JUDGMENT OF THE DISCIPLINARY COMMITTEE (SANCTION)

COMPLAINT NO. 128/2019

In the matter of ALLAN S. WOOD, a member of the General Legal Council of 78 Harbour Street, Kingston AND MICHAEL LLOYD WILSON, an Attorney-at-Law

AND

In the matter of the Legal Profession Act

BEFORE: **MRS URSULA KHAN, CHAIRMAN**
JEFFREY DALEY
MISS CARLENE LARMOND, Q.C.

Appearances:

Mrs Carolyn Reid-Cameron and Mr Chukwuemeka Cameron for the Respondent

Recording Secretaries: **Mrs. Jeanie McLeod and Miss Donette McLean**

Hearing Dates: 16 December 2020 and 31 July 2021

1. By judgment delivered 31st October 2020, the panel found the Respondent guilty of professional misconduct and adjourned the hearing of the complaint to 16 December 2020 for the panel to be addressed on the sanction to be imposed on the attorney as a consequence of this finding of guilt.

2. Counsel for the Respondent called five witnesses to attest to his character. Two of those witnesses are former clients of the Respondent, two are attorneys-at-law practicing in Jamaica and one is a barrister practicing in England & Wales. After the panel took the evidence of the character witnesses, an enquiry was made of the Respondent through his counsel as to whether he would be giving evidence. Time was allowed for Counsel to consult with the Respondent. The panel was informed by Counsel that the Respondent does not wish to give evidence.

3. Ms. Ava-Dawn Weir, a retail account manager with Magna Rewards, said that she initially met the Respondent in relation to a friendly arrangement but that in 2015 she made a property investment and that the Respondent was very professional in how he handled the matter. Ms

Weir gave evidence that the Respondent did not handle money in relation to her transaction, but that she referred him to her brother for a sale transaction. Ms. Weir spoke to the Respondent's family values in relation to his three children and parents.

4. Pete Murdock, a corporal of police with the Area 2 Scenes of Crime Division and a member of the Jamaica Constabulary Force for 12 years, testified to knowing the Respondent for about 8 to 10 years and had been introduced to him as he was in the process of buying a property and that the Respondent acted for him. Corporal Murdock said the transaction was in or around 2013 – 2014, and that the Respondent was employed to Kareen Stanley-Jones at the time of the transaction but that another firm had to finish the transaction because the Respondent had to leave during the transaction.

5. Like Ms. Weir, Corporal Murdock described the Respondent as professional. Both witnesses expressed awareness of the Respondent having some issues abroad with a business in which he encountered problems with. They both are aware of the Respondent's conviction. Ms. Weir said she heard through the Respondent as a friend, and both witnesses said he volunteered that information. It was the position of both witnesses that the conviction does not change their view of him, based on their experiences with him as a professional, and both would again use the Respondent as an attorney.

6. Mr Leon Hosang, an attorney-at-law practicing for some 50 years in Jamaica, gave evidence of meeting the Respondent in 2015 and developing a relationship with him for a year or so. The contact ceased for some time, and it was this year that the Respondent informed him "unhesitatingly" about something that happened in England and expressed an awareness that the Respondent was incarcerated and convicted in that jurisdiction. Mr Hosang said the Respondent informed him that he made a mistake and is on the road to redemption. Mr Hosang testified that in the time he met the Respondent, he assessed him as a person who is realistic, upfront and can be trusted. Mr Hosang further testified that while the Respondent is not employed to his firm, Murray & Tucker, the Respondent has helped them, without asking for money, to update their website and in organizational methods, particularly follow-up with client which he said is a weakness of the firm. He described the Respondent as ambitious, family oriented and "deserving" of his support. Mr Hosang expressed awareness

of the Respondent being struck off the Roll of Attorneys in England, and said this would not affect his views of the Respondent.

7. Marc Williams, an attorney-at-law called to the Bar in this jurisdiction since 2009 and a barrister in England & Wales since 2008, also gave character evidence and of having known the Respondent for some 8 years. Mr Williams' deponed that his father, Carlton Williams also of counsel, called the Respondent to the Bar in this jurisdiction. Mr Williams described the Respondent as upstanding, hardworking, honest, of consistent character and transparent concerning his situation in England. Mr Williams said he learned about the situation a little before the Respondent returned to England for trial, and that the Respondent voluntarily told him when he was charged with the offences that eventually led to his conviction and custodial sentence.

8. Mr Williams expressed the opinion that the Respondent has not, in his eyes, brought the profession into disrepute. He took the view that the Respondent made a mistake, acknowledged his part, did "his time" (presumably a reference to the incarceration) and paid restitution to the tune of everything he had and returned to Jamaica to rebuild. Mr Williams' evidence is that the Respondent expressed regret and remorse to him.

9. The final character witness was Peter Equae, a barrister called in England & Wales, who gave evidence that he has known the Respondent since 2014 when they both attended the Norman Manley Law School. He describes the Respondent as a strong, positive and resilient man; and that the way in which the Respondent responded to adversity reinforced his view of him. Mr Equae expressed awareness of the Respondent having taken responsibility for what he did as far as he could.

10. Mr Equae sought to give evidence of the nature of the offence for which the Respondent was convicted in the United Kingdom, sought to draw a comparison of it with the Proceeds of Crime Act in Jamaica, expressing the view that in respect of the offence of which the Respondent was convicted, the bar is quite low. He further expressed views as to the "troubling paradox and inconsistency" of a jury trial in the United Kingdom. The panel takes the view that the sanctions hearing is not the appropriate forum for evidence of this nature. Such opinions, supported by other verifiable standards than just the oral evidence of a barrister

in the United Kingdom, would perhaps have been more appropriately adduced in relation to issues as to culpability in respect of the Canons already found to have been breached.

11. Mrs Carolyn Reid-Cameron, Q.C. in forceful oral submissions urged the panel not to impose the harshest sanction, that of striking off. Learned Queen's Counsel reminded the panel of the cross-section of persons who gave character evidence of the Respondent all of whom spoke to his integrity, honesty, professionalism and commitment to the profession. Of the witnesses, learned Queen's Counsel noted, three spoke to the fact that the Respondent has taken an internal view of what has happened to him and that he is a reformed and rehabilitated individual who has shown extreme remorse. Perhaps in recognition of the fact that no evidence of remorse came from the Respondent, learned Queen's Counsel submitted that any evidence of remorse, wherever it comes from, ought to enure to the benefit of the Respondent.

12. Mrs Reid Cameron, QC also urged the panel to take into account the Respondent's response to these proceedings. It was her further submission that when first taxed with these circumstances, the Respondent's immediate response was to admit and embrace his situation. She further submitted that based on how the hearing unfolded, the second time he was taxed by the powers that be, he happily decided to plead.

13. In the end, learned Queen's Counsel submitted that a "short sharp shock" is what would be appropriate and would be achieved by a suspension for a fixed period, preferrable a short period because:

    i. The situation occurred at least 4 years ago. Here we understand Queen's Counsel to be speaking of the conviction;
    ii. The Respondent has been punished several times over for the one offence for which he was convicted;
    iii. The Respondent is a man of good character that ought not to be extinguished and that is what would happen if he were to be struck off;
    iv. A suspension for a fixed period would satisfy the objective of the sanction.

14. The panel was urged to consider the seriousness of the misconduct, the purpose for which sanctions are imposed and to then choose the sanction that most appropriately fulfills that purpose.

15. The panel refers to the oft-cited and applied judgment of Sir Thomas Bingham MR in **Bolton v The Law Society** [1994] 2 All ER 486 where he 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 ... 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. 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 that inspires."

16. The panel was urged by learned Queen's Counsel in the course of her submissions that the Respondent was not acting in his capacity as an attorney-at-law and that no evidence was led as to his dishonesty. These submissions go against the panel's findings as to culpability on the complaint, and the panel cannot properly consider them to be mitigating factors.

17. It was the panel's finding, on the matter of culpability in respect of the complaint, that the Respondent has been convicted of a criminal offence:

    i. the basis of which involves an element of deception and dishonesty, in particular the unauthorized use of significant amounts of money invested with and entrusted to Global Wines Investments Limited, a company for which he was a director and which said funds he withdrew for his own purposes;

    ii. that is of a nature likely to bring the profession into disrepute.

    The Respondent was therefore held to be in in breach of Canon III(k) of the Legal Profession (Canons of Professional Ethics) Rules.

18. The panel, having found that the Respondent acted with dishonesty, does not therefore intend to revisit the issue of culpability in this judgment, but accepts that at a sanction hearing it ought

to be guided by established principles that require it to give due consideration to evidence concerning the nature, scope and extent of the dishonesty. In **Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin),** Coulson J in delivering the judgment said at paragraph 13:

> **It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see *Bolton* and *Salisbury*. That is the normal and necessary penalty in cases of dishonesty, see *Bultitude*. (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances, see *Salisbury*. (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes, or over a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes), and whether it had an adverse effect on others."** [Emphasis supplied]

19. The Respondent refused to give evidence at trial and at the sanction hearing. The panel was deprived of evidence that would enable it to form a view as to the factual background surrounding the offending act leading to the Respondent's conviction. The Respondent having admitted on the pleadings to his conviction, sentence of imprisonment, director's disqualification and having been struck from the Roll of Solicitors in the United Kingdom, chose to leave the admission without evidentiary context as might have spoken to the nature, scope and extent of the dishonesty, or any other factor relevant to disproportionality of a striking off. The panel cannot, in these circumstances, conclude that this case falls within that small residual category where striking off would be a disproportionate sentence in all the circumstances.

20. In this vein, the panel notes also that there is no evidence of remorse coming from the Respondent. Some of the character witnesses have spoken of his remorse as expressed to them, but the panel is unable to accept learned Queen's Counsel invitation to take a liberal approach as to the source of such evidence to the exclusion of evidence from the Respondent himself.

21. Remorse, by its very nature, is personal to the individual expressing it. The panel takes the view that, as a fact-finding body charged with assessing the presence, absence or extent of remorse, it is best placed in discharging that duty after hearing direct evidence from the Respondent and considering his demeanour and overall credibility, given the serious nature of the proceedings before it. The Respondent's refusal, even at the stage of sanction, to participate in the process as would allow for the mitigation of his sentence is therefore also a basis for the panel's finding that he has failed to bring his case into that small residual category of cases where striking off would be a disproportionate sentence.

22. Learned Queen's counsel urged the panel to take into account the Respondent's admission at the very early stage of the proceedings, both on his pleading and at the first hearing of this complaint. This submission runs contrary to the very manner in which the Respondent conducted his case.

23. Having made an admission on his pleading and at the first hearing on 9 November 2019, the Respondent devoted two further days' sittings of the panel in an effort to dismiss the complaint (on 25 January 2020) and to withdraw the plea (on 4 February 2020). It is significant to note that the latter application to withdraw the plea was made without notice to the panel or the complainant. Indeed, neither was the first application. However, since the Respondent did not appear with counsel on 9 November 2019 and the panel understood the point to be raised on 25 January 2020 to be one as to its jurisdiction to hear the complaint, the panel felt compelled to hear the application notwithstanding the absence of notice.

24. The panel has also been deprived of any evidence from the Respondent as to restitution. One character witness, Mr Marc Williams, spoke to the Respondent making restitution "to the tune of everything he had". The panel can attach no weight to this evidence, not only because it did not come from the Respondent himself or from any independently verifiable documentary evidence, but also because it lacks specificity. The Respondent was convicted of depriving investors of a specific sum, and the total of those losses amounted to approximately £100,000.00. The panel is not persuaded that it should give any favourable consideration to matters of restitution given the state of the evidence.

25. The panel now considers the character evidence led on behalf of the Respondent, from a total of 5 character witnesses. Sir Thomas Bingham in Bolton (supra) at p. 519 observed:

> **"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. [Emphasis supplied]**

26. The panel notes that evidence from Mr Hosang and Ms Ava-Dawn Weir of the Respondent as an attorney-at-law in this jurisdiction would have been during his year of practice in 2015. The Respondent was admitted to practice on 23 July 2015, having attended the Norman Manley Law School in the period September 2014 to March 2015. None of the character witnesses gave evidence of being involved in any transaction that involved client funds or any kind of financial responsibility or duty. Indeed, Corporal Murdock deponed that the Respondent who was employed to a firm, did not complete his sale of land transaction as he had to leave the Island and that another firm completed it.

27. It is noted that Mr Hosang gave evidence that having developed a relationship with the Respondent for a year or so after meeting him in 2015, he was then unable to get in touch with him. Mr Williams, also a Barrister in the United Kingdom, said he knew the Respondent for about 8 years, which would be since around 2012, a time span that would have included the Respondent also being a solicitor in the United Kingdom.

28. We agree with learned Queen's Counsel that all witnesses spoke to the Respondent's integrity, honesty, professionalism and commitment to the profession. It does appear that in the case of at the very least 2 of the witnesses (being Mr Hosang and Mr Equae) there would have been limited time within which to make that assessment prior to the conviction in April 2016 Mr Equae having known the Respondent since 2014 and Mr Hosang in 2015.

29. It is also difficult to appreciate how the assessment as to commitment to the profession could have been arrived at in this limited period of time, particularly where the Respondent was incarcerated in June 2016 just one year short of the anniversary of having been called to the Jamaican Bar and would then have spent 3 years incarcerated in the United Kingdom up to 2019.

30. The panel also notes that the only evidence of the Respondent's interaction with the profession in this jurisdiction was his consistent obtaining of practicing certificates pursuant to the Legal Profession Act since his call in 2015 including during the period of his incarceration in the years 2017, 2018 and 2019. The Respondent has given no evidence, and the panel was not placed in a position to enquire of him, as to why this curious step was taken when the Respondent had no basis, apparent reason and clearly no ability to practice in this Island while incarcerated in the United Kingdom.

31. The panel notes the seriousness of the nature of the offence of which the Respondent was convicted and sentenced. The testimony of good character does not, in the panel's view, amount to a mitigating factor that ought to lead to a lesser sanction as suspension, as learned Queen's Counsel proposes. In the premises, after full consideration of the evidence and submissions in mitigation and in particular the panel's finding of dishonesty, the Panel finds that there are no exceptional circumstances that ought to lead to a conclusion that this case falls within the small residual category where a striking off would be a disproportionate sentence.

32. The panel is not unmindful of the fact that the Respondent has served a custodial sentence and has been struck from the Roll of Solicitors in the United Kingdom. The question as to whether a sanction of striking off in this jurisdiction would be unduly harsh has been considered, and it is our finding that such a sanction would not be. For, the question is not answered only by the Respondent having "done his time", as stated by Mr Williams in his character evidence or having been "punished several times over" as has been submitted by learned Queen's Counsel.

33. Apart from the fact that the striking off order is not imposed with the intent of punishing the Respondent, the question as to whether a striking off would be unduly harsh is answered by the Respondent placing before this Tribunal evidence of relevant factors peculiar to the dishonesty that demonstrate that this case ought to be placed small residual category where a striking off would be a disproportionate sentence. He has failed to do so, for all the reasons above-stated. The panel cannot be moved to consider his custodial sentence and striking-off in the United Kingdom in a vacuum when discharging its statutory mandate to impose appropriate sanctions in this jurisdiction. In all the circumstances, the panel implements the following sanctions:

1. The Attorney-at-Law be struck from the Roll of Attorneys-at-Law.
2. Cost to the General Legal Council in the sum of $100,000.00.

DATED THE 31st DAY July 2021

MRS URSULA KHAN, CHAIRMAN

JEFFREY DALEY

MISS CARLENE LARMOND, Q.C.