

SANCTION DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO.186/2007

IN THE MATTER OF FRANK MILTON PHIPPS and PEARL MILLICENT PHIPPS v RAYMOND CLOUGH

And IN THE MATTER OF THE LEGAL PROFESSION ACT

PANEL: MRS. MARGARETTE MAY MACAULAY, MRS. URSULA KHAN & TREVOR HO-LYN

Appearances: Richard Small & Donna Scott-Mottley for Frank & Pearl Phipps

Abe Dabdoub for Raymond Clough

DATE OF SANCTION HEARING: 13 JULY 2019

On the 13 July 2019 a sanction hearing was conducted in this matter whereby an opportunity was given to the parties to make submissions as to what in their respective opinions was the appropriate sanction in this case.

The essence of the submissions made for and on behalf of the Complainant by his Counsel was that the Attorney having been found guilty of inexcusable and /or deplorable negligence the nature of which was to allow a person not qualified to act as an Attorney to hold himself out as an Attorney while under his direct supervision was so serious in its effect on the public at large and the reputation of the profession that the only appropriate sanction in those circumstances was one of striking off. This was further reinforced by the initial denial as to knowing the student and then recanting to admit that he was under his supervision which Counsel submitted had an element of dishonesty.

On the other hand Counsel for the Attorney submitted that the cases of inexcusable and/or deplorable negligence which have been decided by the General Legal Council Disciplinary Committee have usually imposed a sanction of a fine and /or a reprimand. He submitted that in the circumstances of this case the appropriate sanction was a severe reprimand.

The Panel took time to consider these submissions and to have a look at past cases involving inexcusable or deplorable negligence and what have been the sanctions imposed.

In Complaint # 25/2009 between Leonard Wellesley and Lynden Wellesley the Attorney was found guilty of inexcusable and/or deplorable negligence and was fined Two Million Dollars. The factual circumstances are that the Attorney had failed to act in a timely manner and this had caused the Complainant to be statute barred with respect to his personal injury claim.

In Complaint # 131/2003 between Hortense Sharpe Sanderson and Berriston Bryan the Attorney was found guilty of inexcusable and/or deplorable negligence and fined One Hundred and Forty Thousand Dollars. The factual circumstances are that the Attorney was in breach of an undertaking that caused the Complainant to suffer a loss of One Hundred and Forty Thousand Dollars.

In Complaint # 75/1996 between Frederick Scott and Elsie Taylor the Attorney was found guilty of inexcusable and/or deplorable negligence and fined Two Hundred and Thirty Two Thousand Dollars. The factual circumstances are that the Attorney's actions facilitated the loss to the Complainant of the sum of Two Hundred and Thirty Two Thousand Dollars.

In Complaint # 59/2005 between John Grewcock and Lord Anthony Gifford the Attorney was found guilty of inexcusable and/or deplorable negligence and fined One Million One Hundred Thousand Dollars. The factual circumstances are that the Attorney embarked on an inadequate procedure and ultimately failed to enforce a judgment that he had obtained on behalf of the Complainant. The fine was calculated with reference to the net principal amount to be recovered less the contingency fees the Attorney would have earned.

All these cases illustrate that the level of fine imposed have a direct reference to the amount necessary to compensate the Complainant for his financial loss. None of them deal with issues over and above the losses to the complainants with regard to the sanction imposed.

This case does not have any basis upon which the loss to the Complainant caused by the inexcusable and/or deplorable negligence of the Attorney can be calculated . Accordingly the issue of a fine is inappropriate.

A severe reprimand does not take into any account the consequence of an Attorney permitting these actions on the Legal Profession and its integrity. Disciplinary proceedings overriding objective is to uphold the high standards of the profession and to maintain its honor and dignity in the eyes of the public. Failure to do so will only bring the profession into disrepute.

The character witness called on behalf of the Attorney when asked if he would have permitted some of the acts which the evidence showed to have been done by the Attorney said he would not. In fact he could not properly speak to the integrity of the Attorney he could only speak to the fact that he was a good instructing attorney. The end result of the character witness evidence is that it was for the most part unhelpful to the Attorney.

The Complainant has asked that the Attorney be struck off . The Complainant himself is an attorney. He emphasizes the effect on the profession itself not on himself personally. As mentioned before the immediate reaction of the Attorney when the name Donovan Rodriques came up was to deny any knowledge of him at all. Thereafter that contention became untenable and the Attorney changed his position, this in itself does lend itself to an inference that there existed an element of dishonesty in the behavior of the Attorney.

In considering the appropriate order which ought to be imposed, where there is a finding of professional misconduct as in the instant case, the Disciplinary Committee is guided by the principle that the purpose for the imposition of a penal order is primarily to maintain the reputation of the Legal Profession and to sustain public confidence in the integrity of the profession: See Bolton v Law Society (1994) 2 ALL ER 486 at 492. Save in the most exceptional circumstances such as where there is an element of dishonesty or sharp practice, a finding of inexcusable or deplorable negligence would not give rise to a consideration of suspension or striking off . However as stated before the actions of the Attorney in permitting a law student to hold himself out as an attorney and thereby deceive members of the public is by itself

dishonest. There is therefore no difficulty in a finding that this case falls into the exceptional cases spoke of in Bolton v Law Society..

The Legal Profession Act at section 8 states:-

8.-(1) Subject to the provisions of this Act, if a person who is not enrolled practises as a lawyer he shall be liable on summary conviction before a Resident Magistrate to a fine of five hundred thousand dollars in respect of a first offence and for any second or subsequent offence to a fine of one million dollars or to imprisonment for a term of twelve months or to both such fine and imprisonment.

(2) Subject to the provisions of this Act, if any person who is not enrolled wilfully pretends to be, or makes or uses any name or title or description implying that he is qualified or recognized as qualified to act as an attorney he shall be liable on summary conviction before a Resident Magistrate to a fine of five hundred thousand dollars or to imprisonment for a term of twelve months or to both such fine and imprisonment.

(3) Any person who not being duly qualified or entitled to act as an attorney, acts in any respect as an attorney in any action or matter or in any court in the name or through the agency of an attorney entitled to practise, commits an offence against this Act and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term of twelve months or to both such fine and imprisonment.

Canon II of the Canons provides that :-

*{a) An Attorney shall not hold out any person {not qualified to practise as a lawyer) as a partner, associate consultant or Attomey.

These two provisions demonstrate clearly the parameters binding persons who are not Attorneys from acting as an Attorney and attorneys from holding out unqualified persons as being attorneys. One is a breach of the criminal law and the other a breach of the canons of the legal profession. This shows the severity with which these types of action are viewed. The finding of the Panel in this case shows that Donovan Rodriques acted in breach of the law and could have been charged pursuant to section 8 of the Legal Profession Act. In such an event the Attorney would be liable to be charged for aiding and abetting this behavior which was in breach of the criminal law.

Based on a the finding that this case falls into the exceptions spoke of in Bolton v Law Society the only appropriate sanction is therefore either a suspension or a striking off. Further in Bolton v Law Society at pages 490 and 491 it was 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 had been established, even after a passage of years, and even where the solicitor had 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 upon trust. A striking-off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to 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.

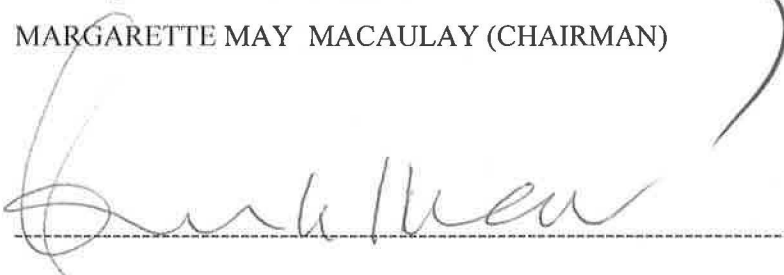
It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order 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. Particularly is this 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, 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. Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears, likely to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price."

Upon due consideration of the facts of the case and the plea in mitigation the Panel finds that a sanction of striking off would not be appropriate, accordingly the Panel imposes the sanction of a suspension. The Panel finds that the appropriate length of time for this suspension to allow the Attorney to be meticulous

in his further compliance with the required standards is one year. The suspension will therefore be for a period of One year commencing from the 1st September 2019. In addition the Attorney will pay costs in the sum of Eight Hundred and Fifty Thousand Dollars (\$850,000.00) to the General Legal Council on or before the 15th day of August 2019, of that sum the amount of Four Hundred Thousand Dollars (\$400,000.00) shall be paid to the Complainant.



MARGARETT MAY MACAULAY (CHAIRMAN)



URSULA KHAN



TREVOR HO-LYN