

**DECISION ON SANCTION
DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL**

COMPLAINT NO. 243/2018

BETWEEN	LOWELL MORGAN	COMPLAINANT
AND	MAURICE FRANKSON	RESPONDENT

PANEL:

DANIELLA GENTLES SILVERA (Chairman)
DELROSE CAMPBELL
ANNA GRACIE

PERSONS PRESENT:

Mr. LOWELL MORGAN - Complainant
Mr. MAURICE FRANKSON – Respondent

Hearing Date: 29th July 2020

Background

By its Decision delivered on July 4, 2020 the Disciplinary Committee made the following findings:-

- i. The Complainant was a member of the General Legal Council and authorized in law to bring this complaint.
- ii. The Respondent Attorney at the time the complaint was laid was an attorney -at-law in private practice with offices at 9-11 Church Street in the parish of Kingston.
- iii. The Respondent Attorney failed to file either an accountant's report or declaration with the Secretary of the General Legal Council in keeping with Regulations 16(1) of the Legal Profession (Accounts and Records) Regulations 1999 for the years 2014, 2015 2016, and 2017.

- iv. This means that for 4 consecutive years the Respondent Attorney has not complied with the Legal Profession (Accounts and Records) Regulations 1999.

The Disciplinary Committee concluded that this failure is in breach of regulations 16(1) and 17 of the Legal Profession (Accounts and Records) Regulations 1999 consequently the Respondent Attorney, MAURICE FRANKSON, is guilty of professional misconduct. The Respondent was advised that before imposing the appropriate sanction, the matter would be adjourned to hear his submissions in mitigation of any sanction the panel may impose pursuant to section 12(4) of the Legal Profession Act.

The Respondent Attorney indicated that he would not be giving any evidence simply making submissions in mitigation of sanction at the hearing held for that purpose. He said that he was aware that the failure to submit the reports was a breach of the regulations and he has no excuse whatsoever for having "fallen into this position". He also stated that he recognised the value of the Regulations and that it was never his intention to bring the General Legal Council into disrepute or to appear to be unable to govern the profession. He said he recognized that one sanction open to the Committee is striking off but submitted that to impose such a sanction would be ignoble. He submitted that given the opportunity he would rectify the breach as soon as possible and that the sanction of a suspension would allow him to do so.

The Complainant submitted that the Committee had a long list of precedents and that there was nothing in the case which made it fall outside of the precedents. These precedents were striking off the Attorney for failure to file the accounting reports prior to the date of the sanction hearing. The Complainant submitted that he was not sure why more time was being requested in circumstances where the Respondent Attorney had accepted responsibility and up to the date of the sanction hearing no report had been filed. The Complainant ended by submitting that there was no material before the Committee on which it could exercise its discretion other than in accordance with the precedents of the former decisions of the Disciplinary Committee of the General Legal Council.

Decision:

The panel considered the Court of Appeal's treatment of the decisions of the Disciplinary Committee in Complaint No. 72 of 2007 *C Dennis Morrison v Audley Earl Melhado* delivered on February 12th 2011 and Complaint No. 141 of 2017 *Allan Wood v Ian Robins* delivered on April 14, 2018.

In the Melhado case the attorney failed to file accounting reports for the years 2002, 2003, 2004 and 2005 and despite a number of adjournments in 2010 to give the opportunity to file none had been filed up to the date of hearing. The Disciplinary Committee found the attorney guilty of professional misconduct and the panel struck the name of the attorney from the Roll of Attorneys-at-Law entitled to practice in Jamaica. The panel in imposing that sanction stated that "*where such conduct remains un-rectified at the date or dates of hearing where nothing is said by way of explanation for the neglect or refusal to comply and no efforts were made to correct the default...the attorney ought to be precluded from continuing to practice. This is necessary for the protection of the public*". Mr. Melhado appealed to the Court of Appeal and that court upheld the findings of professional misconduct but imposed a sanction of suspension from practice for a period of nine months instead as Mr. Melhado had by the time of his appeal complied with the requirement of the regulations and filed the accountants reports for the years 2005 to 2009 and the requisite declarations for the years 2002 - 2004.

In the Robins case the attorney failed to file accounting reports for the years 2000 and 2005 – 2016. The panel; in similar circumstances having found the attorney guilty of the breaches of the Legal Profession (Accounts and Records) Regulations; was constrained to remove the attorney from the Roll of Attorneys-at-Law entitled to practice in Jamaica. The attorney in that case had procured letters from eminent persons affirming his good character and integrity and his long unblemished career as an attorney -at-law to no avail as he had offered no reason to the panel for his default. The Court of Appeal endorsed the decision in the Melhado case and reiterated the court's statement in that case that "*the Legal Profession Act and the various regulations promulgated under the Act must be taken seriously. Failure to file appropriate declarations and accounts is an indication of disrespect and attorneys who display such disrespect can expect that the committee may well order a 'striking off the roll' and the court is not sympathetic in situations such as those.*" The court set aside the striking off imposed by Disciplinary Committee and instead suspended Mr. Robins for a period of six months and a fine of \$650,000.00, representing \$50,000.00 for each of the years for

which he was found to be in breach of the Legal Profession (Accounts and Records) Regulations.

In arriving at its decision the Court of Appeal in the Robin's case considered that the attorney had rectified the breach "to the extent that he was able", he had complied since the ruling of the Disciplinary Committee and had filed accounting reports for the years 2005 -2014 and declarations for 2015-6 , only 2000 remained unaccounted for, that is for the year he was employed to a firm and the probability of retrieving information from the firm with the lapse of time was also considered. The court considered the attorney's expression of contrition together with his co-operation with the General Legal Council (attending hearing dates, not so in the Melhado case, where the attorney failed to respond). The court also considered the 2017 amendment to the Regulations specifically the provision contained in regulation 16(6) which allows the General Legal Council to withhold practising certificates where attorneys have failed to deliver accountant's reports or declarations; the effect of that amendment is that an attorney who fails to comply with the Accounting Regulations will not be permitted to practice. The court said in the circumstances the ultimate sanction of striking off would not be appropriate but would be excessive and disproportionately harsh.

Based on the Court of Appeal Judgments, once the Attorney rectifies the breaches of the accounting regulations and files the accounts the sanction of striking off has been substituted by orders for suspension from practice. We accept that in the instant case the Respondent Attorney is still in breach of the Regulations however we take into account the fact that the Respondent Attorney was present all the hearing dates, he was penitent and respectful to the Committee and stated that he will be able to make good and submit to the General Legal Council Accountant's Reports for the years, 2014, 2015, 2016 and 2017 if given time. The Committee is also aware that if he fails to do so Regulation 16(6) which allows the General Legal Council to withhold his practising certificate could be effected in which event he will not be permitted to practice.

The Committee, pursuant to the provisions of section 12(4) of the Legal Profession Act, makes the following Orders:-

1. The Respondent Attorney is suspended for a period of twenty-four months commencing from the date of this Order or until he delivers to the General Legal

Council Accountant's Reports for the years 2014, 2015, 2016 and 2017 which are satisfactory to the General Legal Council whichever occurs sooner.

2. The Respondent Attorney is hereby fined the sum of \$200,000.00, representing \$50,000.00 for each of the years 2014, 2015, 2016 and 2017 for which he was found to be in breach of the Legal Profession (Accounts and Records) Regulations. The said sum is to be paid to the General Legal Council on or before November 30, 2020.
3. The Respondent Attorney is to pay cost to the General Legal Council in the amount of \$50,000 on or before November 30, 2020.

Dated the 13 day of August 2020



DANIELLA GENTLES SILVERA



DELROSE CAMPBELL



ANNA GRACIE

