[2023] JMCA Misc 1

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MR JUSTICE D FRASER JA
THE HON MRS JUSTICE G FRASER JA (AG)

MISCELLANEOUS APPEAL NO 7/2017

BETWEEN	**RICHARD BONNER**	**APPELLANT**
AND	**GENERAL LEGAL COUNCIL**	**RESPONDENT**

Aston Spencer for the appellant

Mrs Sandra Minott-Phillips QC and Mrs Kellie-Anne Hacker instructed by Myers, Fletcher & Gordon for the respondent

10, 11 May 2022 and 5 May 2023

Civil Law - Professional misconduct by an attorney-at-law – Whether there was a fair hearing due to the refusal to grant adjournment requests – Improper constitution of the panel of the Disciplinary Committee of the General Legal Council ('GLC') – Challenging findings of fact made by the GLC panel – Re-hearing the complaint before the GLC – Whether the sanction imposed was manifestly harsh and excessive

P WILLIAMS JA

[1] The appellant, Mr Richard Bonner ('Mr Bonner'), an attorney-at-law, was alleged to have misappropriated funds held on his client's behalf and had failed to account for those funds after being reasonably required to do so, thereby bringing the dignity of the legal profession into disrepute. The Disciplinary Committee of the General Legal Council ('the Committee') found him guilty of professional misconduct. The Committee ordered that he be struck from the Roll of Attorneys-at-Law entitled to practice in Jamaica, make

restitution and pay costs. He sought to challenge the Committee's findings on the basis that he did not receive a fair hearing of the complaint that was made against him and that various incorrect findings of fact had been made. He also contended that the sanctions imposed were manifestly harsh and excessive.

Background

[2] Mr Bonner was a close family friend of the complainant, Dr Opal Gibson-Corbin ('Dr Gibson-Corbin'), and her brother, Mr Michael Gibson ('Mr Gibson'), for over 50 years. In or about January 2007, Mr Gibson retained him on behalf of all the Gibson siblings to attend to the probate or administration of the estate of their deceased mother, Annie Anita Gibson. The other siblings were Ms Maxine Gibson ('Ms Gibson') and Ms Fern Bishop ('Ms Bishop'). While attending to the estate, Mr Bonner conducted the sale of premises located at 3 Chevy Chase, Havendale, Kingston 19 ('the property') for $11,100,000.00. That sale was completed in 2007.

[3] Dr Gibson-Corbin filed a complaint with a supporting affidavit against Mr Bonner before the General Legal Council ('GLC') in June 2014. She asserted that "as a consideration for his services", Mr Bonner had billed them, and he was paid $65,400.00. She further stated that after the sale of the property, an initial distribution of $1,500,000.00 was made, followed by a further distribution of $3,616,500.00 to herself and her siblings. She said this represented approximately 50% of the net proceeds of the sale after expenses, leaving a balance of $5,509,535.00. Mr Bonner gave her a statement of account dated 4 October 2013, which he had signed, confirming that $5,509,535.00 was "due and owing" to the siblings.

[4] At the time of filing the complaint, Mr Bonner had not paid the outstanding sums to Dr Gibson-Corbin or her siblings. The hearing into the complaint commenced on 7 February 2015, and, at that time, Mr Bonner had not filed a response to the complaint. The hearing was held on diverse days between 7 February 2015 and 25 March 2017.

[5] At the first date of the hearing on 7 February 2015, Dr Gibson-Corbin (who travelled from Barbados where she resided), Mr Gibson and Ms Gibson were present. Mr Bonner represented himself at the hearing. At the commencement of the hearing, the Committee indicated to Mr Bonner that they had not seen any response from him apart from two letters dated 4 September 2009 and 3 May 2012. These were letters from Mr Bonner to Dr Gibson-Corbin in which he sought to account for his delay in responding to her and explain the expenditures he had made. He also indicated that he was in the process of selling some properties. The Committee enquired of Mr Bonner if he had a copy of the complaint, and he affirmed that he had not responded to it but said that he had spoken to Dr Gibson-Corbin "as [to] how [they] could work the problem". He said that "[i]t was a situation we had agreed on. We agreed on a time line and a certain date but I am tempted to show her".

[6] Dr Gibson-Corbin gave oral evidence, and the complaint she had filed and the supporting affidavit were tendered and admitted into evidence without objection from Mr Bonner. Her evidence mirrored the facts outlined above. In answer to questions from the Committee, after the admission of these documents, Mr Bonner indicated that he had not filed any documents, and there were none that he intended to rely on.

[7] Dr Gibson-Corbin identified the statement of account, dated 4 October 2013, that she said she had received from Mr Bonner. It was tendered and admitted into evidence, with no objection from him. When Mr Bonner cross-examined her, she agreed that there was no line item of $65,000.00 for his fees contained in that statement of account. She indicated that she did not know whether Mr Bonner had been retained for $65,000.00. She was also questioned as to her knowledge about the property.

[8] Mr Gibson also gave sworn testimony. He corroborated the evidence given by his sister, Dr Gibson-Corbin. He stated that he knew Mr Bonner for over 50 years and that Mr Bonner was retained in relation to the property and had carriage of the sale. An undated statement of account relating to the sale of the property that Mr Gibson had received from Mr Bonner, which Mr Bonner also signed, was tendered and admitted into

evidence without objection. During cross-examination, Mr Gibson denied knowledge of the winding up of and discussions surrounding the estate of Hector, situated at 20 New Haven Avenue. Immediately following Mr Gibson's denial, the following exchange occurred:

"R. Bonner:	Can I ask for an adjournment to retain counsel?
Panel:	Ok. Mr. Bonner you need to look at the complaint.
Bonner:	What are you looking at?
Panel:	There are 2 specific charges, so what is [sic] the charges?
R. Bonner:	**To mitigate.**
Panel:	What month.
R. Bonner:	I think March." (Emphasis added)

[9] The matter was adjourned to 28 March 2015, but a notice dated 23 March 2015 was issued by the GLC to Mr Bonner indicating that the matter was postponed. In July 2015, Dr Gibson-Corbin wrote to the GLC expressing her displeasure at the adjournment of the hearing and her surprise at the long delay. A notice was issued to Mr Bonner dated 4 August 2015, advising that the matter was set for continuation on 10 October 2015.

[10] On 10 October 2015, Mr Gibson and Ms Gibson were present, but Mr Bonner was absent. He sent a letter dated 9 October 2015 to the Committee, attaching a medical certificate indicating that he was ill and unable to attend the hearing. Mr Bonner also filed an affidavit in response to the complaint dated 9 October 2015. In it, he admitted that he was retained in relation to work on the estate of Annie Anita Gibson, deceased, and that he was required to undertake the sale of the property. He indicated that, in order to administer her estate, he had to also administer the estate of her late husband and deceased son, in whose estates she had an interest. He also deponed to undertaking the sale of a number of other properties and indicated that he honestly believed that he had tried his best to keep Dr Gibson-Corbin informed as to the progress of the matter despite

several constraints. He maintained that he had accounted to Dr Gibson-Corbin for all sums of money he handled on behalf of the estate. He denied that he had not accounted to the executor and beneficiaries of the estate for all the moneys. He denied breaching Canon I(b) of the Legal Profession (Canons of Professional Ethics) Rules ('Canons') as he had always sought to maintain and uphold the honour and dignity of the profession and denied acting unprofessionally or negligently. He filed a statement of account, dated 8 October 2015, in which he set out expenditure in the sum of $10,228,153.00 in relation to services performed regarding "20 New Haven Drive, the estate of Anthony Lloyd Gibson", the "sale of 3 Chevy Chase between Jacqueline Austin and Annie Gibson (Aborted Sale)", "Paul McCormack (11,100,000.00)" and for the "Sale of Red Hills part of Belvedere".

[11] The medical certificate Mr Bonner attached to his 9 October 2015 letter was dated 5 October 2015. That certificate was from Dr Derrick Jarrett, who indicated that Mr Bonner was "physically unfit for work for 14 days as of 05/10/2015". A member of the panel was also absent on 10 October 2015, so the hearing could not have proceeded in any event. It was adjourned to 24 October 2015, and the secretary was directed to write to Mr Bonner suggesting that his witnesses give character evidence in mitigation by way of affidavit and that the statement of account dated 8 October 2015 should be revised to include more details regarding receipts and payments. This was communicated to Mr Bonner in a letter from the GLC dated 14 October 2015.

[12] Dr Gibson-Corbin sent an email to the GLC on 21 October 2015 concerning the postponement. She indicated that she had been informed that a letter "had been concocted by [Mr Bonner] and sent to the council". She further stated that she had been informed of the contents of the letter, and from what she had been told, "the content [was] preposterous", and she had no recollection of any of what Mr Bonner stated.

[13] On 24 October 2015, both Mr Gibson and Ms Gibson were present along with counsel for Dr Gibson-Corbin, but Mr Bonner was again absent. The Committee acknowledged that he had submitted a letter to the GLC dated 21 October 2015, referring

to the statement of account dated 8 October 2015 and enclosing documents he said were "receipts in support of the items of expenditure". He also attached a medical report from Dr J V Ford, which detailed his ill health and indicated that he was "incapable of attending court etc. for the next three months". Mr Bonner also stated that his illness prevented him from finalising the affidavit that the Committee had requested. The matter was then adjourned to 23 January 2016, and Mr Bonner was directed to file the evidence on which he intended to rely in an affidavit in support by 5 January 2016. This was conveyed to him in a letter dated 17 November 2015.

[14] In a letter to the GLC dated 20 January 2016, Dr Gibson-Corbin indicated that she had received Mr Bonner's affidavit filed on 9 October 2015. She described the contents as being "preposterous". She pointed out that "Mr Bonner had acknowledged that he owed more than $5 million in 2007". She denied knowledge about the "articles" Mr Bonner spoke about and indicated that the property in Belvedere was solely owned by Mr Gibson. She also denied knowledge of any services rendered in relation to New Haven and noted that she had never been shown any documents by, nor had she received any bills from Mr Bonner regarding the same. She highlighted the statement of account of 4 October 2013, in which Mr Bonner indicated that he owed the sums claimed.

[15] The hearing was not re-convened on 23 January 2016. On 11 July 2016, Dr Gibson-Corbin sent an email enquiring about a new date for the hearing. She was advised that the matter was "tentatively fixed for" 12 November 2016.

[16] On 8 November 2016, a letter was submitted to the GLC bearing the same date from Mr Bonner, indicating that he could not attend the hearing on 12 November 2016 due to his having to undergo a surgical procedure on 11 November 2016. Attached to the letter was a medical certificate dated 23 September 2016 from Dr Gerald Smith, indicating that Mr Bonner was suffering from medical issues and would be "incapable of carrying out his normal occupation for the next three (3) months" and that he would not be able to attend court during this period. Dr Smith did not reference a surgical procedure in his letter.

[17] On 12 November 2016, Mr Gibson and Ms Gibson were present, along with counsel appearing on behalf of Dr Gibson-Corbin. Mr Bonner did not attend, and the Committee noted his letter. The Committee also noted that, even then, Mr Bonner had not complied with the order made on 24 October 2015 to file an affidavit with the evidence on which he intended to rely. At that time, counsel for Dr Gibson-Corbin objected to any adjournment and informed the Committee that her case was closed and made oral submissions. The Committee then ordered that written submissions on Dr Gibson-Corbin's behalf were to be filed and served on or before 15 December 2016. The matter was adjourned to 25 February 2017. Mr Bonner was notified of the Committee's order by letter dated 13 December 2016.

[18] In a letter to Mr Bonner, dated 6 January 2017, the GLC enclosed Dr Gibson-Corbin's written submissions. On 25 February 2017, Mr Bonner was once again absent from the scheduled continuation of the hearing. Mr Gibson, Ms Bishop and counsel for Dr Gibson-Corbin were present. A letter was submitted from Mr Bonner dated 24 February 2017 indicating that he underwent a surgical procedure on 21 February 2017, was suffering from pain and bleeding and could not attend the scheduled hearing. He stated that he was scheduled for follow-up procedures on 27 February 2017. He admitted that "[a]lthough he had been ordered to bed rest, [he had] gone to [his] office and court on a few occasions to deal with emergency situations that required [his] direct and immediate intervention". He asserted his belief that he had a proper defence to the complaint and "plead for time to deal with [his] health issues and to pursue [his] defence". He referenced a notice of intention to rely on hearsay statements made in a document he intended to use in his defence. He also indicated that he needed more time to settle his submissions. Mr Bonner stated that he had enclosed a copy of his medical certificate but the Committee noted in its record of the hearing that none was seen. They denied his request for an adjournment.

[19] The GLC, in a letter to Mr Bonner dated 13 March 2017, acknowledged receipt of his letter and noted the absence of a medical certificate. It was also pointed out to him that he had not complied with orders made on 24 October 2015 and 12 November 2016.

He was advised that his request for an adjournment was declined and that the matter was set for 25 March 2017, when the Committee would deliver its decision.

[20] On 24 March 2017, the GLC received another letter from Mr Bonner, bearing that said date. He enclosed a medical report dated 27 January 2017, which, he said, was previously attached to his letter of 24 February 2017. This report from Dr Smith indicated that Mr Bonner had undergone surgery on 3 January 2017 (and not 21 February 2017 as Mr Bonner had stated) and that although he had been released from the hospital, he required monitoring. He indicated that Mr Bonner:

> "… will be incapable of carrying out his normal occupation over the next three (3) months, as his condition is being monitored. In particularly [sic], he will not be able to attend court during this period."

[21] On 25 March 2017, Mr Gibson and counsel for Dr Gibson-Corbin were present. Counsel, Mr Neville Stewart, appeared on Mr Bonner's behalf and indicated that he "had no instructions to seek an adjournment and stated that he was present to receive the judgment". Due to the absence of a Committee member, the delivery of judgment was adjourned to 25 April 2017.

[22] On 12 April 2017, a letter was received by the GLC from Mr Bonner seeking a copy of the orders made on 24 October 2015 and 12 November 2015 "as a matter of urgency so that [he] could respond to the panel". This was provided to him in a letter dated 19 April 2017. On that date, another letter was received by the GLC from Mr Bonner repeating the request.

[23] In a letter, dated 24 April 2017, Mr Bonner stated that he had undergone a surgical procedure and was scheduled to do another one "very shortly". He, therefore, could not attend the hearing set for 25 April 2017, as he was "unable to carry out [his] normal functions". He asked for an adjournment in the matter and enclosed another letter from Dr Smith, dated 12 April 2017, which confirmed that Mr Bonner had done a medical procedure on 13 March 2017 and was to have further surgery done on 5 May 2017. Dr

Smith also indicated that Mr Bonner was incapable of carrying out his normal function within the upcoming two months and would not be able to attend court within that period.

[24] It is unclear what transpired at the hearing set for 25 April 2017. However, the Committee's decision was delivered on 28 April 2017 with Mr Gibson, counsel for Dr Gibson-Corbin and Mr Neville Stewart, representing Mr Bonner, being present.

The Committee's findings

[25] The Committee indicated that it had considered all the evidence having regard to the standard and burden of proof. Although Mr Bonner did not attend any hearings subsequent to 7 February 2015, and his affidavit filed on 9 October 2015 was not formally admitted into evidence, the Committee considered its contents and that of the statement of account dated 8 October 2015, in arriving at its decision.

[26] It found the evidence of Dr Gibson-Corbin and Mr Gibson reliable and the Committee noted that Mr Bonner had not cross-examined them as to the evidence contained in the statement of account he signed, dated 4 October 2013, or challenged their claim that they were owed $5,509,535.00. The evidence that Mr Bonner had promised to sell land to pay the siblings and that he had made several promises to pay the sums owed remained unchallenged.

[27] The Committee examined the statement of accounts dated 4 October 2013 and the undated statement of account given to Mr Gibson by Mr Bonner, which he also signed, vis-à-vis the statement of account dated 8 October 2015, exhibited to Mr Bonner's affidavit, which they indicated differed in several respects. They noted several entries for fees unrelated to the estate of Annie Anita Gibson and the sale of the Chevy Chase property, which amounted to $1,462,875.00. They noted that Mr Gibson, in cross-examination, had denied having a discussion with Mr Bonner about fees for "winding up of the estates". Mr Bonner had never suggested to the witnesses that fees were owed to him up to 4 October 2013, nor did it appear that he had ever made that claim to them. It was also noted that, in the statement of account dated 8 October 2015, fees and

expenditures were included for the "sale of Red Hills part of Belvedere", but there was no entry for the proceeds of sale of that property, as would be expected in a properly drafted statement of account. Two entries were made for payments totalling $2,648,648.00 to Mr Gibson, but no suggestion was put to Mr Gibson about those payments being made. There was also no documentary proof that those payments were made or even that they were connected to the property. Despite the several reminders given in several letters to Mr Bonner, the Committee noted Mr Bonner's failure to provide a revised statement of account with better details, including the "dates for the receipts and payments", as they had requested. The Committee thereafter indicated that having seen the witnesses and reviewed the exhibits, it accepted them as "credible witnesses of truth". They found that the following was established beyond a reasonable doubt:

> "a. [Mr Bonner] represented [Dr Gibson-Corbin] and her siblings in administering the Estate of their late mother Annie Anita Gibson.
>
> b. [Mr Bonner] handled the sale of the property at 3 Chevy Chase, Kingston 19 for $11,100,000.00 and received the proceeds of sale.
>
> c. [Mr Bonner] paid over sums totalling $3,616,500.00 to [Mr Gibson].
>
> d. [Mr Bonner] delivered a signed Statement of Account in which he stated that as at 4 October 2013 the sum of $5,509,535.00 was the balance of the net proceeds of sale due and owing to [Dr Gibson-Corbin] and her siblings.
>
> e. [Mr Bonner] has not accounted for nor paid to [Dr Gibson-Corbin] or any of her siblings the balance of $5,509,535.00.
>
> f. [Mr Bonner] made several promises to pay the balance.
>
> g. [Mr Bonner] misappropriated [Dr Gibson-Corbin's] money which ought to have been paid over to [Dr Gibson-Corbin] and her siblings.

h. [Mr Bonner] has acted dishonestly and thereby failed to maintain the honour and dignity of the profession and his behaviour had discredited the profession of which he is a member in breach of Canon I(b) of the [Canons]."

[28] Ultimately, the Committee found Mr Bonner guilty of professional misconduct as per Canon VIII(d) in that he breached Canons I(b) and VII(b) of the Canons. Canon I(b) requires an attorney to "at all times maintain the honour and dignity of the profession and… abstain from behaviour which may tend to discredit the profession of which he is a member". Canon VII(b)(i) stipulates that an attorney shall "keep such accounts as shall clearly and accurately distinguish the financial position between himself and his client". Canon VII(b)(ii) stipulates that an attorney shall "account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonably required to do so". Further, Canon VII stipulates that an attorney "shall for these purposes keep the said accounts in conformity with the regulations which may from time to time be prescribed by the [GLC]". Canon VII(d) states that a breach of certain Canons (including those mentioned before) "shall constitute misconduct in a professional respect and an Attorney who commits such a breach shall be subject to any of the orders contained in section 12(4) of the [Legal Profession Act]".

[29] The Committee found that Mr Bonner received the proceeds of sale of the property and failed to account for the balance of the net proceeds of sale. They stated that, in the circumstances, it was "reasonable to infer that [Mr Bonner] has misappropriated the monies paid to him being the balance purchase price". It continued:

> "[Dr Gibson-Corbin] and her siblings placed their trust and confidence in [Mr Bonner] who they had known as a family friend for over 50 years. [Mr Bonner] betrayed that trust and confidence when he collected the proceeds of sale of the property and failed to turn all of it over to [Dr Gibson-Corbin] and her siblings."

[30] In concluding its decision, delivered on 28 April 2017, the Committee directed that a date be set to give Mr Bonner an opportunity to be heard in mitigation before a sanction was imposed.

The sanction hearing

[31] The hearing was fixed for 13 May 2017. On that day, Mr Bonner was absent and was again represented by counsel, Mr Stewart, who indicated that he had not heard from Mr Bonner since 28 April 2017 despite several attempts to contact him. However, a letter had been sent on 12 May 2017 to the GLC, signed by Miss Erica Pryce for Mr Bonner, indicating that Mr Bonner had "on Tuesday May 9th, 2017 … recently underwent a surgical procedure at the University Hospital of the West Indies" and was "confined to bed for fourteen (14) days" as "[he was] unable to carry out [his] normal functions". He requested an adjournment to be afforded the opportunity to be present and be represented by counsel at the re-scheduled hearing in order to provide his plea in mitigation. He expressed his displeasure with the matter proceeding "in the past" despite submitting medical certificates as "evidence of medical condition".

[32] There were, in fact, three documents from the University Hospital of the West Indies presented to the Committee, one of which was dated 10 May 2017 and indicated that Mr Bonner was an "outpatient" at the hospital and "unfit to carry on his occupation for 14 days" from 10 May 2017. Another was an appointment card indicating that Mr Bonner had an appointment for 15 May 2017 at 9:00 am. The third was a deposit and payment advice dated "3/4/17", indicating the proposed date for admission for a surgical procedure was "5/5/17".

[33] On 13 May 2017, the Committee reviewed Mr Bonner's letter and its attachments and the reasons for the request for an adjournment and found them "unsatisfactory". The Committee ordered that Mr Bonner was to file, by himself and his proposed witnesses, affidavits in support of his plea in mitigation on or before 22 May 2017 and that, if he was unable to attend the hearing, he could make arrangements to be heard

and his evidence taken via Skype. The sanction hearing was adjourned to 27 May 2017. The order was communicated to him in a letter dated 19 May 2017.

[34] On 26 May 2017, another letter was received from Mr Bonner dated 12 May 2017. He again advised of his recent surgical procedure and that he was confined to bed, unable to carry out normal duties. He requested an adjournment and indicated a desire to be present and represented at the re-scheduled hearing in order to provide his plea in mitigation and to make an application for a rehearing of the complaint. He attached a medical certificate from Dr Smith, whom he indicated had been requested to "attend the hearing to give evidence of the state of [his] condition and the reasons for [his] inability to attend". In the medical certificate, Dr Smith confirmed that Mr Bonner was admitted to the University Hospital of the West Indies for a surgical procedure on 6 May 2017. He indicated that Mr Bonner was being monitored outside of the hospital. He opined that due to complications related to the surgery, restrictions on Mr Bonner's activity would remain for at least another six weeks and, as such, he was "deemed unfit to appear for meetings and proceedings ... until the week of July 10, 2017".

[35] On 27 May 2017, Mr Bonner did not attend the hearing but was represented by counsel, Mr Charles Williams, who indicated that he "reluctantly" appeared for Mr Bonner, who had only "within the last hour asked him to attend on his behalf". Mr Bonner's medical doctor, Dr Smith, was present and gave evidence on oath regarding Mr Bonner's medical condition.

[36] Dr Smith testified that Mr Bonner had been his patient for seven years and that he examined him the "Last Friday" before the hearing when he visited his office in Lawrence Tavern. It was after this examination of Mr Bonner that he prepared a medical report. Dr Smith confirmed that he was responsible for monitoring Mr Bonner outside the hospital. He stated that Mr Bonner had developed complications after hernia repair surgery on 9 May 2017, which left him in significant pain and discomfort, for which he received pharmacological relief. Dr Smith testified that the complications developed "partly due to his physical activity" as although he was advised to rest, he was "a little too generous in

his activity in terms of moving around and the area was aggravated". He indicated that Mr Bonner became active much earlier than he ought to have. When asked whether there was anything that would prevent Mr Bonner from preparing a document in writing, Dr Smith responded that his answer would be "yes and no" because:

> "… his mental faculty is intact and he can reason and give instructions that would not affect him but his comfort level in terms of being able to overcome his concern that he has about his health issue and to sit and prepare an Affidavit. An affidavit is a document it would not be impossible but I could not speak to the time it would take to do it but he could do it."

[37] He also testified that Mr Bonner had complained of pain and had been provided medication, which provided intermittent relief. When he referenced that Mr Bonner would be restricted for six weeks, he accepted that no consideration had been made to Mr Bonner preparing documents since he was not assessing Mr Bonner for his ability to prepare documents but rather his physical ability. Dr Smith agreed that Mr Bonner would be able to prepare a document in one week, and there was no medical reason why Mr Bonner could not have appeared via Skype.

[38] The Committee ruled that "no evidence/material has been advanced which justifies the absence of affidavit evidence in mitigation or to explain why arrangements have not been made for [Mr Bonner's] evidence or appearance via Skype". The matter was adjourned to 5 June 2017 for the decision of the panel on the sanction to be delivered.

[39] On 5 June 2017, Mr Bonner failed to attend. In its decision on sanction, the panel noted that they had received a letter from Mr Bonner stating that he could not attend due to an appointment at the "surgery clinic". Enclosed with the letter was a cheque dated 6 June 2017, drawn on Mr Bonner's client account, in the sum of $1,236,881.00, payable to Dr Gibson-Corbin. Also enclosed was a copy letter from Dr Smith dated 2 June 2017 indicating Mr Bonner's ability to attend the hearing; a notice applying for a rehearing of the complaint; an affidavit of Mr Bonner sworn on 5 June 2017 and exhibits; and a notice of intention to tender hearsay statement made in a document dated 5 June 2017.

[40] The Committee went on to consider and explore dicta from **Bolton v Law Society** [1994] 2 All ER 486. It stated that the applicable principles were as follows:

> "(a) Where an attorney is guilty of serious dishonesty he must expect a severe sanction.
>
> (b) For dishonesty, tribunals have invariably struck off the attorney from the roll no matter how strong his plea in mitigation.
>
> (c) The reason for such seemingly harsh orders such as striking off is:
>
> (i) to punish the attorney and deter other attorneys from behaving in a similar matter; and
>
> (ii) to maintain the reputation of the profession and give the public confidence in the integrity of the profession."

[41] It considered the statement of account signed by Mr Bonner admitting that he owed $5,509,535.00 to Dr Gibson-Corbin and her siblings. It noted Mr Bonner's absence and that there was no material advanced in mitigation. It also considered the cheque dated 6 June 2017, which had been tendered by Mr Bonner. Ultimately, the Committee imposed the following sanction:

> "(a) The name of the attorney Richard Bonner, is struck off the Roll of Attorneys-at-Law entitled to practice in the several courts of the island of Jamaica.
>
> (b) The attorney Richard Bonner shall make restitution to [Dr Gibson-Corbin] in the sum of $5,509,535.00 with interest at the rate of 4½ per cent per annum from the 4th October, 2013 until payment.
>
> (c) Costs of these proceedings in the amount of Fifty Thousand Dollars ($50,000.00) are to be paid by the Attorney as to which Thirty Thousand Dollars ($30,000.00) is to be paid to [Dr Gibson-Corbin] and Twenty Thousand Dollars ($20,000.00) is to be paid to the General Legal Council."

The appeal and the issues therein

[42] On 20 October 2017, Mr Bonner lodged an appeal against the Committee's finding and its sanction. He sought orders allowing the appeal and reversing the decisions made by the Committee. Reliance was placed on several grounds of appeal as follows:

> "1) That the [Committee] fell into grave error by proceeding to hear the complaint in [Mr Bonner's] absence despite his presentation of medical certificates explaining his absence.
>
> 2) The [Committee] misdirected itself and fell into error by not placing sufficient weight on the importance of the medical certificates provided by [Mr Bonner].
>
> 3) The [Committee] fell into error and or misdirected itself in failing to give full and proper consideration to the testimony of [Mr Bonner's] primary care physician who was cross-examined by the [Committee] as to the true state of [Mr Bonner's] health.
>
> 4) That [Mr Bonner's] right to a fair hearing was breached by the [Committee's] proceeding to hear the complaint in [Mr Bonner's] absence.
>
> 5) That had the [Committee] heard [Mr Bonner's] explanation and examined all of the relevant documents supplied by [Mr Bonner] then it would reasonably have come to a different conclusion.
>
> 6) The [Committee] wrongly concluded that [Mr Bonner] had misappropriated [Dr Gibson-Corbin's] money. It was always understood between the parties that there was a dispute between them about legal fees and how much was owed to [Mr Bonner] or vice versa, how much was owed to [Dr Gibson-Corbin] and on account.
>
> 7) That the [Committee] was improperly constituted as it ought not to have been chaired by an attorney who has a complaint against him for misappropriation of fees, failing to account for monies held on account and or professional negligence and the attorney sitting as chairman at the hearing ought to have disclosed that fact to the other members of the Panel in the interest

of fairness and justice, he properly ought to have recused himself from the hearing against [Mr Bonner].

8) That the [Committee] fell into error when it refused [Mr Bonner's] Application for the complaint to be reheard before handing down judgment.

9) That the [Committee] fell into error when they failed to afford [Mr Bonner] sufficient time to make a proper plea in mitigation before handing down the sanction.

10) That the [Committee] took into account matters that were immaterial and or irrelevant in coming to its conclusions.

11) That the [Committee] misdirected itself in its consideration of the material/evidence before it.

12) That in misdirecting itself the [Committee] came to erroneous and or improper findings of fact.

13) That [Mr Bonner] has a real prospect of successfully defending the complaint.

14) That the [Committee] did not and or failed to apply and adhere to the rules of natural justice.

15) That there was procedural unfairness in the hearing of the complaint.

16) That the hearing proceeded without [Mr Bonner] being afforded the opportunity to fully and properly confront and cross-examine [Dr Gibson-Corbin].

17) That the judgment/orders made by the [Committee] are manifestly harsh and excessive.

18) That in coming to a conclusion the [Committee] failed to properly consider and assess all the material put before it.

19) That having failed to properly consider and assess the matters before it, the [Committee] came to an erroneous/wrong conclusion."

[43] These grounds raised the following five issues:

1. Was Mr Bonner denied a fair hearing having regard to his inability to attend due to illness (grounds 1, 2, 3, 4, 9, 14, 15 and 16?
2. Was the panel improperly constituted (ground 7)?
3. Were the findings of fact made by the Committee correct, having regard to the evidence before it (grounds 5, 6, 10, 11, 12, 13, 18 and 19)?
4. Did the Committee err when it failed to grant the application for the complaint to be reheard (ground 8)?
5. Was the sanction imposed manifestly harsh and excessive (ground 17)?

[44] On 12 October 2017, this court granted Mr Bonner's application for a stay of execution of the judgment pending appeal, on condition that, among other things, he should pay $1,500,000.00 to the GLC by 20 October 2017, with $1,450,000.00 being held in escrow pending the determination of the appeal. At the time the appeal was heard, it remained unclear whether that sum had, in fact, been paid as a copy of a cheque in the sum of $1,500,000.00, dated 19 October 2017, was included in the bundle, but it was not exhibited to any affidavit.

[45] Subsequent to the completion of the hearing on 11 May 2022, Mr Bonner filed documents in this court on 13 September 2022 titled "Appellant's Supplementary Submissions". In that document, Mr Bonner stated that he was seeking and craving the court's leave to allow "this addendum" to be included. This was an unusual approach taken by Mr Bonner as leave had not been sought and granted before the matter was completed, and that document was filed some seven months after the appeal had been heard. As a consequence, that document will not form a part of this court's consideration of the appeal.

The issues in the appeal

Issue 1: Fair hearing (grounds 1, 2, 3, 4, 9, 14, 15 and 16)

[46] At the hearing of the appeal, counsel for Mr Bonner, Mr Aston Spencer, complained about the hearing process before the Committee. He indicated that all the correspondence from Mr Bonner and the medical certificates from his doctors had shown that Mr Bonner was "very unwell, very vulnerable in regards to his physical integrity" and that his illness had affected his "emotional well-being and integrity". He argued that the Committee did not give enough weight to these circumstances when it refused Mr Bonner's requests for adjournments and proceeded to hear the complaint in his absence. This, he argued, amounted to a breach of the principles of natural justice. He also submitted that the refusals to grant the requested adjournments were unreasonable in the sense of **Associated Provincial Picture Houses Limited v Wednesbury Corporation** [1948] 1 KB 223 ('**Wednesbury**'). It was posited that it was for these reasons that it became necessary to make an application for "a quashing order from this court on the ground of [**Wednesbury**] unreasonableness".

[47] In response to these submissions, Mrs Sandra Minott-Phillips QC, on the GLC's behalf, reminded the court of the need to balance Mr Bonner's needs against that of Dr Gibson-Corbin. She referred us to rule 8 of the Legal Profession (Disciplinary Proceedings) (Amendment) Rules, 2014, which she says, "confers the Committee with the discretion to proceed in a party's absence". She highlighted the circumstances under which the adjournments were granted or refused and submitted that there was no proof that the Committee had improperly exercised its discretion. She contended that Mr Bonner had failed to show that, in balancing the interests of the parties, the Committee was manifestly wrong in exercising its discretion to proceed with the hearings on the two occasions his adjournment applications were refused.

[48] The Committee is empowered to exercise its discretion to refuse adjournments by virtue of rule 8 of the Legal Profession (Disciplinary Proceedings) (Amendment) Rules, 2014. It states that:

> "Where either or both of the parties fail to appear at the hearing, the Committee may, upon proof of service of the notice of the hearing, proceed to hear and determine the application, notwithstanding such failure, and shall in writing inform the parties of its findings, directions and orders arising therefrom."

[49] In **Jade Hollis v The Disciplinary Committee of the General Legal Council** [2017] JMCA Civ 11 ('**Jade Hollis v GLC**'), this court conducted an extensive discussion on the duty of the Committee to exercise its discretion judicially, having regard to all the prevailing circumstances when considering an application for an adjournment on the ground of ill health. McDonald-Bishop JA, writing on behalf of the court, noted that the discretion is not an absolute one and is subject to review by this court (see para. [47]). McDonald-Bishop JA also identified the applicable principles for a review, by this court, of such an exercise of discretion to be those as stated by Atkin LJ in **Maxwell v Keun and others; Same v Same** [1927] All ER Rep 335, at pages 338 and 339, where he said:

> "I quite agree that the Court of Appeal ought to be very slow, indeed, to interfere with the discretion of the learned judge on such a question as an adjournment of a trial, and it very seldom does do so; but, on the other hand, if it appears that the result of the order made below is to defeat the rights of the parties altogether and to do that which the Court of Appeal is satisfied would be an injustice to one or other of the parties, then the court has power to review such an order, and it is, to my mind, its duty to do so."

[50] McDonald-Bishop JA went on at para. [50] to state the following:

> "This court in **Amybelle Smith v Noel Smith** [(unreported), Court of Appeal, Jamaica, Resident Magistrate's Civil Appeal No 4/2005, judgment delivered 24 April 2009], through Harrison JA, reiterated these relevant principles with the important extension that the court will interfere where the decision is palpably unreasonable or unfair. The dicta of Sir Jocelyn Simon P and Kaminski J in **Walker v Walker** [1967] 1 All ER 412, at pages 414 and 415, respectively, are also very instructive on this point. It is quite clear on the authorities that the appellate court will interfere in the interests of justice."

[51] In reviewing the exercise of this discretion, guidance can be sought from criminal cases which require the same standard of proof as proceedings before the Committee. In **R v Delroy Raymond** (1988) 25 JLR 456, Carey P (Ag) (as he then was) said, at page 458, that:

> "In considering whether an adjournment should be granted, a trial judge is obliged to balance a number of competing factors. The judge would be entitled to consider the number of occasions the matter has been before the Court ready for trial; the availability of the witnesses or their future availability; the length of time between the commission of the offence and the trial date; the possibility that a Crown witness may be eliminated or suborned; whether the defence have had sufficient time to prepare a defence bearing in mind Section 6 of the [Criminal Justice (Administration) Act]. The list does not pretend to be exhaustive."

[52] Harrison JA, in **Pauline Gail v R** [2010] JMCA Crim 44, reminded that courts should not easily accommodate adjournments as witnesses may become frustrated and lose interest due to several attendances and adjournments; memories may have faded; and it may also exacerbate the backlog in the courts. In **Beres Douglas v R** [2015] JMCA Crim 20, Phillips JA indicated that, ultimately, the court must decide whether an injustice would be occasioned by the grant or refusal of the adjournment.

[53] In **Jade Hollis v GLC**, McDonald-Bishop JA acknowledged and set out what she described as salient directives given by Rose LJ in **R v John Victor Hayward and others** [2001] EWCA Crim 168, which should guide a trial judge in deciding whether a trial ought to have continued in the absence of the defendant (see para. [53]). She went on to make the following observation relevant to circumstances where the reason for the absence is illness:

> "[57] The illness of a defendant in criminal proceedings (and by analogy in disciplinary proceedings) has been recognised as a strong and compelling basis for the grant of an adjournment. In **R v Jones** [[2002] UKHL 5], Lord Bingham, in speaking definitively to the situation where absence is due to illness, usefully opined that while the courts do have a

> general discretion whether or not to continue a trial in the absence of a defendant, "**a defendant afflicted by involuntary illness or incapacity will have much stronger grounds for resisting the continuance of the trial than one who has voluntarily chosen to abscond**." (Emphasis as in original)

[54] Having regard to these considerations, I think it is first necessary to note that it was at the end of the first day of the proceedings, after the witnesses had completed their testimony, that Mr Bonner had sought an adjournment specifically to mitigate. He had not been deprived of the opportunity to hear the evidence of Dr Gibson-Corbin and her witness and had been able to confront and challenge them. The Committee could not be faulted for approaching this matter as one in which all the evidence was completed, and the adjournments, thereafter, were to facilitate Mr Bonner's expressed desire to mitigate. To my mind, in the circumstances, any assertion that the Committee had heard the complaint in the absence of Mr Bonner can be considered baseless.

[55] The Committee was under a duty to ensure that there was a balancing of justice between the parties and, ultimately, to avoid a miscarriage of injustice. Dr Gibson-Corbin and her siblings were kept out of the full sums owed to them since 2007, despite their repeated attempts to obtain the same. The hearing into the complaint against Mr Bonner lasted two years and, as indicated, was held on several days between 7 February 2015 and 25 March 2017. Dr Gibson-Corbin, who lived in Barbados and travelled to Jamaica for the hearing, appeared once. She was subsequently excused from attending further hearings. Mr Gibson and other siblings appeared on every hearing date.

[56] Mr Bonner had only appeared once. As already noted, at that hearing, after being given an opportunity to cross-examine Dr Gibson-Corbin and Mr Gibson, he asked for an adjournment "to mitigate". As an attorney-at-law, he would have fully understood the nature of his request, and yet, when directed to provide affidavit evidence in mitigation, he failed to do so. Mr Bonner sent letter after letter indicating that he was unable to attend due to ill health. His medical certificates often listed varied periods of incapacitation and were consistent in his inability to attend court. Nothing further was heard in the

matter, from the first date on 7 February 2015 to 12 November 2016, when Dr Gibson-Corbin's case was formally closed and oral submissions made on her behalf. Over that period, the Committee gave Mr Bonner the opportunity to tender character evidence in mitigation by way of affidavit and to supply more details to the statement of accounts he had submitted, some nine months after the matter had commenced.

[57] In its decision, the Committee set out the several days that they had received letters by or signed on behalf of Mr Bonner requesting adjournments on medical grounds. It noted that it was only on two hearing dates that requests for adjournments were opposed by counsel for Dr Gibson-Corbin, and those requests were refused. At the hearing on 12 November 2016, based on the apparent conflict between Mr Bonner's claim of having a surgical procedure and the absence of any reference to this procedure by his doctor, counsel on behalf of Dr Gibson-Corbin objected to his request. Being cognizant of these issues, the Committee had also satisfied itself that Mr Bonner had been served with the orders and directions from the previous hearing. It, thereafter, refused his request for an adjournment. Counsel for Dr Gibson-Corbin closed her case and made oral submissions. The matter was adjourned and set for a time outside of the period the doctor had indicated that Mr Bonner would be incapacitated.

[58] The subsequent refusal to grant Mr Bonner's request for an adjournment occurred at the hearing on 25 February 2017. Mr Bonner, in a letter dated 24 February 2017, admitted to going to "[his] office and court on a few occasions to deal with emergency situations that required [his] direct and immediate intervention". At that time, he still had not complied with the directions and orders given to him over one year prior, nor did he file an affidavit as instructed. Given Mr Bonner's admission, it was evident that since he was able to deal with emergencies at his office and in court, absolutely nothing prevented him from filing documents or participating in the hearings before the Committee. These hearings ought to have been considered at least equally important, requiring his direct and immediate intervention, since they would ultimately decide whether he remained a member of the legal profession.

[59] It is noted that there was a clear conflict in the information that Mr Bonner had offered in his letter dated 24 February 2017 requesting the adjournment and the medical certificate subsequently supplied. In the former, he stated that he had done a procedure on 21 February 2017 and was scheduled for a follow-up on 27 February 2017. In contrast, the medical certificate from Dr Smith stated that he had surgery on 3 January 2017. Also of note was that the medical certificate accompanying this request for an adjournment was dated 27 January 2017 and indicated that Mr Bonner would have been incapable of carrying out his "normal occupation" for the next three months. I do not think that Committee can be faulted for refusing the adjournment in the circumstances. The matter was adjourned for 25 March 2017 for delivery of the Committee's decision and, on that date, Mr Stewart attended specifically to "receive the judgment". The matter was further adjourned to 28 April 2017. Of note, too, is that this was outside the three-month period the doctor had referenced and recommended.

[60] Another request for an adjournment was made for similar reasons in a letter dated 24 April 2017. Mr Bonner spoke of having undergone a surgical procedure "recently" and was scheduled to "do another one very shortly". A medical certificate dated 12 April 2017 spoke of a procedure being done on 13 March 2017, with another surgery to be done on 5 May 2017, and of a period of incapacitation within the next two months. The Committee made the same considerations before refusing the request and delivering its decision, with Mr Stewart in attendance on Mr Bonner's behalf.

[61] The sanction hearing was first fixed for 13 May 2017. Despite Mr Bonner's lack of communication with his counsel at that time, Mr Stewart, and having considered the contents of Mr Bonner's request and the medical certificate and found them unsatisfactory, the Committee nonetheless granted an adjournment. It even gave Mr Bonner an opportunity to once more file affidavit evidence in mitigation or appear via Skype.

[62] On 27 May 2017, Mr Bonner failed to appear and only belatedly, at the last hour, asked counsel, Mr Williams, to appear on his behalf. Mr Williams said he appeared

"reluctantly". Dr Smith came to testify on Mr Bonner's behalf, indicating that Mr Bonner was a little too generous in conducting physical activity, which affected his recovery process. Interestingly, Mr Bonner's generous physical activity did not include the provision of any affidavit evidence to the Committee or an appearance via Skype. In fact, Dr Smith said that Mr Bonner's illness did not preclude him from preparing a document or appearing via Skype. Nonetheless, the matter was adjourned to 5 June 2017, and, on that date, Mr Bonner still had not complied with the directions and orders, nor did he appear. The Committee considered those factors and decided to proceed with his sanction hearing.

[63] In my view, the Committee fairly and justly exercised its discretion when considering whether to grant or refuse Mr Bonner's several requests for adjournments. The evidence on the complaint had been taken in Mr Bonner's presence. The Committee acted appropriately, thereafter, in light of the stage the proceedings had reached when Mr Bonner had attended; the sometimes conflicting medical evidence; and the admission from Mr Bonner that he was able to respond to "emergency" situations at his office and in court.

[64] The Committee demonstrated a full and proper consideration of the testimony of Mr Bonner's primary care physician. It acknowledged the admission from this doctor that the extent of his illness did not affect his ability to prepare documents or appear via Skype. It was perhaps largely due to the evidence given by the doctor that the Committee was forced to reach the inevitable conclusion that there was no material advanced that justified Mr Bonner not availing himself of the opportunity he had been afforded to submit the affidavit evidence or appearing by Skype.

[65] In all the circumstances, I am confident that no miscarriage of justice was occasioned by the manner in which the Committee exercised its discretion in dealing with Mr Bonner's requests for adjournments due to his illness. Therefore, there is no merit in grounds 1, 2, 3, 4, 9, 14, 15 and 16, and so they must fail.

Issue 2: Improper constitution of the panel (ground 7)

[66] On ground of appeal 7, Mr Bonner complained that the panel that heard his matter was improperly constituted as the Chairman had a complaint against him for misappropriation of fees, failing to account for monies held on account and for professional negligence. He contended that this fact ought to have been disclosed to the other members of the panel and the Chairman ought to have recused himself.

[67] It was asserted that a quashing order was necessary and applicable because the Committee acted in a manner that squarely placed its conduct within **Wednesbury** unreasonableness. In the written submissions, it was contended that a panel member who had a previous close friendship with Mr Bonner ought to have recused himself. Further, it was contended that that panel member had also been subject to an inquiry into his alleged wrongdoing in relation to his credibility and fitness to practice.

[68] This ground, to my mind, can be very shortly disposed of. I agree entirely with submissions made by Mrs Minott-Phillips that these are "bare allegations substantiated by nothing". Mr Bonner had not filed an application to adduce fresh evidence relating to this issue. His complaints about that panel member were all within his personal knowledge. Yet, there is no indication on the record that Mr Bonner had ever made an application for any Committee member to recuse him or herself from the hearing. Ground of appeal 7 is, therefore, without evidential basis, has no merit and fails.

Issue 3: Improper findings of fact (grounds 5, 6, 10, 11, 12, 13, 18 and 19)

[69] Although Mr Bonner admitted to conducting the sale of the property, he denied misappropriating the funds received from the sale. Mr Spencer submitted that the Committee had failed to properly consider the full extent of the case having regard to the "background relationship; years of connection with the family"; and the fact that the trusted relationship between the parties may have resulted in Mr Bonner being subjected to "adverse influence and strategic tampering". He said that it was customary for things to be handled informally and problems resolved amicably without destroying the long-term friendship. He said that Mr Bonner's good nature was taken for granted and abused.

The relationship, he said, caused Mr Bonner "to properly invoice [the other party] for the true fees as it relates to the amount of work that was undertaken". It was contended that Mr Bonner was led to believe that the "complaints would never arise based on their years of good relationship and based on oral undertakings and promises made to each other". Counsel urged that the complaint was malicious and designed to destroy Mr Bonner's career and was orchestrated to circumvent the payment of fees for extended work done.

[70] Mr Spencer further contended that the Committee's finding of guilt was, therefore, flawed as it was contrary to reasonableness and fairness. He submitted that there was "a mistake of fact" in the Committee's findings, and the Committee had misinterpreted the allegations related to the Canons. Consequently, he urged this court to quash the decision "for a misunderstanding or ignorance of an established and relevant fact". He relied on **Wednesbury; Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen and others (No 2)** [1972] 2 QB 455; **Secretary of State for Education and Science v Tameside Metropolitan Borough Council** [1977] AC 1014; **R v West Sussex Quarter Sessions, ex parte Albert and Maud Johnson Trust Ltd and others** [1974] QB 24; **Haile v Immigration Appeal Tribunal** [2001] EWCA Civ 663; **R (on the application of Mitchell) v Secretary of State for the Home Department** [2008] EWHC 1370; and **R v Criminal Injuries Compensation Board, Ex parte A** [1999] 2 AC 330.

[71] In his written submissions, it was averred that the Committee prevented Mr Bonner from adducing additional evidence in relation to expenses incurred as a result of him winding up a notation of death, the services performed in relation to the estates of Dr Gibson-Corbin's father and that of her brother, and services performed for other siblings. He complained that the Committee requested his 8 October 2015 statement of account and had totally disregarded it. He further complained that the Committee became embroiled with the cross-examination of the expert witness (the doctor), prematurely closed the case without hearing the full facts and allowed him to complete his cross-examination regarding the Gibsons' complaint.

[72] In response, after conducting her assessment of the evidence, it was Mrs Minott-Phillips' overarching view that the Committee's "assessment of the evidence before it was unimpeachable, and its conclusions based on that assessment were sound".

[73] Before embarking upon a review of the evidence before the Committee, I remind myself of the principles applicable to reviewing findings of fact made by a trial court. Before disturbing those findings, this court must be satisfied that they are plainly or justifiably wrong (see **Bahamasair Holdings Ltd v Messier Dowty Inc (Bahamas)** [2018] UKPC 25 and **Beacon Insurance Co Ltd v Maharaj Bookstore Ltd** [2014] UKPC 21). Since this court is being asked to review findings of fact made by a disciplinary committee, the words of Widgery CJ in **Re A Solicitor** [1974] 3 All ER 853 provide some guidance. At page 859 of that decision, he said:

> "It has been laid down over and over again that the decision as to what is professional misconduct is primarily a matter for the profession expressed through its own channels, including the disciplinary committee. I do not, therefore, for one moment question that if a properly constituted disciplinary committee says that this is the standard now required of solicitors that this court ought to accept that that is so and not endeavour to substitute any views of its own on the subject."

[74] Accordingly, from all indications, this court ought to be very slow to disturb decisions made by disciplinary tribunals unless it can be shown that the findings were not warranted in the circumstances.

[75] In the instant case, Mr Bonner admitted to having carriage of sale of the Chevy Chase property in 2007. The earliest indication of this admission can be found in a letter Mr Bonner wrote to Dr Gibson-Corbin and Ms Bishop dated 4 September 2009. Mr Bonner also admitted to undertaking the sale of the Chevy Chase property in his affidavit filed on 9 October 2015 in response to Dr Gibson-Corbin's complaint to the GLC.

[76] In Mr Bonner's 4 September 2009 letter, he listed charges of $295,000.00 being deducted for expenses related to the estate of Hector Lloyd Gibson. He stated that these

total expenditures should be considered when determining the balance owed from the proceeds of sale. He attached a statement of account dated 4 October 2013 that he had signed, proclaiming to owe $5,509,535.00. Mr Bonner also gave an undated statement of account he had signed to Mr Gibson stating that the "sum due and owing [is] $5,557,723.00". During his cross-examination of Mr Gibson, Mr Bonner asked for an adjournment "to mitigate". As an attorney-at-law, he is fully cognizant of the meaning of that term, and it seems to be an indirect admission to owing the sums claimed.

[77] Mr Bonner has yet to account for the sums due and owing to Dr Gibson-Corbin and her siblings despite being reasonably required to do so. In fact, at the first hearing date on 7 February 2015, Mr Bonner admitted that he had not responded to the complaint, and there was no document on which he intended to rely. Indeed, as submitted by Queen's Counsel, this may be the explanation of the intention he declared "to mitigate". He said that he had indicated to Dr Gibson-Corbin "how [they] could work the problem". The letter of 4 September 2009 also references an apology from Mr Bonner to the parties for not responding before but indicated that he "was in the process of selling a home" and was "making a genuine effort to comply with [their] request". Another letter was sent to Dr Gibson-Corbin dated 3 May 2012, outlining, once again, Mr Bonner's efforts to sell property in Saint Thomas and apologising for lack of prior communication. It seems to me that there is adequate documentary evidence supporting the complaint.

[78] Despite initially not filing a response to the complaint, Mr Bonner's filed an affidavit on 9 October 2015 claiming that he had accounted to Dr Gibson-Corbin for all monies handled. He attached a statement of account indicating an expenditure of $10,228,153.00 for various services performed in other ventures entirely unrelated to the matter that had led to the proceedings before the panel. Significantly, when Mr Bonner had the opportunity to cross-examine Dr Gibson-Corbin and Mr Gibson, he did not challenge them on much of their evidence, the most relevant being that they were owed $5,509,535.00; or that he had failed to account to them for the balance. He did not even suggest to the witnesses that they owed him $10,228,153.00. Significantly, in none of his requests for adjournments did he request to further cross-examine the witnesses about these issues.

[79] Although Mr Bonner complained that he did not obtain an opportunity to present his case, he was given the opportunity to file affidavit evidence, update his statement of account and, in relation to the sanction hearing, appear via Skype. He chose not to avail himself of these processes. He was served with the decisions and orders of the Committee at every instance when they were made.

[80] In the light of the foregoing, there is, in fact, overwhelming documentary and *viva voce* evidence supporting the finding of the Committee. Mr Bonner himself, either directly (via his letters and the earliest statements of account) or indirectly (by making promises to sell assets to pay and indicating that he wished "to mitigate"), admitted to owing the sums claimed. During cross-examination, he did not challenge the witnesses as to their assertion that he owed them money and had failed to account to them for it. I am, therefore, satisfied that there was more than a sufficient basis for the Committee to find that Mr Bonner had misappropriated the funds owed. Its finding was supported by evidence that satisfied the criminal standard of proof, namely beyond a reasonable doubt, which is the standard of proof in disciplinary proceedings such as these (see **Campbell v Hamlet** [2005] 3 All ER 1116) and was, therefore, guilty of professional misconduct. Grounds of appeal 5, 6, 10, 11, 12, 13, 18 and 19 must consequently fail as they are without merit.

Issue 4: The re-hearing of the complaint (ground 8)

[81] In the written submissions, it was contended that the Committee failed to do several things, ultimately, failing to make a decision fairly and sensibly. Counsel argued that this meant that the Committee ought to have re-heard the matter. It was submitted that this failure to rehear "set the overriding view and established the naturally arrived at reasons that the entire process was unfair".

[82] The Legal Profession (Disciplinary Proceedings) (Amendment) Rules, 2014, sets out the following relating to applications for rehearing:

> "9.- (1) Where, pursuant to rule 8, the Committee determines an application in the absence of either or both of

> the parties, any such party may within one calendar month after receiving the information referred to in rule 8, apply to the Committee for a rehearing upon giving notice to the secretary and the other party.
>
> (2) The Committee may grant an application for a re-hearing under paragraph (1), upon such terms as to costs or otherwise, as the Committee thinks fit, if the Committee is satisfied that it is just that the case should be re-heard.
>
> (3) On a re-hearing under this rule, the Committee may amend, vary add to or reverse its findings, directions or orders made upon the previous hearing."

It is to be remembered that rule 8 deals with proceedings in the absence of parties and the information referred to in that rule is the findings, directions and orders arising therefrom.

[83] It is immediately apparent that the assertion that the Committee had erred when it refused the application for the complaint to be reheard **before** handing down judgment is unsustainable and ill-conceived. The rule provides for an application to be made within one calendar month **after** receiving the findings, directions and order after giving notice to the secretary and the other party. The decision of the Committee was given on 28 April 2017, and among the papers before us was a notice of an application for rehearing addressed to the secretary and filed with the GLC on 26 May 2017. This was indeed within the calendar month after the Committee's decision, but there is no indication that notice was given to the other party as required by rule 9. A question as to the validity of this application would arise as it is noted by the Committee, in its sanction decision dated 5 June 2017, that it had received a notice applying for rehearing of the complaint dated 5 June 2017, signed by Mr Bonner. This notice would then have been outside the timeline provided by the rules, and the Committee would not have been obliged to consider it.

[84] In any event, before us, no submission was advanced on Mr Bonner's behalf, demonstrating that the Committee had wrongly exercised its discretion in not granting the application for rehearing. Indeed, in my view, there are no circumstances that would

have warranted a rehearing. It seems to me that there is no basis on which we can properly consider whether this ground has any merit. The ground therefore fails.

Issue 5: Manifestly harsh and excessive sanction (ground 17)

[85] Mr Spencer argued that, in all the circumstances, the sanctions imposed on Mr Bonner were manifestly harsh and excessive. He indicated that Mr Bonner had paid the sum of $1,500,000.00 as a condition of the stay of the decision. He also stated that only $1,500,000.00 was owed. However, Mrs Minott-Phillips asserted that a statement indicating that only $1,500,000.00 was owed had never been put to the witnesses. In any event, the balance remaining of $5,509,535.00 has not been paid. She, therefore, argued that the seriousness of Mr Bonner's transgressions warranted the sanctions made by the Committee.

[86] In **Minett Lawrence v General Legal Council** [2022] JMCA Misc 1, this court revisited and pronounced on the standard of review of sanctions imposed by disciplinary committees expected from this court. McDonald-Bishop JA found the statement of the relevant principles in **Fuglers LLP and others v Solicitors Regulatory Authority** [2014] EWHC 179 (Admin) "superbly helpful". She noted that Popplewell J expressed the applicable principles derived from various cases, including, **Bolton v Law Society**; **Salsbury v Law Society** [2009] 1 WLR 1286 and **Solicitors Regulation Authority v Anderson** [2013] EWHC 4021. She then proceeded to adopt the principles stated in those cases, and her reformulation of those principles is as follows:

> "(1) The appellate court should only interfere if there is an error of law, a failure to take account of relevant evidence, or a failure to provide proper reasons (see **Anderson** at para. [60] per Treacy LJ).
>
> (2) The disciplinary tribunal, as an experienced body of attorneys-at-law, is best placed to weigh the seriousness of the professional misconduct and the effect that their findings and sanctions will have in promoting and maintaining the standards to be observed by individual members of the profession as a whole (see **Bolton** at page 516, per Sir Thomas Bingham MR).

> (3) Accordingly, the appellate court must pay considerable respect to the sentencing decisions of the disciplinary tribunal and in the absence of legal error will not interfere unless the sentencing decision was clearly inappropriate (see **Salsbury** at para. [30], per Jackson LJ; and **Anderson** at para. [64], per Treacy LJ). Although it is an overstatement to say a very strong case is required before the court will interfere (**Salsbury** at para. [30], per Jackson LJ), nevertheless, the test is a high hurdle (see **Anderson** at para. [65] per Treacy LJ)."

[87] In **Bolton v Law Society**, Sir Thomas Bingham MR noted at page 491 that:

> "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."(Emphasis added)**

[88] The Judicial Committee of the Privy Council in **Dr Purabi Ghosh v The General Medical Council** [2001] UKPC 29 indicated, at para. 34, that:

> "It is true that the Board's powers of intervention may be circumscribed by the circumstances in which they are invoked, particularly in the case of appeals against sentence. But their Lordships wish to emphasise that their powers are not as limited as may be suggested by some of the observations which have been made in the past. In *Evans v General Medical Council* (unreported) Appeal No 40 of 1984 at p. 3 the Board said:
>
> > 'The principles upon which this Board acts in reviewing sentences passed by the Professional Conduct Committee are well settled. It has been said time and again that a disciplinary committee are the best possible people for weighing the seriousness of professional misconduct, and that

> the Board will be very slow to interfere with the exercise of the discretion of such a committee. … The Committee are familiar with the whole gradation of seriousness of the cases of various types which come before them, and are peculiarly well qualified to say at what point on that gradation erasure becomes the appropriate sentence. This Board does not have that advantage nor can it have the same capacity for judging what measures are from time to time required for the purpose of maintaining professional standards.'

For these reasons, **the Board will accord an appropriate measure of respect to the judgment of the Committee whether the practitioner's failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the Board will not defer to the Committee's judgment more than is warranted by the circumstances.**" (Emphasis added)

[89] I find that the instant case exemplifies an egregious breach of trust and professional misconduct. Mr Bonner was a family friend of the complainant, Dr Gibson-Corbin, for about 50 years. He was retained to administer her late mother's estate and misappropriated approximately 50% of the proceeds of sale. The parties waited seven years before filing a complaint against him, and, to date, the sums due and owing have still not been paid. He made repeated promises to pay that had never been fulfilled. It is to be noted that Counsel for Dr Gibson-Corbin wrote to the GLC indicating that their attempts to lodge the cheque for $1,236,881.00 dated 6 June 2017 were unsuccessful as the wording and figures stated did not correspond and the source of funds was not stated. In addition, after the commencement of the hearing, Mr Bonner claimed that he was owed fees unrelated to the subject of the complaint, which, conveniently, eclipsed the amount owed and outstanding to Dr Gibson-Corbin and her siblings.

[90] The Committee, to my mind, identified and applied the correct principles in determining the sanction to be imposed (see para. [41] above). In my view, in the light of his proven dishonesty, the Committee appropriately sanctioned Mr Bonner and nothing

indicates that the sanction ought to be disturbed. Given the manner of his dishonesty, the sanction imposed was necessary in the public interest and cannot be said to be excessive or disproportionate. Accordingly, ground 17 also is without merit and fails.

Conclusion

[91] In all the circumstances, Mr Bonner received a fair and just hearing before the Committee. His requests for adjournments were fairly considered, and the Committee may have, in fact, been overly generous in granting some of his requests. There was no evidence to support the allegations Mr Bonner had made impugning the integrity of a Committee member. The evidence overwhelmingly supports the Committee's finding that Mr Bonner was guilty of professional misconduct. As the professional misconduct related to an act of egregious dishonesty, the sanctions imposed on Mr Bonner were adequate, proportionate and could not be said to be manifestly harsh and excessive.

[92] I would therefore dismiss Mr Bonner's appeal and affirm the decision and orders made by the Committee on 28 April 2017 and 5 June 2017. I can find no basis to go against that general principle that costs should follow the event, and so I would also award costs to the GLC to be taxed if not agreed.

D FRASER JA

[93] I have read, in draft, the judgment of my sister P Williams JA. I agree with her reasoning and conclusion and have nothing to add.

G FRASER JA (AG)

[94] I, too, have read the draft judgment and agree with my sister's reasoning and conclusion.

P WILLIAMS JA

ORDER

1. The appeal is dismissed.

2. The decision and orders of the Disciplinary Committee of the General Legal Council, delivered on 28 April 2017 and 5 June 2017, are affirmed.
3. Costs of the appeal to the General Legal Council to be agreed or taxed.