

DECISION OF THE DISCIPLINARY COMMITTEE OF THE  
GENERAL LEGAL COUNCIL AT SANCTION HEARING

IN THE MATTER OF CECILLE THOMAS VS  
DONOVAN MALCOLM

COMPLAINT NO. 132/2017

PANEL: MRS. DEBRA MCDONALD – CHAIRMAN  
MR. DANE MARSH  
MR. JEFFREY DALEY

SANCTION HEARING 17<sup>TH</sup> APRIL 2019

1. The matter was set for 9.30 a.m. The parties were called and up to 10:30 a.m. there was no answer from the Attorney Mr. Malcolm or anyone appearing on his behalf. The Secretary informed the Panel that she had earlier received a telephone call from Mrs. Christopher-Walker Attorney for the Complainant to say that she was unable to be present. No communication had been received from the Attorney Mr. Malcolm or anyone on his behalf.
2. The Panel, having satisfied itself that the Attorney Mr. Malcolm had been properly served, and referred to the Affidavit of Wayne Crawford of 15<sup>th</sup> April 2019 which exhibited a Notice by registered post by certificate of posting dated 20<sup>th</sup> March 2019. Another Notice was delivered by hand, on the 20<sup>th</sup> March 2019. The Attorney was also sent a letter dated March 19, 2019 which also informed him of the date for the sanction hearing.
3. The Panel was satisfied that in accordance with the Rules and the Law, the Notice of Hearing was properly served on the Attorney.
4. The Panel noted that on the 13<sup>th</sup> March 2019, the Attorney admitted that he had received the decision dated 8<sup>th</sup> March 2019.
5. The Panel noted the findings and conclusion in its decision of 8<sup>th</sup> March 2019.
6. In the absence of the Attorney or an Attorney-at-law representing him, neither submissions nor circumstances in mitigation have been put before the Panel for consideration.

7. The Attorney has not denied the evidence of the Complainant that he admitted to her in a "Whats App" conversation that he had applied the funds to his own use and requested time to pay her back.
8. The Complainant has not been placed in a position to receive her title as a result of the misappropriation of the funds paid to the Attorney by the Complainant .
9. In determining the appropriate sanction to be imposed, the Panel is guided by the case of **Bolton v Law Society (1994) 2 ALL ER 486** and in particular the judgment of Sir Thomas Bingham, MR.

*"It is required of lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness. ....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... 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 may 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 tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. .... 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 re-admission...A profession's most valuable asset is its collective reputation and the confidence which that inspires."*

10. In the matter of Oniel Wright vs Howard Lettman in Complaint No. 7/2017 in its decision on the sanction hearing dated 25<sup>th</sup> February 2018, the Panel summarized the effect of the principles of Sir Thomas Bingham MR. in Bolton v Law Society as follows:

*“One can conclude that:*

- (a) Where an attorney is guilty of dishonesty, he must expect a severe sanction.*
- (b) For dishonesty, tribunals have invariably struck off the attorney from the roll no matter how strong the mitigating factors may be.*
- (c) The reason for such seemingly harsh orders such as striking off is:*
  - (i) To punish the attorney and deter other attorneys from behaving in a similar manner; and perhaps even more importantly.*
  - (ii) To maintain the reputation of the profession and give the public confidence in the integrity of the profession.*

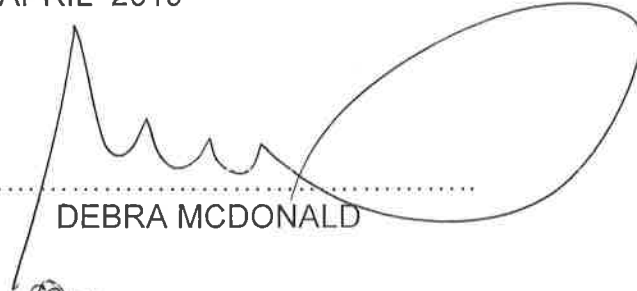
*The reputation of the profession is based on the maintenance of the standard of honesty and integrity which the public is entitled to expect to be observed by Attorneys in their dealings with them”.*

11. Accordingly, it is the decision of this Panel that:-

1. Pursuant to Section 12(4) of the **Legal Profession Act**, the name of the Attorney Donovan O. Malcolm is struck off the roll of Attorneys-at-law entitled to practice in the several courts of the island of Jamaica.
2. The Attorney Donovan Malcolm is ordered to make restitution to the Complainant as follows:-
  - (i) The sum of \$1,380,000 being the sums of \$630,000.00 and \$750,000.00 paid to him by the Complainant for the applications for change of use of the property and for modification of restrictive covenants respectively which work was not done by the Attorney.
  - (ii) The sum of \$2,600,000.00 or any part thereof received from the Complainant for which he has not accounted; said failure to account having resulted in the Complainant not receiving her title.

3. The Attorney is ordered to pay costs in the sum of \$400,000.00 to the Complainant and \$200,000.00 to the General Legal Council.

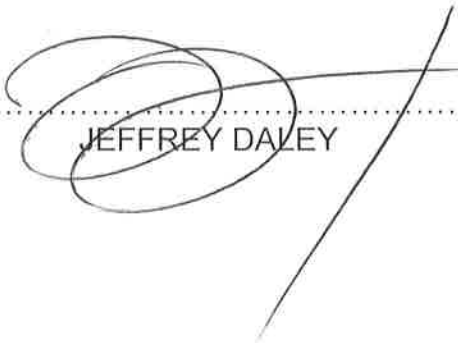
DATED THE 17<sup>th</sup> DAY OF APRIL 2019



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DEBRA MCDONALD



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DANE MARSH



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JEFFREY DALEY