 to be paid to Mr. Kenneth McLeod the vendors attorney by way of deposit. The Complainant’s evidence was that he signed an agreement for sale and the money was sent to Mr. McLeod by his attorney. Mr. McLeod acknowledged receipt of the money by letter to Mr. Bailey dated 21st January, 1998 tendered as **Exhibit 1A**.

7. The Complainant's evidence was that the sale did not go through as Mr. Goodall's wife would not sign the contract. Mr. Bailey was instructed to have the money refunded. Mr. Bailey wrote several letters to Mr. McLeod in an effort to have the money refunded.

These were tendered in evidence as follows:-

Letter dated 29th June, 1998	-	Exhibit 1B
Letter dated 3rd August, 1998	-	Exhibit 1C
Letter dated 4th June, 1998	-	Exhibit 1D
Letter dated 1st June, 1998	-	Exhibit 1E
Letter dated 7th May, 1998	-	Exhibit 1F

8. The letters are mostly to the same effect and therefore we will quote from only two (2) of them.

Exhibit 1B:

"June 29, 1998

**Mr. Kenneth McLeod & Company
Attorneys-at-Law
47 Market Street (Upstairs)
Montego Bay
St. James**

ATTENTION: MR. KENNETH McLEOD

Dear Sirs:

Re: Sale of Lot 10 Providence, St. James

We refer to previous correspondence herein DEMANDING the return of the deposit paid to you and interest payment thereon.

For the avoidance of doubt OUR CLIENTS ARE NOT interested in purchasing the property for the reasons already made known to you (see our letter of May 7, 1998).

Accordingly, we ask that you let us have the refund within ten (10) days of the date hereof, failing which steps will be taken to have the sum collected, as may be deemed appropriate.

**Yours faithfully,
PATRICK BAILEY & COMPANY
PER:**

PATRICK DELANO BAILEY

PDB/hb

c.c. Mr. Rudolph Brown"

Exhibit 1C:

"August 3, 1998

**Messrs. Kenneth McLeod & Company
Attorney-at-Law
47 Market Street (Upstairs)
Montego Bay
St. James**

Attention: Mr. Kenneth McLeod

Dear Sirs:

Re: Sale of Lot 10 Providence, St. James

We refer to our numerous letters to you herein resting with ours of June 29, 1998 to which (and others) we have not been favoured with a response.

Our clients are pressing us to collect the refund of the deposit paid.

Please also note that they are now making arrangements to seek the assistance of the Police in collecting the amount due as well as to report the matter to the Disciplinary Committee of the General Legal Council.

**Yours faithfully,
PATRICK BAILEY & COMPANY**

**PER:
PATRICK DELANO BAILEY**

PDB/hb

c.c. Mr. Rudolph Brown

9. The Complainant's evidence was that he attended on Mr. McLeod's office bearing **Exhibit 1D**, a letter dated 4th June, 1998 from Mr. Patrick Bailey to Mr. McLeod which authorised delivery of the cheque to the bearer (the Complainant). However, he did not see Mr. McLeod as the secretary said he was unable to see him. The Complainant says he then went to the Fraud Squad on East Street. He also made the complaint to the General Legal Council. He also went to the Fraud Squad in Montego Bay. He said that the gentleman from the Fraud Squad called Mr. McLeod who telephoned him the following evening and brought some cheques. He promised to pay the balance in 14 days.

10. The Complainant was then cross examined by Mr. Leonard Green.

In the course of the evidence he stated that he never met Mrs. Goodall and her name

did not come up at the time of the agreement to purchase. He admitted that he left Mr. Bailey and retained another attorney Mrs. Maureen Moncrieffe. He was asked by Mr. Green when did he go to the police. He sought leave to refresh his memory from his diary and the leave was granted. Having refreshed his memory he stated that he went to the Fraud Squad on Thursday 6th May, 1999 and gave statements to Mr. Gardner. On the 13th May, 1999 Mr. McLeod visited him with two (2) cheques. Mr. Brown denied that after the letter of December 1998 he was pursuing the sale. When asked if up to December 1998 he was still making efforts to purchase the property Mr. Brown responded,

"I am not sure. Mr. Bailey sent me to Montego Bay to Mr. McLeod terminating the contract".

11. A letter dated 16th December, 1998 from Moncrieffe Pantry Betton Small to Mr. Kenneth McLeod was put in evidence as **Exhibit 2**. As that letter was a focal point of the Defence we quote it in full,

"December 16, 1998

**Mr. Kenneth McLeod
Attorney-at-Law
47 Market Street
Montego Bay
St. James**

Dear Sir:

**Re: Lot 1010 Providence, St. James -
Patrick Goodall to Beneca Prince et al**

This acknowledges receipt of your letter dated December 11, 1998. As indicated in our letter dated December 4th, our clients still wish to purchase but we need to know the amount inclusive of interest, that you hold for our clients. This is very important and need to be addressed.

You indicate that your client's wife will be in the island as of December 22nd however our office will be closed for the holiday as of December 23rd and will re-open on January 2nd, 1999. You can however send us fax messages during that period.

W await hearing from you.

**Yours faithfully,
MONCRIEFFE, PANTRY, BETTON-SMALL & CO.
PER:**

Maureen F. Moncrieffe (Mrs.)"

12. The Complainant denied a suggestion that his interest in purchasing the property continued up until the time he went to the police.

In answer to the question whether \$1,065,000.00 was repaid in a matter of a week of his going to the police, the Complainant sought and was granted leave to refresh his memory from his diary. Mr. Green objected but the objection was overruled. He consulted his diary and said the money was paid on Saturday 29th May, 1999. The payment was as follows:-

2 cheques on	13.5.99	-	\$515,000.00	
1 cheque	" 27.5.99	-	\$ 25,000.00	- CIBC
1 cheque	" 21.5.99	-	\$ 75,000.00	- CIBC
1 cheque	" 19.5.99	-	\$100,000.00	- NCB
1 cheque	" 18.5.99	-	\$ 30,000.00	- CIBC
1 cheque	" 18.5.99	-	\$320,000.00	-
	" 13.5.99	-	\$300,000.00	- NCB
	" 12.5.99	-	\$215,000.00	- NCB

13. The Attorney, Mr. Kenneth McLeod gave evidence on the 8th June, 2002. He stated that Mr. Patrick Goodall gave him instructions to act in the sale of property in Ironshore, Montego Bay. The premises were registered in the name of Mr. Goodall and his wife. He prepared a sales agreement. Mr. Patrick Goodall executed it, he could not recall whether the Complainant had signed it.

He stated that in November 1998 Mr. Bailey sent him a cheque for \$1,065,000.00 requesting that it be held and no other transaction done. This payment he says was made in an effort to bind the agreement. He says he lodged the money. He did not dispute the receipt of letters from June 1998 demanding on behalf of the Complainant repayment of the money.

14. He admitted that the money without interest was not refunded until May 1999 and says this was because he was constantly in touch with the Complainant who insisted that he wanted the property and was willing to wait until Mrs. Goodall signed. He denied

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the complaint was made on 13th August, 1998⁸ the Complainant's address was in the Corporate Area.

23. However, at the end of the day the determination of the issues did not necessitate resolution of any conflict between the viva voce evidence of the witnesses. Our ultimate findings and conclusions were determined almost entirely on the documentary evidence none of which was challenged. This was because the Attorney admitted the basic fact that the money paid by the Complainant amounting to J\$1,065,000.00 was held by him from November 1997 until it was repaid in May 1999. The issue is therefore whether the Attorney had any reasonable explanation for not satisfying the numerous written demands made for repayment of that money and despite repeated threats by letters that the matter would be reported to the Fraud Squad and to the General Legal Council. Despite the fact that the complaint was lodged with the General Legal Council on 15th August, 1998, no step was made to repay the money until May 1999 when the Fraud Squad intervened. It is also most significant that the evidence of the client, Mr. Goodall was that he did not instruct the Attorney not to refund the money.

24. The findings of the Panel are as follows:-

- (a) In or about the year 1997 \$1,065,000.00 was paid to Mr. McLeod as a deposit on the purchase of certain land. This was acknowledged by letter dated 21st January, 1998 (**Exhibit 1A**) from Mr. Kenneth McLeod.
- (b) By letter dated 7th May, 1998 an immediate return of the payment was demanded (**Exhibit 1F**).
- (c) This demand was followed by others dated 1st June, 4th June, 29th June, 3rd August, 1998 (**Exhibits 1E, 1D and 1C**).
- (d) A report was made to the Disciplinary Committee of the General Legal Council on the 13th August, 1998.
- (e) Letters of the 30th October, 1998 (**Exhibit 4**) and 2nd November, 1998 (**Exhibit 5**) followed demanding repayment.
- (f) We have not seen but references in the letters exhibited make it clear that

reports to the General Legal Council and several demands by the various attorneys representing the Complainant. Mr. McLeod failed to account for the principal and interest even though this was clearly an important precondition to any continuation of the transaction as per the letter dated 16th December, 1998 (**Exhibit 2**). It must also have been to the discredit of the profession that payment occurred only after contact by the police in May 1999.

28. The Committee considered the explanation proffered by Mr. McLeod that in his honest belief the sale was still to go ahead and that the purchaser, Mr. Brown was prepared to wait. The Committee rejects that any such belief existed or that it was the reason for the failure to account or to return the money. Even if, which is not accepted, he did honestly believe the purchasers still wanted to purchase, he could not possibly believe that they were content to leave the money in his custody. There is nothing inconsistent with a purchaser asking back for the money and saying when the vendor is ready let me know.

29. The several letters of demand firstly from Mr. Bailey and later from Mrs. Moncrieffe and the failure of Mr. McLeod to respond is sufficient to lead to a rejection of Mr. McLeod's account. Indeed the letter of 16th December, (**Exhibit 2**) on which Mr. McLeod relies so heavily makes it very clear that an account was required. None was forthcoming nor did it come in February after the letter of 10th February, 1999 again threatened that the matter would be reported to the Fraud Squad. This has lead the Committee to a finding that Mr. McLeod could not account for the money when called upon so to do. It is also of relevance that after the police contact he made the payment by several cheques drawn on three (3) banks and from several different accounts. The only reasonable inference from this fact is that Mr. McLeod had intermeddled with the amount paid and did not return it upon demand because he did not have it at the time.

30. The Defence of honest belief is rejected. As stated in paragraph 27 above whether or not there was an honest belief the failure to account and repay until contact

by the police notwithstanding the several demands was conduct in breach of Canon I

(b). Canon VIII is worthy of a full quotation,

“Where in any particular matter explicit ethical guidance does not exist, an Attorney shall determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the Legal system and the Legal Profession”.

It is manifest that Mr. Kenneth McLeod has not so acted and his delay and failure to account clearly did not promote public confidence.

31. We therefore find the attorney Mr. Kenneth McLeod guilty of conduct which constitutes misconduct in a professional respect contrary to Canon 1(b) and Canon VIII (d). He is therefore subject to an Order pursuant to Section 12 (4) of the Legal Profession Act.

32. In considering the sentence to be imposed the Committee bears in mind the fact that there was repayment and that interest on the principal was eventually also paid. The Committee on the other hand has borne in mind (a) the fact that Mr. McLeod remains unrepentant and attempted to satisfy this Committee that there was some reasonable explanation for his failure to repay; (b) that no contract existed; (c) that the delay was for more than 12 months; (d) that a complaint was laid to no avail; (e) that reports had to be made to the police after he had been warned of an intent so to do and; (f) that the repayment was by several cheques over many days and that the interest was only repaid over several years.

33. This Committee is mandated to maintain the standards of the Profession. As stated on the first day of the hearing it is our duty not to collect debts but to maintain professional standards. It is a relevant consideration that the complaints and arrest of attorneys for intermeddling and fraud are far too prevalent. It is necessary that public confidence in the Profession is restored and/or maintained. This is only possible if it is brought home to the members of the profession the absolute importance of their duty at all times and upon reasonable demand to account for money held for another's account. Any failure or delay in doing so brings the Profession into disrepute.

In this regard we refer to the word of Sir Thomas Bingham MR when giving judgment in the matter of *Bolton v Law Society* [1994] 2 ALLER 486 at 492,

“It is important that there should be a 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.....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, may be 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. 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 it inspires.”

It is instructive that in the *Bolton* case the Court of Appeal approved of the decision of the disciplinary tribunal to suspend for two (2) years an attorney who in anticipation of completion of a sale took a deliberate risk and disbursed money before he ought to have. (The money was refunded to the financial institution). The tribunal decided to suspend rather than expel the solicitor because they accepted he was an honest man who was naive and stupid, that he was at the time young and relatively inexperienced in the profession and that his judgment may have been clouded by the fact that the parties to the transaction were his wife and brother-in-law. None of these factors apply to the instant case.


34. Mr. Kenneth McLeod’s conduct in this matter is such that this Committee has no alternative but to Order as follows:

- a) That Mr. Kenneth McLeod be and is hereby struck off the roll of Attorneys-at-Law entitled to practice law in the island of Jamaica pursuant to Section

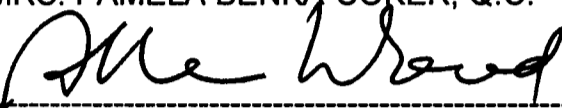
12 (4) (a) of the Legal Profession Act.

- b) Costs of \$25,000.00 to be paid to the complainant.


NOVEMBER 16, 2002



MRS. PAMELA BENKA-COKER, Q.C.



MR. ALLAN S. WOOD



MR. DAVID G. BATTS