

## DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

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Complaint No.216/2018

ALLAN WOOD, a member of the  
General Legal Council of 78,  
Harbour Street, Kingston

AND

BABARA LEDGISTER, an Attorney  
at law

AND

IN THE MATTER OF THE LEGAL  
PROFESSION ACT

PANEL: Mrs. Ursula Khan ( Chairman)  
Mrs. Katherine Francis  
Mr. Jeffrey Daley

Hearings: November 9, 2019, December 7, 2019, February 8, 2019, October 31 2020, January 16, 2021, March 27, 2021, July 10, 2021, July 24, 2021, October 2, 2021, and October 6, 2021

Present: Mr. Allan Wood Q.C. and Miss Shana Kay Shirley, his Counsel. The Respondent and her Counsel Miss Kristina Excell. In 2021 Ms Carol Davis appeared instructed by Ms. Excell

### COMPLAINT:

1. By complaint dated October 8, 2018 the Complainant as a member of the General Legal Council alleged that by virtue of the provisions of **Section 12 (1) of the Legal Profession Act** ( referred to hereinafter as LPA) he was authorized to make this application that having been granted a practicing certificate on November 1, 1984 the Respondent has been involved in conduct that may be in breach of the Legal Profession ( Canons of Professional Ethics) Rules 1999 and the Legal Profession ( Accounts and Records) Regulations 1999 in that:
  - i) She has failed to deliver to the secretary of the General Legal Council ( GLC) an Accountant's Report in respect of the financial years 2015, 2016 and 2017

pursuant to the said 1999 Rules. Later added by way of supplemental affidavit he alleged that an Accountant's Report was also not delivered for the year 2018.

- ii) That the Council has been informed that the Respondent was declared bankrupt pursuant to the bankruptcy Order made in the United Kingdom where she practiced as a Solicitor on February 6, 2018 and that pursuant to **Section (5) 7 of the LPA** she should not be entitled to practice in Jamaica.
2. That in view of these matters he had reasonable and probable grounds to believe that the Respondent was guilty of Misconduct in a professional respect having regard to **Rule 17 of the Legal Profession ( Accounts and Records ) Rules 1999** and **Section 5(7) of the LPA**.

### COMPLAINANT'S EVIDENCE

3. The Complainant gave evidence and tendered into evidence his Form of Application and affidavit in support as Exhibits 1 & 2 respectively, and a supplemental affidavit as Exhibit 3. He also tendered into evidence as Exhibits 4A, 4B & 4C - 3 Accountant's Reports dated October 12, 2018, December 19, 2018, and December 19, 2018 from Global Accounting Auditing and Tax Services for Lindel U Smith. He further stated that the General Legal Council (GLC) had also received 3 Accountant's Reports from Mr. Wendel Wilkins, Attorney at law, dated December 24 2018 for the years 2015, 2016 & 2017 stated to be for Wendel Wilkins only ( This gentleman is alleged to have been a partner in the firm)
4. Other exhibits tendered into evidence were :
  - i. Exhibit 5A - Letter from Robertson Smith and Ledgister dated December 24, 2018
  - ii. Exhibit 5B & 5C – Accountant's Report dated December 21, 2019 for years 2015 & 2016 from Neville Robinson & Associates.
  - iii. Exhibit 6 – Report dated June 12, 2015 from Neville Robinson & Associates
5. The complainant stated that these exhibits were tendered to show that the alleged partners filed reports individually. He also told the panel that after the complaint was laid Global Accounting and Tax Service sent unsigned pages dated October 4, 2019 to the GLC requesting that these be substituted for the first page of Exhibits 4A,4B &4C for the alleged partners and associates of the firm named as Marcia Robertson, Lindel U Smith, Barbara J Ledgister partners and Wilwood Adams and Kevin Harriot as Associates. Wendel Wilkins was not named. – The Accountant's Reports were signed by Mr. Dayle Blair, Chartered Accountant. These said pages were admitted into evidence as Exhibits 7A,7B & 7C.and were unsigned.

6. The affidavit of the Secretary of the GLC, Althea Richards, was also tendered as Exhibit 8 -this affidavit confirmed that Accountant's Reports were not filed by the Respondent in respect of the said years.
7. The Complainant also mentioned that the Respondent was a bankrupt and remained so up to the time of his giving evidence – a copy of the UK Gazette was exhibited in his affidavit as exhibit 2.
8. At this point the said Mr. Dayle Blair's evidence was taken as he was expected to be overseas. The Complainant indicated a wish to speak to this witness before he testified but the Respondent objected and Mr. Blair gave his evidence and stated that the reports were for the firm and could not or did not explain to the panel why the first page of the reports read "in respect of Lindel U. Smith". He said he did not recall sending an amendment and later said that it was sent without his knowledge. In reference to the pages later sent to the GLC and exhibited as 7A, 7B & 7C He was also questioned about receipts and ledgers and stated among other things that the Accountant's responsibility is to ensure that he gives a true and fair reflection of compliance but it was not an audit. Miss Excell, Counsel for the Respondent reserved cross examination.
9. At the continuation of the hearing the cross examination of Mr. Blair commenced. He said he always did reports for Smith and Ledgister from 2004 and he always dealt with Mr. Smith. The receipt book for the period November 2015 to July 2019 was tendered in evidence as Exhibit 9, the ledger of 2017 was put into evidence as Exhibit 10 and questions continued on the contents of the ledger. The panel reminded Counsel that all she had to answer was whether reports were filed for the years complained of and not of the contents of the ledger.
10. In Re Examination Mr. Blair stated that he never dealt with the Respondent, never met her, never spoke to her and don't know who she is.
11. The Respondent later appeared on zoom and wanted to ask a question since she had had connectivity issues. The Complainant agreed provided he too could reopen and ask a question. The panel obliged. Mr Blair stated that he had an understanding from Mr. Smith that the Report was to be prepared in relation to Ms Ledgister although he did not know her. However he said that he did not know that the Respondent was a Solicitor practicing in the United Kingdom and did not know the extent to which her UK practice related to the Jamaican practice and do not recall seeing any of her records. He was not aware that she was suspended in the UK for not keeping proper records.
12. The Complainant's cross examination resumed. He denied receipt of Accounting Reports for 2015, 2016, & 2017 or 2018. He said that the fact that documents are received does not mean that the contents are accepted. That listing on the website is done by clerical staff and not necessarily reviewed by the responsible committee. That

Robertson, Smith & Ledgister is suggested to be an actual partnership but that they would have to clarify that. That he has not seen that Mr. Smith signed on behalf of himself and the Respondent and that the Accountant's Reports speak for themselves in reference to Exhibits 4A, 4B & 4C. – " On each report it says " This report is in respect of Lindel U Smith. "

13. The case for the complainant was then closed.

## **RESPONDENT'S EVIDENCE**

14. After being sworn the Respondent tendered two affidavits sworn by her as Exhibits 11 & 12. She said the reports submitted ( Exhibits 4A, 4B & 4C) were on her behalf. By agreement of the parties the Accountant's Report in respect of 2018 filed 28<sup>th</sup> February, 2020 was admitted as Exhibit 13. Mr. Lindel Smith, who was called as a witness for the Respondent, had his affidavit dated 29<sup>th</sup> September, 2021 tendered as Exhibit 14. She stated that she and Lindel U Smith were partners since 1990 and she went on to explain the relationship between her UK practice and her Jamaican practice to which the complainant objected as not being evidence but submission arguments. She was reminded by the panel that all she had to do was to respond to the charges laid against her.

15. At the resumed hearing on July 10, 2021 Ms. Carol Davis appeared as Counsel for the Respondent instructed by Ms. Excell - the Respondent was absent allegedly sick. But there was an application before the panel which the panel considered and reserved decision which was given orally on the 15 day of July 2021. The application was refused and the panel promised to set out its reasons when giving its decision on the complaint.

## **Application**

16. In November, 2020 the Respondent filed an application of intention to take a preliminary point and made written submissions to which the Complainant also responded in writing. This application was adjourned from time to time because of Covid restrictions in the United Kingdom. Although the Respondent's counsels were present, they indicated that the Respondent wanted to be present. However after adjournments they agreed to carry on with the application in the absence of the respondent as this was a very old matter.

17. The Panel recognized that with the proceedings having already started and the Respondent having submitted to the jurisdiction of the Disciplinary Committee, the application, whilst permitted, would not be regarded as a "Preliminary Point."

18. In summary, the crux of the Respondent's application was that the proceedings against the Respondent were tainted and should be stopped and recommenced before a new Panel because the Panel allowed Mr Wood QC, to act as both Counsel and a Witness in the proceedings and also that Mr. Wood had acted in breach of **Canon V (p)** of the **Legal Profession (Canons of Professional Ethics) Rules** which prohibits an Attorney from testifying on behalf of his client except as to merely formal matters, while appearing on behalf of his client.
19. At the actual hearing of the application on July 10, 2021 each party was given 20 minutes to amplify his/her written submissions. After consideration the panel refused the application and reserved reasons to be given at a later date.
20. The reasons are stated hereunder :
- a) That **Canon V(p)** was inapplicable and the 2 cases ( **Crown Motors et al v First Trade Bank (2016) JMCA Civ at para 79 and R –v- Secretary of State for India in Council and Others Ex parte Ezekiel 9 1941 2 All E R 546at page 556** ) cited were inapplicable to proceedings before the Disciplinary Committee.
  - b) That the complainant is Allan Wood Q.C. and that he gave evidence and filed an affidavit in support of his application.
  - c) That all Complainants are required to file affidavits and give evidence in support of their applications.
  - d) In Disciplinary Hearings all complainants are permitted to give evidence and cross examine their opponents.
  - e) That what Mr. Wood did in cross examining the witness was not irregular - he, as Complainant, just happened to be an Attorney at law. He did not take over conduct of the Complaint from his Counsel, Ms. Shirley.
  - f) The Disciplinary Committee is not a court of civil or criminal jurisdiction - it is *sui generis* with its own rules and conventions subject to fairness. Hence Court rules do not apply.
  - g) He was entitled to cross examine his opponent as happens in most disciplinary hearings.
  - h) Alternatively, even if **Canon V(p)** applied as considered in Court cases, the contents of the evidence given by him would have been acceptable and he would not have committed professional misconduct as Canon V(p) is not one of the canons that carry such a sanction.
  - i) The application was refused..

**CROSS EXAMINATION OF RESPONDENT CONTINUED**

21. The Cross Examination of the Respondent therefore continued on October 2, 2021. She told the panel that financial reports are always filed 6 months after the end of the financial year and that Mr. Lindel U Smith always did that on her behalf. She did not agree that Accountant's Reports were not filed on her behalf. By agreement the parties put in evidence the affidavit of Lindel U Smith as Exhibit 14 and a letter written by him dated 26/2/20 as Exhibit 13. She also told the panel that with respect to the bankruptcy, the proceedings were not yet completed as they were awaiting a decision for financial aid.

#### **WITNESS FOR RESPONDENT**

22. Mr. Lindel U Smith was called as a witness for the Respondent and he referred to Exhibit 14 in which he described his partnership with the Respondent, that he was the managing partner and it was his responsibility to file relevant documents with the GLC. And that his responsibility in the relevant years was no different - that he never had query and his reports were always accepted. That he was delinquent in 2018 and was reminded by the GLC, and all reports were prepared by Mr. Dayle Blair. That since he began filing reports he signed on behalf of the partners and the Respondent never signed any reports. That the reports for 2015, 2016 and 2017 were signed by him on behalf of the partners. That he did sign on behalf of the partnership although it was not so explicitly written out. That he had overlooked the significance in the way the auditor's report was written and could be interpreted, but it was never his intention in respect of the years 2015 to 2018 to sign except on behalf of the partnership.

23. In Cross examination he admitted that he was aware of her bankruptcy and suspension from practice in the United Kingdom later referred to as UK.

24. The case for the Respondent was then closed and the parties were invited to send in written submissions by a certain date. They did and the panel is grateful for the help they gave in assisting us to come to a decision.

#### **CONSIDERATION OF WRITTEN SUBMISSIONS**

##### **Complainant:**

25. He alleged that the Respondent is guilty of professional misconduct because of breach of the provisions in **the Legal Profession (Accounts and Records) Regulations 1999** and **Section 5(7) of the Legal Profession Act (P & C)** in that she was declared a bankrupt in the UK on 6<sup>th</sup> February, 2018... .

26. He said that having been admitted to practice in Jamaica in 1984 she failed to deliver Accountant's Reports for the 4 years 2015 – 2018 as is required. That after the complaint was filed the GLC received reports prepared by Dayle Blair, Chartered Accountant in respect of Lindel U Smith, Attorney at law and that some time after the GLC also received reports from Wendel Wilkins, Attorney at law, who is alleged to be a partner in the said legal firm. And yet later from another alleged partner and that this was a practice that continued over the years.
27. When Mr. Lindel U Smith gave evidence on behalf of the Respondent he admitted that he had not seen any books and accounts held by the Respondent in the UK and did not know whether or not she kept receipts for funds received from clients in UK. And that she was suspended in the UK for failure to keep proper Accounting Records.
28. The complainant also told the panel that there was a new form for Accounting Reports gazetted on March 27, 2019 and that the report for 2018 submitted did not comply with the new form which required more details and he set out its 4 serious discrepancies with the requirements.
29. That Exhibit 13 was tendered after Mr. Blair gave evidence to the panel and that there was no attempt to recall him to explain the breaches.
30. He cited two decisions made in the Disciplinary Committee of the General Legal Council (GLC) in which the committee in referring to failure to file accountant's reports for prolonged periods frowned on "breaches for unacceptably long periods in which the interests of clients were not being protected" -**Complaint 143/2013 GLC -v- Paulette A Warren Smith** and **Complaint 228/2018 GLC -v- McLeod**—where in its decision the panel said "the panel is to protect the general reputation of the profession and the interest of the public".
31. On the question of the allegation of bankruptcy the complainant told the panel that the Respondent was declared a bankrupt by order in the UK in 2018 and this order was not set aside. That after the case was closed the Respondent sent a document to GLC purporting to allege that her status had changed but that this document was unsigned and not in evidence.
32. The Complainant also produced a copy of the findings of the Tribunal that suspended her from practice in the UK. In these findings the Tribunal alleged that the Respondent had admitted all the allegations made against her but claimed they were not deliberately made and she was suspended on October 9, 2008. She claimed before the Tribunal that she misunderstood and had misbeliefs of the regulations. The Tribunal however found it strange that a person qualified to practice in two jurisdictions could have such misunderstandings. She had told them that she did not have a bookkeeping system and did not produce bank statements as required. In mitigation she claimed a medical

history. Among significant admissions made to this Tribunal were the fact that she told them that she mainly had a Jamaican practice as a Jamaican Attorney at law, had a mistaken view that she held clients funds, she was not insured as required, to which the Tribunal stated that it would not expect an attorney practicing in 2 jurisdictions could hold such a mistaken view and misguided beliefs. Among other findings the tribunal held that she exhibited a wholesale disregard for regulatory requirements and she avoided them. The Tribunal suspended her indefinitely.

33. We mention this decision of the UK tribunal not because we are bound by it but because of her alleged admission of the allegations made against her and which she claimed was because of a mistaken belief by her with regard to regulatory requirements.

#### **Respondent:**

34. On her behalf it was contended that:

- Even if the Accountant's Reports were submitted outside the required time there was provision in the rules for an application to extend time. It was conceded that they were late but silent on whether or not such an application had been made. However, she said that Lindel U Smith was competent to act for and on behalf of the firm of which she was a partner.
- That the UK order in bankruptcy did not apply to Jamaica because the provisions made in Section **287 of the Insolvency Act** were not complied with,
- That the findings of the UK Tribunal were not a binding authority.
- Finally, that the evidence adduced by the Complainant did not meet the required standard of proof which is beyond reasonable doubt.

#### **Standard of proof**

35. The panel reminds itself that the standard of proof required for conviction is standard of proof applicable in criminal cases, that is, beyond reasonable doubt.

#### **ANALYSIS**

- a. The Accountant's Reports tendered as Exhibits 4A, 4B & 4C were on the face of them explicitly for Lindel U Smith. The panel was always puzzled as to why having regard to his testimony he made no attempt to submit corrected versions to cure any omissions as would be expected in such circumstances when the documents were brought to his attention, or why he took no action to have them corrected.



- b. No attempt was ever made to establish the nature of the alleged partnership between Lindel U Smith and the Respondent and others by documentary proof which the occasion called for.
- c. After Lindel U Smith testified as to who the reports were intended to be for, no attempt was ever made to call back Mr. Dayle Bair, Chartered Accountant who prepared the Accountant's Reports from instructions, to explain how such an alleged mistake was made in the said reports.
- d. The panel was perplexed to note how the Respondent could say that these exhibits were for her too in spite of the contents of the said reports.
- e. Also perplexing was the statement by Lindel U Smith that he misunderstood/ overlooked the effect of what he signed begging the question should an experienced Attorney sign documents without reading and understanding them properly? The panel found it hard to accept his explanation..
- f. On the other hand the complainant did not satisfy the panel that the said **Section 287 of The Insolvency Act was complied with** before laying the complaint against the Respondent of being a bankrupt as there was no evidence that he did.

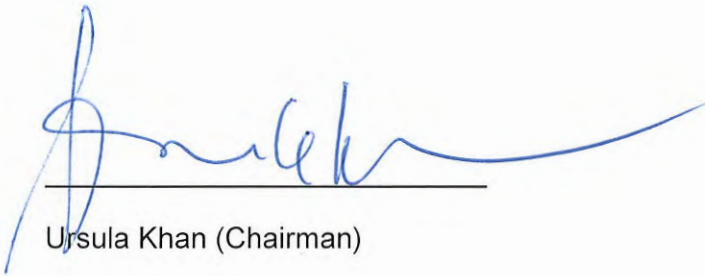
## FINDING

1. That Exhibits 4A,4B &4C were filed for Lindel U Smith alone.
2. That no credible attempt was ever made to correct any alleged mistakes..
3. That if the said exhibits were presented contrary to instructions no evidence was called to establish this fact.
4. No Accountant's Reports for or on behalf of the Respondent were filed for the years 2015 to 2018.
5. This is a very serious breach that failed to protect the reputation of the profession and the public and the Disciplinary Committee would be failing in its duty to overlook such breach.
6. The complainant has not proved the alleged breach of **Section 5 (7) of the LPA** beyond reasonable doubt as is required, as to do so the Respondent must have been recognized as a bankrupt in Jamaican law. There is no doubt that she is a bankrupt in the UK but for that status to follow her, compliance with Jamaican law is needed. **Section 5(7)** reads, "If an Attorney is adjudicated a bankrupt any practicing certificate issued to him shall cease to be in force". Since this is a Jamaican law and inapplicable elsewhere it would follow that such an attorney had to be declared a bankrupt in Jamaica. But domestic law has a provision that could capture an Attorney declared bankrupt elsewhere. **Section 287 of the Insolvency Act 2014** facilitates recognition of a foreign bankruptcy order in Regulations made thereunder in 2015. Regulation 62 of these Regulations provides for an application to be made to the Court by a foreign representative for such recognition. Since there is no evidence of any such application being made and a plain interpretation of **Section 5 (7) of the LPA** does not include a foreign bankruptcy order this charge fails.

## DECISION

1. The Respondent is guilty of misconduct in a professional respect in that she failed to submit Accountant's Reports for the years 2015 to 2018 as charged in breach of the provisions of **Rule 17 of the Legal Profession (Accounts and Records) Regulations 1999**.
2. Breach of Section 5(7) of the Legal Profession Act has not been proved.
3. A date will be fixed for a sanction hearing to be held and on that date she may appear and make a case in mitigation pursuant to the 2013 case of **Clunie -v- GLC**.

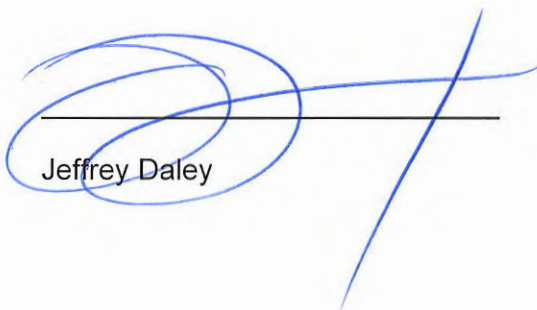
Dated the 26<sup>th</sup> day of November 2022



Ursula Khan (Chairman)



Katherine Francis



Jeffrey Daley

