

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

COMPLAINT NO. 111/2019

**IN THE MATTER OF KEMTEK DEVELOPMENT &
CONSTRUCTION LTD. (KARL TULLOCH) VS
BARBARA LEDGISTER AN ATTORNEY-AT-LAW**

AND

IN THE MATTER OF THE LEGAL PROFESSION

**PANEL: MR. PETER CHAMPAGNIE, KC
MS. CARLENE LARMOND, KC
MS. LILIETH DEACON**

SANCTIONS HEARING DATE: 6TH DECEMBER 2023

This matter has suffered from an abnormal delay and for that we apologize. We are very sorry that it took this time to be addressed. The pressures of what we have here, with our own private practice, sometimes do not allow us to address matters in a timely fashion but we are striving to improve on that. So, this is the decision in the way of sanction.

On the 8th October 2020, the written decision in respect of this matter was delivered and submitted. In that decision the Panel having considered all of the evidence that was before it came to a finding, based on the evidence that the Complainant was properly and legally represented by Karl Tulloch. Mr. Tulloch on behalf of the Complainant presented himself as a witness of truth. The panel found that the Respondent did provide the Complainant with a letter of undertaking. The letter of undertaking was not fulfilled and that the Respondent's conduct and the attendant circumstances as to why the undertaking was not fulfilled, could not be justified, or excused in any way and it was therefore an act of dishonesty.

The Respondent was found to be in breach of Canon VI(d) and (e) of the Legal Profession, Canons of Professional Ethics Rule, 1978 which states that, ***“an attorney shall not give a professional undertaking which he cannot fulfill and shall fulfill every such undertaking which he gives”***. In the findings of facts, we went beyond that to make reference to some other points. However, there isn't any merit in rehashing our findings of facts, save and except the references that were just alluded to.

Before addressing our decision, the Panel wishes to thank not just Miss Exell but Counsel Mr. Stimpson who today presented some very cogent arguments as to how his client should be treated.

Authorities were provided as well as written submissions and we are indebted to Counsel, (plural) for these submissions and arguments. Now in keeping with the decision of *Owen Clunie v General Legal Council*, we now move to the way of sanction having received mitigating arguments or submissions..

In this matter there are some compelling mitigating factors. The Respondent Attorney did not by any way of Affidavit seek to traverse or challenge the allegations and as Counsel has pointed out, it was essentially a situation where the Respondent thought it necessary to outline the history of the association, between herself and the parties, and thought it appropriate to outline whatever malady it is that she said she was operating under that caused her to act in this particular way. So, we are minded to treat this as the first mitigating factor.

The second mitigating factor is that as was pointed out, the Respondent attorney in this instance made full restitution to the party that was affected and certainly that must count for something, and we so find that it is a compelling and second mitigating factor.

The third mitigating factor is that in these proceedings very often times, the Complainant is in fact the client of the Respondent Attorney and there is a direct breach of trust and confidence. However, in this instance for consideration, the Complainant is not the client of the Respondent, not to say that a Complainant not being the client of a Respondent cannot bring a complaint, but it certainly is a mitigating factor in regard.

The fourth mitigating factor is that as was pointed out there has not been any pattern of behaviour of any act of misappropriation of funds in the past. This speaks to antecedent record of the Respondent. We therefore incorporate this as a fourth mitigating factor.

A fifth mitigating factor is although reference was made to a previous history in terms of adverse findings in the way of accounting regulations, what was just presented to us by way of the evidence from Miss Moses is that that matter was cured and therefore, as the record stands, the Respondent is in good standing where that is concerned.

The sixth mitigating factor is that the position was that, and there is some evidence on it that at the material time the Respondent attorney was operating under a particular belief as it relates to her spiritual needs and religious beliefs and practices and we make reference to the report of Dr. Sewell in this regard.

The seventh mitigating factor is an acknowledgement and an admission that there was and is the need for help. Very often person admit that they have a fault, in the way of a particular addiction but going beyond that they do not act. However, in this instance the Respondent Attorney has acknowledged the need for help and has made some effort in that direction.

The eighth mitigating factor is that very often what accompanies these kinds of complaint is the need for self-enrichment, greed to promote a particular kind of lifestyle and to live a particular way; in the way of excesses. There is no evidence before us at all that this was the case and we regard this as a mitigating factor. The other point that the Panel wishes to make is reference to the evidence, and we make reference to page three of the judgment that was given and will quote it extensively because we think it is important to note.

“It was put to Mr. Tulloch whether he acknowledged that the Respondent would have since engaged in the process of selling her house to take care of the outstanding balance that was due to the Complainant. Mr. Tulloch indicated that prior to it being brought to his attention in cross-examination he was not aware”. There was history between the Respondent Attorney and the Complainant and the history was a good one where undertakings were honoured. This is the eighth mitigating factor.

Having said that, we now move to the aggravating factors of this case. Firstly, there was in fact a history of a previous adverse finding in the way of accounting but that has been in a sense nullified to a large extent because of the position in the way of the evidence of Miss Moses. So, we really can't count that as really a serious or significant aggravating factor, save and except that she was brought before the Committee in relation to accounting regulations which as we have said have been rectified.

The second aggravating factor and that cannot be escaped is the fact that the evidence undisputed is that there was failure to honour the undertaking and this is a serious infraction. It cannot be overlooked.

The third aggravating factor is that it appears from the evidence that restitution although made in this instance seem to have been occasioned when the complaint was lodged. Now, this may be a coincidence, it may have been deliberate. It may have been a case where the complaint caused the Respondent to be put in motion but we nevertheless take note that it was occasioned by the way of the complaint, one wonders whether or not it would have been addressed if the complaint had never been filed. So, it is an aggravating feature but it is not that significant in the scheme of things because it invites some degree of speculation in terms of assessing that particular factor.

The fourth aggravating factor takes us to the report of Dr. Sewell. From the report, it clearly demonstrates that at the material time the Respondent attorney knew what she was about. She appeared to understand. However, she felt she could do nothing else based on the pressure she was under from Everton Brown and the effects of the spiritual warfare.

So, there are a series of mitigating factors as indeed there are a series of aggravating factors. The Panel also takes note of the character witnesses who were called. The Panel takes note of the fact that as was said by Counsel, the Respondent is an attorney of 40 years standing. The Panel also takes into account the authorities that were cited and in particular, the Panel is attracted to one case Reid v Clarke, 73 West Indian Report, page 36, and in that particular case, it concerned an issue of professional misconduct, it is from the Court of Appeal in Barbados.

The Court of Appeal consisted of Sir David Simmons, Chief Justice as he then was. In that particular case, what is instructive is what was held and. Paragraph D, page 37.

Sir Simmons went on to make some findings in terms of cost orders in that particular case and in determining what was the appropriate sanction to be applied.

We wish to say from the outset and to make it very clear that this present case and the sanction that is to be applied is not to be treated as a general precedent in the treatment of misappropriation of funds. This is to be emphasized. The reason for that is that this particular case as it ought to be examined on its own particular facts and uniqueness. In this regard the full contents of Dr. Sewell's report in respect of the Respondent is relied upon as the treatment of this matter in the way of sanction

We are moved by Counsel's opening remarks, circumstances alter cases and this is one such case where circumstances have altered the course in relation to the treatment of sanction. In the premises therefore, having found as we did and rendered a judgement on the 8th October 2020, the question remains what sanction to be applied. Of course we are guided by all the mitigating factors and the aggravating factors. Though we may not have made reference to others in the way of mitigation, we have taken into account the entire evidence that was before us. We have taken into account, the entire history of these proceedings before us to include all of the witnesses and all that was said. It is our unanimous position that the sanction to be applied in relation to this matter is one in the way of a suspension. The question now remains as to the length of time. We are of the

unanimous view that in all of the circumstances that we have outlined and read that the appropriate period to be imposed in the way of suspension is two years and that is the first position in terms of settlement of the sanction to be applied in this instance. As it relates to issues of any pecuniary aspect to the sanction, we are minded to impose costs to the Complainant in this matter in the amount of \$130,000.00 and costs to the General Legal Council of \$75,000.00.


The orders therefore in the way of sanction are as follows:

1. The Attorney Ms. Barbara Ledgister is suspended from practice effective the 6th December 2023 and to the 5th December 2025.
2. The Attorney is to pay costs to the Complainant in the sum of \$130,000.00.
3. The Attorney is to pay costs to the General Legal Council in the sum of \$75,000.00.
4. These costs orders are to be paid on or before March 29, 2024.

DATED THE 6TH DAY OF DECEMBER 2023


.....
MR. PETER CHAMPAGNIE, KC


.....
MS. CARLENE LARMOND, KC


.....
MS. LILIETH DEACON