

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

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**COMPLAINT NO. 52/2019**

**In the Matter of LOWELL SPENCE and  
SOPHIA THOMAS, an Attorney-at-Law.**

**AND**

**In the Matter of the Legal Profession Act,  
1971**

Panel: Mrs. Tana'ania Small Davis, K.C.  
Ms. Lilieth Deacon  
Miss Anna Gracie

Appearances: Mr. Lowell Spence - Complainant  
Mr. Matthew Hyatt – Counsel for the Complainant  
Mr. Hugh Wildman – Counsel for the Respondent

Recording Secretary: Ms. Jeanie McLeod and Ms. Donnette Mclean

1. On 29 July 2022 the Panel delivered its decision on the Complaint against the Attorney finding her guilty of professional misconduct. The Attorney was not present however she was represented and the Panel fixed 16 September 2022 for the sanction hearing at which mitigation evidence and submissions would be received.
2. The Attorney was not present on 16 September 2022, however her attorney appeared and offered an apology for her absence which he said was due to the Attorney having other matters to attend to but that he had permission from his client for the hearing to proceed in her absence.
3. The Attorney did not put forward any character evidence or a statement in mitigation. The submissions made on her behalf were brief. It was submitted that the Attorney would be relying on the evidence already before the Panel and that the Panel should take into account the fact that the Attorney was a Deputy Director in the Office of the Director of Public Prosecutions and that she had been charged with prosecuting a major fraud case which is the subject of the Complaint on behalf of the people of Jamaica, and which was not determined on the merits.
4. No submissions were made on the appropriate sanction save that it was for the Panel to determine the appropriate sanction given her background of being employed to the State,

in particular the Office of the Director of Public Prosecutions and that the matter that she was engaged in was on behalf of the State. It was submitted that the Attorney derived no personal benefit, that what she was doing was on behalf of the people in a major case of fraud committed against a bank. The Panel was asked to consider the Attorney's record as there was no indication of any previous infraction.

5. The Attorney was called to the Bar in November 2008 and joined the Office of the Director of Public Prosecutions in 2012.
6. We think it important to set out here, for context, the Panel's findings of fact:
  - a. At the trial date of 7 November 2017, the Respondent did not lay the foundation of the use of the photocopy statement to be used to refresh the witness' evidence as she indicated to the Trial Judge that the original was at her office;
  - b. That based on the Respondent's indication that the original was at her office and on the Respondent's application, an adjournment was granted to produce the original statement;
  - c. The Respondent made checks at her office and discovered at that time that the witness' original statement was mislaid/ lost;
  - d. The witness did not have another original of the statement he gave in May 2017;
  - e. The Respondent spoke to Mr. Hines and requested that he ascertain from the witness whether he had the original statement on his computer and if so, he should reprint it for presentation at trial;
  - f. At the trial date of 22 November 2017, the Respondent did not inform the judge that she had not found the original statement and that she had secured a reprint before having the document passed to the witness;
  - g. That the statement presented was not a replica with an original signature or a "second original" but a new document with changes both to grammar and the content though the changes were not material;
  - h. The Respondent did not check the statements to ensure that the reproduction was an exact replica of the original;
  - i. The Respondent did not know that the document delivered to her by Mr Hinds had some changes to content, though not material; and
  - j. The Director of Public Prosecution offered no further evidence in the matter against the Complainant.
7. In considering the appropriate sanction, the Panel reminds itself of the findings on the complaint. They are that the Attorney:
  - a. knowingly made a false statement of fact to the Court (Canon V (o)); and
  - b. failed to maintain the honour and dignity of the profession and her behaviour discredited the profession of which she is a member (Canon I(b)).
8. Attorneys, as officer of the Court, are under a duty not to mislead the Court and doing so is considered a serious breach. We consider it to be a breach of a core duty of an attorney.

As a prosecutor, the Attorney is an officer of justice. As we quoted from **Randall v R [2002] 2 Crim App R. 17** in the Decision,

*"... The adversarial format of the criminal trial is indeed directed to ensuring a fair opportunity for the prosecution to establish guilt and a fair opportunity for the defendant to advance his defence. To safeguard the fairness of the trial a number of rules have been developed to ensure that the proceedings, however closely contested and however highly charged, are conducted in a manner which is orderly and fair. These rules are well-understood and are not in any way controversial. But it is pertinent to state some of them:*

*1. The duty of prosecuting counsel is not to obtain a conviction at all costs but to act as a minister of justice: R v Puddick (1865); R v Banks [1916] UK. The prosecutor's role was very clearly described by the Supreme Court of Canada in Boucher v The Queen (1954):*

*"It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings..."*

9. An integral part of the function of the sanction of an attorney found guilty of professional misconduct is to protect the public, maintain high standards of behaviour and performance at the Bar and to promote and sustain public confidence in the integrity of the members of the profession.
10. We consider that the appropriate range of sanction for this type of offence goes to the maximum of an order striking the attorney off the Roll.
11. We have reviewed the matter to discern any aggravating and mitigating factors. As we see it, the aggravating factors are:
  - (a) the conduct of the Attorney adversely affected the course of the proceedings in that it resulted in the Director of Public Prosecutor attending at the trial of the Complainant and offering no further evidence in the case. This was a very drastic step taken by the DPP;
  - (b) The persistent conduct in the course of the trial in attempting to circumvent the proper way in which to seek to adduce the evidence;
  - (c) The nature of the misconduct itself, being the presentation of a document to the court knowing it was not what it purported to be;

- (d) The effect in undermining the profession and in particular the prosecution in the eyes of the public;
  - (e) Her position of responsibility within the Office of the Director of Public Prosecutions;
  - (f) Her lack of remorse, which was seen during the hearing when the Attorney maintained that the learned Parish Court Judge (who was a senior judge) misunderstood the rules of evidence in requiring her to produce the original of the statement which she wished to use to assist the witness to refresh his memory; and
  - (g) Her lack of insight into the seriousness of her action as seen during the hearing with her insistence that what she attempted to hand to the witness was a “second original”. The Attorney did not show that she appreciated the gravity of her conduct and sought to justify what she did to the very end.
12. We take the fact that the Attorney is of previous good standing and has not had any other complaints brought against her as a mitigating factor.

### SANCTION

13. As an attorney of nine years practice at the time, the Attorney’s conduct in this matter is entirely unsatisfactory and a cause deep concern. Her conduct brings the entire profession into disrepute and is egregious given the lack of candour to the court and her position as an officer of court and of justice. The manner in which she conducted herself during the criminal proceedings was to mislead the Court and her colleagues at the Bar as well as any other persons who were present in Court. Indeed, the witness himself was aware that the document was not the original statement he prepared and signed in May 2017 and told the Court that the document now being presented to the Court as the original was printed by him and signed the day before (21 November 2017) and dated 18 May 2017.
14. We repeat here paragraph 70 of the Decision, which appropriately sums up the degree of the Attorney’s misconduct:

We consider that the Respondent’s conduct was gross and repeated and therefore intentional in misleading the Court as to the provenance of the so called “second original”. It was not a simple mistake or error in judgment. Being an attorney of nine years practice at the time and five years with the Department of Public Prosecutions, she ought to have known the proper procedure in proceeding to refresh a witness’ memory. The manner in which she proceeded to circumvent the process of obtaining the court’s permission was not exemplar of honesty and candour. Acquiring a reproduced document with an original signature bearing a back date and failing to inform the Court of the absence of the original smacks of pursuing a course to have the use of the document at all costs or certainly without regard to truth, due process and fairness to the defendant.

15. We consider the nature of the Attorney’s breach is one which warrants a suspension from practice to maintain the reputation of the professions and to make it clear that such

conduct will not be countenanced. It must be made clear that members of the profession are required to act with honesty and integrity at all times.

16. The Decision of the Panel on Sanction of the Attorney, consequent upon the finding of guilt of professional misconduct made on 29 July 2022 is as follows:
- A. Ms Sophia Thomas is suspended from practice for a period of six months commencing 1 November 2022.
  - B. The Attorney is to attend the following Continuing Legal Professional Development seminars: (1) Ethical aspects of the decision to prosecute and the prosecution of criminal cases (Justice David Fraser); and (2) Contemporary Ethical Issues In Criminal Law Practice (Mr. Peter Champagnie KC), and must produce a certificate of her attendance to the General Legal Council no later than 31 March 2023.
  - C. Costs to the Complainant in the sum of \$100,000.00 to be paid on or before 31 December 2022.
  - D. Costs to the General Legal Council in the sum of \$300,000 to be paid on or before 31 December 2022.

**Dated the 30<sup>th</sup> day of September 2022.**



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**TANA'ANIA SMALL DAVIS, K.C.**



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**LILIEETH DEACON**



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**ANNA GRACIE**