JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MISS JUSTICE P WILLIAMS JA
THE HON MISS JUSTICE EDWARDS JA

MISCELLANEOUS APPEAL NO 8/2018

BETWEEN	**MINETT LAWRENCE**	**APPELLANT**
AND	**GENERAL LEGAL COUNCIL (Ex parte Kaon Northover)**	**RESPONDENT**

Lord Anthony Gifford QC, Christopher Dunkley and Miss Jahyudah Barrett instructed by Phillipson Partners for the appellant

Hugh Small QC and Mrs Trudy-Ann Dixon-Frith instructed by DunnCox for the respondent

7, 8 November 2019 and 18 March 2022

MCDONALD-BISHOP JA

Introduction

[1] On 2 March 2018, the Disciplinary Committee of the General Legal Council ('the Committee') found attorney-at-law, Mrs Minett Lawrence ('the appellant'), guilty of professional misconduct ('the liability judgment'). On 26 May 2018, the Committee ordered, among other things, that the appellant be struck from the roll of attorneys-at-law entitled to practice in the courts of Jamaica ('the sanction judgment'). Up to then, the appellant had enjoyed approximately 28 years in private practice in Jamaica and for a short while in the British Virgin Islands ('BVI'). When she was struck off the roll, she was a sole practitioner with an unblemished disciplinary record.

[2] The appellant is not happy with the Committee's decisions on liability and sanction and, so, has filed this appeal. The broad questions for the court's consideration are whether the Committee erred in its findings of professional misconduct, especially on its asserted basis of the appellant's dishonesty, and whether the resultant sanctions it had imposed should stand.

Background

[3] Disciplinary proceedings were initiated against the appellant following a complaint made to the respondent, the General Legal Council ('GLC'), by Mr Kaon Northover ('the complainant'). The grounds of complaint were set out in an affidavit sworn to by the complainant on 2 April 2013, as follows:

> "1. Gross Professional Misconduct.
>
> 2. She failed to deal with my business with due expedition.
>
> 3. She acted with inexcusable and/or deplorable negligence or neglect.
>
> 4. She failed to keep proper accounts for my money.
>
> 5. She failed to account for my money, namely US$498,000.00."

[4] The complaint had its genesis in an investment transaction embarked upon by the complainant in 2008 with an overseas company, Schwarzenberg Trust Services, which reportedly had its registered offices in Liechtenstein, Germany. Its principal in Jamaica, to whom the complainant was introduced by the appellant, was one Mr Norman McLeod. Mr McLeod had approached the Jamaica Railway Corporation ('JRC') indicating an interest in raising financing aimed at resuscitating part of the JRC that had ceased to be operational. As part of his purported plan, he sought investors to provide the financing.

[5] The complainant's case before the Committee was that the appellant introduced Mr McLeod's loan-financing investment project to him. At the time, he was 22 years old and had been, among other things, profitably trading in foreign exchange. The appellant,

he said, was aware of his financial success and standing and had initially asked him to introduce the investment project to his friends. He averred that the appellant vouched for the project's legitimacy, safety, and potential profitability. Later, on the encouragement of the appellant, he decided to invest in the project. The appellant had informed him that US$500,000.00 was required for the financing.

[6] The appellant had also previously acted for the complainant in the incorporation of a company in the BVI – K Ann J S.A. – in which the complainant as the sole shareholder. The company Ann was incorporated on 11 June 2008, which would have been roughly two months before the transaction in question. There was thus a recent lawyer-client relationship between the parties at the time of the investment-related discussions.

[7] The investment transaction was done in furtherance of a loan agreement dated 8 August 2008 ('the loan agreement') between K Ann J S.A., as the lender, and Schwarzenberg Trust Services, as the borrower. The loan, purportedly, was a 'bridge loan', that is, for on-lending to the JRC to defray administrative expenses and fees relative to the reported processing of a €700,000,000.00 loan to the JRC. Under the loan agreement, K Ann J S.A. was to receive 33% interest on the loan within 45 days from signing. The appellant drafted the loan agreement and a guarantee that effected the investment transaction.

[8] There is a dispute as to the facts surrounding the circumstances leading to the complainant's engagement in the investment transaction and the subsequent handling and outcome of the transaction. However, what is not in dispute is that on 11 August 2008, in accordance with the loan agreement, the complainant, through his stepfather, transferred US$400,000.00 from a Jamaican bank account, held jointly by both of them, to the bank account of Sotayreeah Financial Services ('Sotayreeah') located in Florida, United States of America ('USA'). The appellant had advised the complainant that Sotayreeah was a cash management company owned by Schwarzenberg Trust Services.

[9] Under the loan agreement, the complainant was expecting to receive his principal of US$400,000.00 plus interest of US$132,000.00 by 25 September 2008.

[10] By letter dated 12 September 2008, the appellant informed the complainant that the sum of US$532,000.00 was repaid and that Mr McLeod had confirmed the availability of the funds. She also informed the complainant that the funds required for use in Jamaica were en route to the Bank of Nova Scotia by wire transfer from a Citibank account in Miami and that the principal remained in the cash management company for onward transmission to the BVI.

[11] According to the appellant in her evidence before the Committee, she had only received US$66,000.00 from Mr McLeod in her Jamaican bank account. From this sum, she paid the complainant US$34,000.00 and the balance of US$32,000.00 was kept by the appellant for herself, purportedly, for fees due to her from Schwarzenberg Trust Services, the borrower. No funds were received by K Ann J S.A. in the BVI.

[12] The case advanced by the complainant before the Committee was that Schwarzenberg Trust Services was a fictitious entity and the whole arrangement was a "scheme" between the appellant and Mr McLeod aimed at depriving him of his money.

[13] However, in response, the appellant maintained that she acted in good faith in making arrangements for the loan. She averred that she was not acting as the attorney-at-law for the complainant with regard to the loan transaction, but was acting as attorney-at-law for Schwarzenberg Trust Services. Apart from the US$66,000.00, no funds passed through her hands and the balance of the loan was not repaid by Schwarzenberg Trust Services. She said the explanation Mr McLeod gave to her was that losses had been sustained in the financial meltdown of 2008.

[14] Following a hearing on the question of the appellant's culpability, which was conducted on numerous days between 2014 and 2016, the Committee concluded that the appellant acted in breach of canons I(b), IV(k), IV(r), IV(s) and VII(b)(ii) of the Legal

Profession (Canons of Professional Ethics) Rules ('the Canons'). Subsequently, on 26 May 2018, it ordered that:

> "(a) The [appellant] do pay over to the [complainant] the sum of $498,000.00 in the currency of the United States of America.
>
> (b) Interest is payable at the rate of 2% and is to be compounded.
>
> (c) The period over which the interest is payable is to run from the 25th September 2008 until payment.
>
> (d) Costs of $750,000.00 are awarded to the complainant against the [appellant].
>
> (e) The attorney-at-law [the appellant] is struck from the Roll of Attorneys-at-Law entitled to practice in several courts of the island of Jamaica."

The appeal

[15] By notice and grounds of appeal filed 13 June 2018, the appellant challenged the decision of the Committee. On 14 June 2018, she applied to this court for a stay of execution of the orders of the Committee, pending the outcome of the appeal. The appellant later withdrew that application. However, on 10 July 2020, after the hearing of the parties' arguments on the appeal, the appellant renewed her application for stay of execution of the order of the Committee, given certain concessions made by the GLC during the hearing of the appeal. Except for the order striking the appellant from the roll of attorneys-at-law, the orders made by the Committee were stayed pending the determination of the appeal.

[16] The appellant has challenged 43 findings of fact and four findings of law of the Committee on 15 overlapping grounds of appeal detailed in these terms:

> "a. The finding that the Appellant attorney acted dishonestly and was involved in a dishonest scheme to persuade the complainant to part with his funds in pursuit of what turned out to be a fictitious investment is wrong as it is

not supported by the evidence or is inconsistent with the weight of the evidence.

b. The Tribunal erred as a matter of fact and/or law in finding that the Appellant had the client's monies in her the [sic] hands for the account or credit of his client and in respect of which she was liable to account.

c. The finding that the Appellant had monies in her hands for the complainant is inconsistent with the documentary evidence of the complainant as set out in his letter of complaint dated the 26th February 2013 such that there was no basis to prefer his oral evidence over that the Appellant on this issue.

d. The Tribunal erred in finding that the Appellant was not a credible witness and conversely that the complainant was such that his evidence was to be preferred.

e. The Tribunal erred as a matter of fact and/or law in making orders for the appellant to pay over to the complainant the sum of US$498,000.00:

    i. This sum was never held or handled by the Appellant.

    ii. This sum is still the subject of civil proceedings filed by the complainant against the Appellant in the Supreme Court in Claim No. 2013 HCV 01171 and such proceedings are still subsisting.

    iii. The complainant has opted not to pursue the borrower or its agent on the loan agreement or the guarantee.

f. The Tribunal erred as a matter of fact and/or law in awarding compound interest to the complainant against the Appellant.

g. The Tribunal erred in finding that the attorney-at-law accepted and continued her retainer or employment on behalf of the complainant and Swarzenberg Trust Services when their interests were likely to conflict or the independent professional judgment of the attorney was likely to be impaired.

h. The Tribunal erred as a matter of fact and/or law in treating with the transaction as if it were the Appellant's and further without regard for the fact that it is business [sic] transaction entered into by the complainant who should be left to his remedies in Court against the party to the transaction.

i. The Tribunal erred in finding that the attorney acted with inexcusable and deplorable negligence in the performance of her duties.

j. The Tribunal erred in finding that the attorney failed to maintain the dignity honour [sic] and dignity of the profession and failed to refrain from behaviour which tend [sic] to discredit the profession of which she is a member.

k. The Tribunal erred in awarding compound interest to the complainant having regard to all the circumstances of this case.

l. The Tribunal erred as a matter of law when they refused to take into account modern principles of sentencing such as those contained in the sentencing guidelines which are aimed at achieving consistency and justice in applying sanctions.

m. The Tribunal erred as a matter of law when they refused to take into account mitigating circumstances on the basis that it is a concept that is limited to civil proceedings while relying extensively on commercial matters and cases in deciding the Appellant's culpability including the award of interest.

n. The Tribunal erred as a matter of a fair trial [sic] when it found that its primary objective in disciplinary proceedings is to protect members of the public and the general reputation of the profession as distinct from dealing justly with the rights of the attorney and the complainant.

o. By taking into account the effect of the Appellant's alleged conduct on their livelihood and inserting their individual considerations of duty, morality and justice

> the Tribunal demonstrated actual bias such as to render their decision unsafe."

[17] From the 15 grounds of appeal, the core issues for this court's determination have been distilled as follows:

(1) Whether the Committee erred when it found that the appellant acted as attorney-at-law for two clients in a matter where their interests were likely to conflict or her independent professional judgment was likely to be impaired (grounds d., and g.)

(2) Whether the Committee erred when it found that the appellant acted dishonestly and was involved in a dishonest scheme to persuade the complainant to part with his money (grounds a., and d.);

(3) Whether the Committee erred when it found that the appellant had monies belonging to the complainant under her control which she failed to account for to the complainant (grounds b., c., and d.);

(4) Whether the Committee erred when it found that the appellant acted with inexcusable and deplorable negligence in the performance of her duties (grounds d., and i.);

(5) Whether the Committee erred in finding that the appellant failed to maintain the honour and dignity of the profession and failed to refrain from behaviour that tends to discredit the profession of which she is a member (ground j.); and

(6) Whether the Committee erred in imposing on the appellant the sanctions it did (grounds e., f., h., k., l., m., n., and o.)

[18] The appellant's complaint in ground d. is that the Committee erred in finding that she was not a credible witness and that the complainant's evidence was to be preferred.

This ground overlaps with other grounds of appeal and so it will not be isolated and treated separately. It touches and concerns the Committee's findings on the culpability of the appellant and so the appellant's complaint in this regard is addressed throughout the analysis of the specific issues to which it relates regarding the Committee's findings on liability. However, it suffices to say in considering ground d. that the issue of credibility was solely one for the Committee as the tribunal of fact and this court has to exercise extreme caution in disturbing findings of fact based on credibility. It has to be established that the Committee was plainly wrong in coming to the particular finding of fact that would have been informed by its treatment of the credibility of the appellant and the complainant. With this in mind, the specific issues identified above for the examination of this court will now be evaluated. I begin with the appeal from the liability judgment.

A. The liability judgment

Issue (1) – whether the Committee erred when it found that the appellant acted as attorney-at-law for two clients in a matter where their interests were likely to conflict or her independent professional judgment was likely to be impaired (grounds d., and g.)

[19] Before the Committee, the appellant denied the assertion of the complainant that when he entered into the transaction with Schwarzenberg Trust Services, she was his attorney-at-law and acted for him in the transaction. Her case was that she represented Schwarzenberg Trust Services only. The Committee found in favour of the complainant on this issue, having opined that the complainant's evidence was to be preferred to that of the appellant. They did not find the appellant credible.

[20] In so far as the law is concerned, the Canons permit an attorney-at-law to represent multiple clients in specified circumstances or under specified conditions. This is explicitly stated in canons IV(k) and (l) in clear terms:

> "(k) Subject to the provisions of Canon IV (l), an Attorney shall not accept or continue his retainer or employment on behalf of two or more clients if their interests are likely to conflict or if the independent professional judgment of the Attorney is likely to be impaired.

(l) Notwithstanding the provisions of Canon IV (k), an Attorney may represent multiple clients if he can adequately represent the interests of each and if each consent to such representation after full disclosure of the possible effects of such multiple representation."

[21] Therefore, where the interests of the clients being represented by an attorney-at-law are likely to conflict or where the independent professional judgment of the attorney-at-law is likely to be impaired, it will amount to a breach of the Canons if the attorney-at-law proceed with such representation. An attorney-at-law may only properly proceed to represent multiple clients within the ambit of the Canons if he is in a position to adequately represent the interest of each of them and he obtained the prior consent of each following full disclosure of the possible effects of the multiple representations.

[22] The Committee concluded that the appellant acted in breach of canon IV(k). This conclusion was based on the following findings of fact as outlined in the liability judgment:

"8 In this transaction [the incorporation of K. Ann J.S.A. in the BVI] the attorney represented the complainant.

9 The complainant was the client of the attorney

10 The attorney was aware that the complainant had funds available to be invested.

11 The attorney informed the complainant of an investment opportunity with a company called Schwarzenberg Trust Services.

12 The complainant did not know of this entity prior to being told about it by the attorney.

13 The attorney informed the complainant that she knew Mr. Norman McLeod, a representative of Schwarzenberg Trust

14 The complainant did not know Mr. Norman McLeod when he was first mentioned by the attorney.

15 The attorney represented to the complainant that this was a good investment from which he would secure very favourable returns.

16 The attorney represented to the complainant that this was a secure investment in which his money would be safe.

17 The attorney reassured the complainant that she was preparing all the documents and he had nothing to worry about with regard to the proposed investment.

18 The attorney did draft the document headed Loan Agreement dated the 8th August 2008.

19 The terms of this Agreement, a legal document, did not come from the complainant but were the creation of the attorney.

20 The attorney did draft the document headed Guarantee which is collateral to the Loan Agreement and is also dated the 8th August 2008.

21 The terms used in the Guarantee are those of the attorney and not the complainant.

22 The attorney acted as the attorney-at-law for the complainant in the drafting of these documents and in the transaction between Schwarzenberg Trust Services and the complainant's company K ANN J.S.A.

23 The attorney acted for Schwarzenberg Trust Services in the same transaction in which she acted for the complainant.

24 The complainant was a client of the attorney-at-law and there was the [sic] client/lawyer relationship between the attorney and the complainant.

25 The attorney did not inform the complainant that she was also representing Schwarzenberg Trust in the same transaction.

26 The Attorney did not advise the complainant that in circumstances of this transaction he should consult with

and secure the services of another attorney to advise him and to act for him.

27 The attorney had a clear conflict of interest between protecting the interests of the complainant and the interest of Swarzenberg [sic] Trust Services." (Punctuations as in original)

[23] Despite these findings by the Committee, the appellant maintains on appeal that she did not act as the attorney-at-law for the complainant in relation to the loan transaction. Lord Gifford QC submitted on her behalf that there is nothing that shows that she and the complainant entered into an attorney-client relationship regarding the loan agreement. He contended that no fees were charged and no retainer between them was mentioned.

[24] Queen's Counsel acknowledged that the appellant has accepted that it would have been wise for her to have advised the complainant to seek independent advice since she was acting for the Schwarzenberg Trust Services, the borrower. However, he argued that her failure to do so does not amount to professional misconduct as there is no canon of ethics which requires an attorney-at-law, dealing on behalf of a client with someone who is not her client, to advise the unrepresented person that he should seek independent legal advice. Queen's Counsel further submitted that, in any event, this was not the charge brought against the appellant; the relevant charge against her was that she acted for two clients in a matter where their interests may conflict.

[25] On behalf of the GLC, Mr Small QC maintained that the appellant acted as attorney-at-law for the complainant regarding the loan transaction. He submitted that the appellant acted, in part, upon the complainant's instructions in drafting the loan agreement, and in drafting the guarantee to the loan agreement which was for the sole benefit of the complainant's company, K Ann J S.A. Counsel also argued that the notice clause in the loan agreement shows that the appellant acted for K Ann J S.A. in accepting notices under the loan agreement.

[26] Mr Small further submitted that if the court were to find that the initial retainer between the appellant and the complainant had ended, then it should, nevertheless, find that an implied retainer arose in the circumstances. He argued that a retainer need not be in writing or even oral, but may be inferred from the conduct of the parties. In support of this submission, Queen's Counsel relied on the case of **Dean v Allin and Watts (a firm)** [2001] EWCA Civ 758 in contending that, in the instant case, a retainer could be inferred due to several factors including the previous attorney-client relationship between the appellant and the complainant regarding the incorporation of K Ann J S.A.; the appellant's failure to advise the complainant to seek independent legal advice; the terms of the notice clause in the loan agreement; and the appellant's deduction of US$32,000.00 as legal fees from the interest sum of US$66,000.00 she had received on the complainant's behalf.

[27] Queen's Counsel submitted that there was a clear conflict between the interests of the complainant and Schwarzenberg Trust Services. He argued that the appellant ought to have been clear about the separate interest of the complainant because, from the outset, she knew the transactions involved large sums of money, cross border transfers and several corporations.

[28] I acknowledge that there was no evidence before the Committee of an expressed retainer between the appellant and the complainant with regard to the loan transaction. However, this is not the end of the matter. In **Dean v Allin and Watts (a firm)**, the court grappled with a similar issue in determining whether the firm of Allin and Watts were retained by the appellant for the purposes of certain loan transactions entered into by the appellant. In delivering the judgment of the court, Lightman J stated that:

> "22. The primary case of Mr Dean at the trial was that he had impliedly retained A&W to act as his solicitors in respect of each of the four loans and that accordingly A&W owed to him a contractual duty of care. Arden J rejected this case. The starting point is that A&W was retained by CH; that A&W could not in accordance with Law Society Rules act for both parties to the four loan transactions; and that on the 10th

March 1993 Mr Dolan made it clear to Mrs Young that he could only act for CH. **As a matter of law, it is necessary to establish that A&W by implication agreed to act for Mr Dean: an implied retainer could only arise where on an objective consideration of all the circumstances an intention to enter into such a contractual relationship ought fairly and properly to be imputed to the parties.** In *Searles v. Cann and Hallett* [1993] PNLR 494 the question arose whether the solicitors for the borrowers impliedly agreed to act as solicitors for the lenders. Mr Philip Mott QC (sitting as a deputy judge of the Queen's Bench Division) held that there was nothing in the evidence which clearly pointed to that conclusion. He went on:

> **'No such retainer should be implied for convenience, but only where an objective consideration of all the circumstances make it so clear an implication that [the solicitor himself] ought to have appreciated it.'**

'All the circumstances' include the fact, if such be the case (as it is here), that the party in question is not liable for the solicitors fees and did not directly instruct the solicitors. These are circumstances to be taken into account, but are not conclusive**. Other circumstances to be taken into account include whether such a contractual relationship has existed in the past, for where it has, the court may be readier to assume that the parties intended to resume that relationship, and where there has been such a previous relationship the failure of the solicitor to advise the former client to obtain independent legal advice may be indicative that such advice is not necessary because the solicitor is so acting**: see e.g. *Madley v. Cousins Combe & Mustoe* [1997] EGC 63." (Emphasis added)

[29] Accordingly, it is clear that despite the absence of an expressed retainer, a retainer may be implied upon an objective consideration of all the circumstances which render it such that an intention to enter into such a contractual relationship ought fairly and properly to be imputed to the parties. It is, therefore, incumbent on this court to assess

whether the circumstances of the instant case would support the implication of a retainer between the appellant and the complainant.

[30] Of great importance to this analysis is clause 21.2 of the loan agreement, which states that:

> "21.2 Any notice to be given by the Borrower to the Lender shall be in writing and shall be deemed to be duly served if delivered personally or sent by e-mail, telex, telegram or facsimile transmission or by prepaid registered post to the Lender at the address or facsimile number set out below:
>
> The Lender: K Ann J S.A.
> Address: c/o 26 East Street, Kingston
> Facsimile No.: 922-7378
> Attention: Mr. Kaon Northover & Mrs. Minett Lawrence"
> (Underlining as in the original)

[31] The appellant gave evidence before the Committee that her office was at 26 East Street. Therefore, she gave her address as the address for the service of notice on the lender, K Ann J S.A. and she was also named as a party along with the complainant to whom the notice must also be given for the lender.

[32] The provisions of clause 21.2 of the loan agreement, which was drafted by the appellant herself, demonstrate that the appellant held herself out to be the contact person for the complainant's company concerning any notice that was to be given to it by Schwarzenberg Trust Services. The appellant was, therefore, acting as agent for the lender with express authority to receive notices on its behalf. It is rather curious that the appellant would have drafted a clause in the loan agreement in which she named herself and her office address as the contact for the complainant's company if she did not consider herself as acting on behalf of the complainant and his company with regard to the loan transaction.

[33] The circumstances giving rise to the implication of a retainer between the appellant and the complainant are strengthened when one considers that an attorney-client relationship existed in the recent past between the appellant and the complainant with

regard to the incorporation of K Ann J S.A. Furthermore, against that background, the appellant did not advise the complainant to seek independent legal advice in the glaring light of these facts:

(a) the previous attorney-client relationship was quite recent to the signing of the loan agreement, having regard to the fact that K Ann J S.A. was incorporated on 11 June 2008 and the loan agreement was signed on 8 August 2008;

(b) the appellant was the person who introduced the complainant to the arrangement with Schwarzenberg Trust Services and Mr McLeod, its representative;

(c) the appellant knew she was acting as attorney-at-law for Schwarzenberg Trust Services; and

(d) the loan transaction involved the transfer of a large sum of money to an overseas corporate borrower.

[34] Finally, it is also noted that in email correspondence dated 31 October 2008, between the appellant and Mr McLeod regarding the return of the loan sum, the appellant wrote:

> "I hope that whatever is happening you will be directed to return **our** funds." (Emphasis added)

This is juxtaposed against the appellant's directive to the complainant in the letter of 12 September 2008, that he should:

> "…remember to renew your US visa so that we can visit the Cash Management company to establish **our own account** for future transactions." (Emphasis added)

[35] Clearly, the appellant had identified with the complainant and his company's interest regarding the loan transaction and the repayment of it. Everything points to her acting for him regarding the transaction and making arrangements for him at the bank

to establish an account for her to transfer his funds to him "as discussed". There was never any evidence to credibly establish that the appellant ever told the complainant that she was the attorney-at-law for Schwarzenberg Trust Services or Mr McLeod and not his or his company's.

[36] On an objective consideration of all the circumstances, I find that an intention to enter into an attorney-client relationship, with respect to the loan transaction, ought fairly and properly to be imputed to the appellant and the complainant. The circumstances, when viewed as a whole, make it so clear an implication that the appellant herself ought to have appreciated that she was acting as the complainant's attorney-at-law. So even though the Committee did not use the terms implied retainer or imputed attorney-client relationship, it is clear that its findings of an attorney-client relationship between the parties would, in actuality, amount to such a finding in the absence of an express retainer.

[37] In any event, the question of whether the appellant acted as the complainant's (or his company's) attorney-at-law was ultimately one of fact for the Committee to resolve by reference to all the evidence and the credibility of the appellant and the complainant. It found that the complainant was more credible. That finding was one for the Committee to make having seen and heard the parties. It was a finding which was open on the evidence that was before it. Therefore, there is no justifiable basis for this court to disturb the Committee's findings that the appellant acted as attorney-at-law for the complainant in the loan transaction.

[38] The Committee's finding that the appellant acted as attorney-at-law for the complainant, taken together with the appellant's position that she was acting on behalf of Schwarzenberg Trust Services, inevitably, leads to the further conclusion that the appellant was acting on behalf of both parties to the loan agreement. She did not advise the complainant of her dual representation.

[39] Based on the nature of the transaction and all that has been revealed regarding it, it is clear beyond question that the interests of the complainant and Schwarzenberg

Trust Services were likely to conflict. The appellant, herself, acknowledged before the Committee that, in the circumstances, it would have been appropriate for her to have advised the complainant to obtain independent legal advice. This acknowledgment came during cross-examination of the appellant:

> "Panel: Did he give you instructions? Is it your position that Mr. Northover is not your client?
>
> Lawrence: For the loan transaction I was not acting for Mr. Northover I was acting for Mr. McLeod.
>
> **Panel: Did you advise Mr. Northover to get independent legal advice?**
>
> **Lawrence: I do not recall advising him.**
>
> **Panel: Do you think looking back you ought to have advised him?**
>
> **Lawrence: Looking back yes and I would not have acted in the transaction as the only attorney.**
>
> **Panel: It would have been appropriate that Mr. Northover should be advised to get an attorney to advise him?**
>
> **Lawrence: Looking back yes**." (Emphasis added)

[40] Accordingly, I would opine that the Committee was justified in its finding that the appellant acted as attorney-at-law for two clients in a matter where their interests were likely to conflict and her independent professional judgment was likely to be impaired. A clear manifestation of this conflict of interest is evidenced by the fact that the appellant considered it necessary to take her fees of US$32,000.00 from the US$66,000.00 sent to her on the basis that she was owed fees by Schwarzenberg Trust Services. She did not consider it proper or prudent to give the complainant the entire sum that would have represented the interest payment due to him under the loan agreement. She was placed in that conflicted position to take payment for herself from money that ought properly to

have belonged to the complainant's company because she was acting for both parties to the transaction. Her independent professional judgment was seriously impaired.

[41] This conduct on the part of the appellant in acting for two clients with opposing interests contravenes canon IV(k). The Committee was correct in so finding. In this regard, the appeal cannot succeed on this issue.

Issue (2) – whether the Committee erred when it found that the appellant acted dishonestly and was involved in a dishonest scheme to persuade the complainant to part with his money (grounds a., and d.)

[42] In arriving at its conclusion regarding the issue of dishonesty, the Committee found that:

> "78 The conduct of the attorney viewed as a whole is inexplicable except to conclude that she was involved in a dishonest scheme to persuade the complainant to part with his funds in pursuit of what turned out to be a fictitious investment.
>
> 79 At every stage of this transaction the attorney was the main actor who engineered and facilitated the creation and performance of the loan Agreement and the disbursement of the funds.
>
> 80 The fact that the attorney failed to produce any documentation whatsoever to establish that the alleged loan Agreement was predicated on the existence of genuine legal corporations speaks volumes.
>
> 81 The very cavalier and unprofessional manner in which the attorney handled this alleged transaction, on her own admissions, not only falls far short of required professional standards, but fortifies our opinion that this was done with the deliberate intention of obfuscating what really happened to the sum of money ostensibly loaned to Schwarzenberg Trust Services and wired to Sotayreeah Financial Services."

[43] The appellant, through her counsel, continued before us to vehemently deny any dishonesty or fraudulent conduct on her part. Lord Gifford took issue, particularly, with

finding no. 81 of the Committee above that the appellant acted "with the deliberate intention of obfuscating what really happened to the sum of money ostensibly loaned to Schwarzenberg Trust Services and wired to Sotayreeah Financial Services". He argued that the evidence, simply, did not support the Committee's finding that the appellant was involved in a dishonest scheme to persuade the complainant to part with his money.

[44] Lord Gifford further contended that the Committee was essentially saying it had formed an opinion that the appellant had committed fraud and that other evidence fortified that opinion. He submitted that the law required the Committee to examine all the evidence and only to find the appellant guilty if it was satisfied beyond a reasonable doubt that the complaints were proved. He argued that the Committee erred in its opinion that the appellant acted dishonestly and was involved in a dishonest scheme to deprive the complainant of his money.

[45] Despite counsel for the GLC strident arguments in their written submissions that dishonesty was established, they eventually conceded in oral arguments, through Mr Small, that there was a flaw in the way the issue of dishonesty (or fraud) was treated by the Committee and that the evidence was insufficient to substantiate a finding of fraud. However, Queen's Counsel posited that a finding of fraud is not the basis on which the GLC is asking the court to sustain the finding of liability. He maintained that the evidence supported a case of gross professional misconduct which would, nevertheless, render the appellant liable.

[46] The concession made by counsel on behalf of the GLC regarding the issue of dishonesty regarding the appellant's involvement in the investment scheme is accepted as one rightly made. I begin with a consideration of the standard of proof to be applied in disciplinary proceedings such as this. Lord Brown in **Campbell v Hamlet** [2005] 3 All ER 1116 at para. [16], put it beyond doubt that the standard of proof in disciplinary proceedings and particularly where criminal conduct is alleged is the criminal standard. He stated:

> "[16] **That the criminal standard of proof is the correct standard to be applied in all disciplinary proceedings concerning the legal profession, their Lordships entertain no doubt.** If and insofar as the Privy Council in *Bhandari v Advocates Committee* [1956] 3 All ER 742, [1956] 1 WLR 1442 may be thought to have approved some lesser standard, then that decision ought no longer, nearly fifty years on, to be followed…
>
> …
>
> [24] …To find this complaint proved it was not necessary for the committee or the Court of Appeal to find each and every sub-issue proved beyond reasonable doubt. A sufficient number of strong probabilities (or even mere probabilities) can in aggregate amply support a finding of proof beyond reasonable doubt. That, indeed, is how many a criminal case is proved in reliance principally upon circumstantial evidence." (Emphasis added)

[47] In the Canadian case of **Re Shumiatcher and Law Society of Saskatchewan** [1996] 60 DLR (2d 318), the court laid down what has been regarded as the correct approach relating to the standard of proof in cases where striking off or suspension could be the sanctions imposed, which is invariably so in cases of dishonesty. Cullerton CJS opined at page 328 of the report:

> "Where a complaint is made against a solicitor which may result in his suspension or disbarment, effect should not be given thereto unless the grounds of complaint are established by convincing evidence and when the complaint involves a criminal act by evidence establishing the grounds beyond a reasonable doubt. In the assessment of the evidence, the solicitor's explanation should be accepted if there is a reasonable probability of it being true."

[48] The Committee had explicitly stated, quite correctly, that the standard of proof it was obliged to apply in determining the appellant's liability was proof beyond a reasonable doubt. Accordingly, for its decision to stand on this issue of dishonesty, its finding must be supported by evidence that satisfies the criminal standard of proof beyond a

reasonable doubt, that is to say, proof to the point where it would have felt sure that dishonesty on the part of the appellant was proved as alleged.

[49] Whilst it is appreciated that a finding of fact may be arrived at based on a cumulative assessment of the evidence and the drawing of reasonable and inescapable inferences from proved facts, the entire evidence before the Committee, properly evaluated, did not reach that high threshold of being beyond a reasonable doubt, or where the Committee could have been satisfied to the extent it felt sure that the appellant acted dishonestly or fraudulently in persuading the complainant to part with his money in pursuit of a fictitious scheme.

[50] The GLC, through its counsel, was correct to have graciously conceded on this issue, as will be further gleaned from the discussions on issue (3) below. Therefore, there would be no need, at this juncture, for this court to further explore the entire evidence that was before the Committee that had a bearing on this issue. It suffices to say for present purposes that the Committee fell in grave error when it found that the appellant acted dishonestly in persuading the complainant to enter into the transaction and invest his company's money. Furthermore, there was no cogent and indisputable evidence establishing that the scheme was fictitious and that the appellant knew it, so as to support a finding of fraud on her part. Suspicion or speculation, on which the complainant evidently relied to advance his case, was not enough. On this issue, the appeal succeeds.

Issue (3) – whether the Committee erred when it found that the appellant had monies belonging to the complainant under her control for which she failed to account (grounds b., c., and d.)

[51] The complainant alleged that the appellant failed to account to him for his money in the sum of US$498,000.00 and is indebted to him for the said sum. This allegation was premised on the letter dated 12 September 2008 from the appellant to the complainant (to which reference has already been made). The contents of the letter are of crucial importance to the findings of the Committee and the resolution of this issue and so it would prove useful to reproduce it verbatim. It reads:

"September 12, 2008

Mr. Kaon Northover
K Ann J S.A.
Craigmuir Chambers
Road Town,
Tortola; BVI

Dear Mr. Northover,

RE: Loan Agreement – Schwarzenberg Trust

I am pleased to advise that on the repayment date for the bridge loan to the Schwarzenberg Trust, the sum of US$532,000.00 was repaid in accordance with our instructions. On September 9th Mr. McLeod confirmed availability of the funds and an immediate transfer was made as directed.

The funds required for use in Jamaica are en route to BNS by wire transfer from our Citibank account in Miami, and the principal remains in the cash management company for onward transmission to the BVI. The wire transfer to Jamaica is being done in two parts for greater banking convenience and less visibility.

Please remember to let us have a bank reference for the BVI; contact the office for a fresh set of documents; and remember to renew your US visa so that we can visit with the Cash Management company to establish our own account for future transactions.

Miss [I. L.] at BNS, Knutsford Blvd Branch will meet with you at your convenience to establish a personal account for you. As discussed, I will transfer your funds to that account.

I enclose for your records a copy of the signed Loan Agreement and Guarantee.

Sincerely

[signature]
.....
MINETT LAWRENCE (MRS.)"

[52] The appellant's explanation regarding the content and wording of her letter was given during the following exchange in cross-examination before the Committee:

"Jarrett: In your letter of the 12th September 2008 to Mr. Northover, pg 30 of exhibit 34 in that letter you have confirmed returning of the funds principal plus interest?

Lawrence: I said that Mr. McLeod has confirmed payment.

Panel: Who are you?

Lawrence: Instruction to Mr. Northover which I passed over to Mr. McLeod

Panel: Who gave this instruction?

Lawrence: Mr. McLeod.

Panel: To whom?

Lawrence: Me.

Panel: Were these instructions in writing?

Lawrence: No.

Panel: I am taking it that the full sum was repaid to whom?

Lawrence: Some sums goes [sic] back to Cash Management Company in Florida. Not in writing. The interest would have been used to cover expenses to come to Jamaica.

Panel: (panel reads letter) Are you saying the funds to be repaid were to come from Mr. McLeod only?

Lawrence: Yes.

Jarrett: Why are you writing this letter without receiving confirmation?

Lawrence: I did not doubt the information from Mr. McLeod.

Panel: Did you know that you have a responsibility. Did you have any other means of confirmation that these funds were repatriated?

Lawrence: I did not have any other means of confirming that the funds were repatriated. I dealt with them in the context of what I was to do.

Panel: Before an attorney gives an undertaking to pay over funds do you think he should have the funds in his possession before giving an undertaking?

Dunkley: The account holder was Schwarzenberg Trust. You cannot get information on the Cash Management.

Panel: When I am dealing with a client even if the funds don't come through… we are making an enquiry in the conduct of the attorney and the conduct of her as an attorney. She is an attorney. What amount of money is being referred to as being forwarded to the BNS?

Lawrence: Sixty something thousand United States Dollars.

Panel: What do you mean by that?

Lawrence: Mr. McLeod would make transfer in less than $50,000.00. It was when the second payment was not reached.

Panel: Schwarzengberg [sic] Trust performed for Mr. McLeod?

Lawrence: I was pressing Mr. McLeod…

Panel: Is he one of your witnesses?

Lawrence: Yes.

Panel: What did Mr. McLeod tell you about the balance on the performance he presented of Mr. Northover's funds?

Lawrence: He explained that there were personal losses of the money in 2008 financial let down and that all funds were not return [sic] to him.

…

Panel: Has Mr. McLeod paid any of the funds?

Lawrence: Yes

Panel: You told us the [sic] Mr. McLeod guaranteed that he is going to pay back the sum, did he paid [sic] any other that [sic] the $66,000.00?

Lawrence: No."

…

Jarrett: When you wrote letter to Mr. Northover 12th September, 2008 was it not mentioned in that letter that you report did you not say you enclose [sic] loan agreement in that letter?

Lawrence: I did not the letter says what it says.

Jarrett: Look at the foot (read) ….

Lawrence: Yes.

Jarrett: This is after the US$532 [sic] came back from that contract?

Lawrence: No this is on the date of the letter that I wrote this.

Panel: No… (read) What was the question?

Jarrett: Is that the first time you are giving Mr. Northover a copy of that…?

Lawrence: The $532,000 [sic] was not repaid. Disputed way this letter says.

Panel: No. (read) "Sir I am pleased to advise you that the…"

Lawrence: I did not receive the money ma'am that is why I am here. It was incorrect. Mr McLeod…

Panel: Why did you not put it in your letter?

Lawrence: It is not my best drafting. It was wrong of me to have written it in this way.

Panel: Why?

Lawrence: Because it caused confusion.

Panel: Why?

Lawrence: This letter has caused confusion to say I have received funds and it was not repaid." (Emphasis added)

[53] The Committee's rejection of the appellant's explanation of the letter was fully expressed in the following findings:

"57 The panel does not accept the attorney's interpretation of her letter dated the 12th September 2008 directed to the complainant. Her attempted interpretation is tortured and incoherent.

58 In this letter, it is clear that the attorney is informing the complainant that Swarzenberg Trust Services has repaid the sum of US$532,000.00.

59 The attorney said that Mr. McLeod confirmed that the funds had been immediately transferred as directed.

60 The attorney said that the funds required for use in Jamaica are en route to BNS by wire transfer from our Citibank account in Miami.

61 The attorney then says that the principal remains in the cash management company for onward transmission to the BVI.

62 There are inherent contradictions in this letter in that in one paragraph of the letter the attorney confirms that the principal and earned interest had been repaid without mentioning to whom it had been repaid, and then she announces later in the same letter that the money is in the cash management company to be forwarded to the BVI without naming the cash management company.

63 In unequivocally stating that the sum of US$532,000.00 had been repaid the attorney is confirming that she knew by way of her own knowledge and not hearsay that the funds had been repaid.

64 In unequivocally stating that the funds to be transferred to the BVI remained in the cash management company, the attorney was confirming that she knew of her own knowledge that the funds were in fact in the cash management company.

65 By unequivocally stating that the funds required for use in Jamaica are en route to BNS by wire transfer from her Citibank account the attorney was unequivocally stating this as a fact that she knew of her own personal knowledge.

…

73 The attorney sought to cast blame for the disappearance of the complainant's funds unto Mr. Norman McLeod.

74 There is no credible evidence before the panel that Mr. McLeod is responsible for the disappearance of these funds.

75 Mr. Norman McLeod never gave evidence before this panel.

…

82 The attorney, in her letter to the complainant dated the 12th September 2008 assured the complainant that the principal together with interest had been repaid and implied that she had control of the funds to be disbursed in the manner directed by the complainant or at the very least that the sums were in a place where she could direct their disbursement.

83 In all the circumstances of this case, the attorney was under a duty to account to the complainant for the principal and interest that was then due to him."

[54] It was the finding of the Committee that the appellant, among other things, acted in breach of canons IV(r) and VII(b)(ii). These canons provide that:

"CANON IV

(r) An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client's business with due expedition."

"CANON VII

(b) An Attorney shall –

(i) ….

(ii) 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

and he shall for these purposes keep the said accounts in conformity with the regulations which may from time to time be prescribed by the General Legal Council." (Emphasis added)

[55] In challenging these aspects of the Committee's decision, Lord Gifford argued that the most serious allegation made against the appellant was that she had received repayment of the money "in her hands". This allegation, he said, was tantamount to saying the appellant had stolen the money. He argued that there was no evidence on which the Committee could have properly found that this allegation was true. Queen's Counsel submitted that the burden was on the complainant to prove beyond a reasonable doubt that the entirety of the funds had been sent to the appellant or to some account to which the appellant had access, and that was never proved.

[56] Queen's Counsel highlighted that great emphasis was placed by the Committee on the letter of 12 September 2008. He argued that though the appellant accepted that the letter was badly drafted, the letter was far more consistent with the position that the

borrower defaulted on payment than with the hypothesis that the appellant had stolen the money through a fraudulent scheme.

[57] In supporting his arguments, Lord Gifford referred to email correspondence between the appellant and Mr McLeod, which was exhibited before the Committee. He argued that, apart from the email regarding compensation, the Committee did not mention these emails in its judgment. Queen's Counsel submitted that this was a serious omission by the Committee as the email correspondence is "wholly inconsistent" with the finding that on 12 September 2008, the appellant "had control of the funds".

[58] Mr Small conceded in response, on behalf of the GLC, that the letter of 12 September 2008 was poorly drafted. He acknowledged that although the letter could reasonably indicate that the appellant had the money in hand, the rest of the evidence and email messages between the appellant and Mr McLeod, subsequent to the letter, illustrate that "the unfortunate choice of language" used in the letter may not have fully represented all the facts.

[59] Having taken into account the findings of the Committee regarding the letter and the concession of the GLC, I would first direct attention to an affidavit sworn to by the appellant on 16 December 2013. In that affidavit, she exhibited email correspondence between herself and Mr McLeod to which Lord Gifford referred (exhibit 5). The full contents of those emails are important to the overall assessment of the evidence on which the Committee found the appellant liable and so are reproduced verbatim. The correspondence between the appellant and Mr McLeod over the period 22 to 31 October 2008, which would have been after the letter, is as follows:

> "From: Minett Lawrence <[email address]>
> To: Norman McLeod <[email address]>
> Cc: Lowell Lawrence <[email address]>
> Sent: Wednesday, October 22, 2008 10:00:11 AM
> Subject: Re: Status of Transfer
>
> Norman

Thanks for the update. As you know the funds should have been returned from September 10th so it is now very late. Also, additional expense was incurred which is to be reimbursed. You asked me to quantify the cost of the delay and advise you but I will not do so until the funds materialise. I cannot raise further expectations but you should note that the cost of the funds was fixed for 30 days and that period was doubled; in addition business commitments have been adversely affected

I am holding [you] personally liable for the principal and fees due from this transaction

Let us hope today is the last day of the delay.

Minett"

"On Oct 22, 2008 at 11:15 AM, Norman McLeod <[email address]> wrote:

I have just finished the first teleconference meeting.
We have agreed that today will be the cutoff [sic] day.
There were some issues regarding the project funding procedures that were concluded.
There will be a second call back to confirm the transfer today.
We have up to this evening to have it done today.
I will get back to you after the next call in.
As to the lateness of the funds to you as agreed, once you have received the funds please let me know what you believe your compensation should be thanks.
GOD BLESS
Norman"

"From: Minett Lawrence <[email address]>
To: Norman McLeod <[email address]>
Cc: Lowell Lawrence <[email address]>
Sent: Wednesday, October 22, 2008 1:21:27 PM
Subject: Re: Status of Transfer

Thanks for the update. I would like a further report before 3 pm.

Minett"

"From: Minett Lawrence <[email address]>
To: Norman McLeod <[email address]>
Cc: Lowell Lawrence <[email address]>
Sent: Wednesday, October 29, 2008 8:21:40 AM
Subject: Re: Update

Norman
This is my last follow up email. If the funds are not in our account today, it will move completely out of my hands."

"On Oct 29, 2008, at 10:18 AM, Norman McLeod <[email address]> wrote:

Minett,
I understand and I am getting it completed.
GOD BLESS,
Norman"

"From: Minett Lawrence <[email address]>
To: Norman McLeod <[email address]>
Sent: Wednesday, October 29, 2008 9:29:09 PM
Subject: Re: Update

Norman
As you were previously advised this is now a police matter as the extensive delay and missed deadlines requires [sic] that steps be taken to expedite the return of the funds.

Please be advised that the full cost of recovering the funds as well as compensation for the delay will be pursued. I regret that it had come to this and I really hoped you would have kept your word.

Minett Lawrence"

"On Oct 30, 2008, at 7:29 AM, Norman McLeod <[email address]> wrote:

Minett,
I understand.
GOD BLESS,
Norman"

"From: Minett Lawrence <[email address]>
To: Norman McLeod <[email address]>
Sent: Friday, October 31, 2008 5:52:15 AM
Subject: Re: Update

I called last night just to see if you were still around since the Wednesday deadline passed without a single word from you. I hope that whatever is happening you will be directed to return our funds.

Minett"

"On Oct 31, 2008, at 7:07 AM, Norman McLeod <[email address]> wrote:

The funds will be returned no question.
You said it was a police matter now so I would rather to just concentrate on returning the funds. I believe that it is in my best interest to be silent until the funds are returned.
GOD BLESS,
Norman"

(Emphasis and punctuations as in original emails)

[60] I accept the position of the appellant and the GLC that the Committee erred in its treatment of the letter of 12 September 2008 as being indicative of the appellant's control over the complainant's money, which rendered her liable to account for it. The Committee's finding on this issue is seriously undermined by indisputable evidence to the contrary contained in the email correspondence that was exhibited. I am mindful that there is a pending claim by the complainant before the Supreme Court with regard to these funds. Therefore, I will express no opinion regarding the whereabouts of the funds. Nevertheless, it suffices to say that these emails would have been effectual in raising a reasonable doubt in the mind of a reasonable tribunal of fact as to whether the proceeds of the transaction were in the hands or within reach of the appellant for repayment by her, based on the letter of 12 September 2008. It is apparent on the face of the email

correspondence that the appellant was seeking to get a refund from Mr McLeod, who, seemingly, accepted that he was the one responsible to make the refund.

[61] Other evidence before the Committee also shows that the money was sent by the complainant's stepfather to the account of Sotayreeah. There is nothing to show that the appellant ever had control over the funds after that. There was nothing in the email correspondence to confirm the money was in the appellant's hands or at a place where she could disburse it or direct its disbursement. The dialogue between her and Mr McLeod was enough to show, at least, that the appellant did not speak the truth in the letter and had unwisely undertaken to make payments to the complainant and his company when she did not have the money in hand to do so and she knew she was in no position to do so. Her action in this regard is the subject of deeper scrutiny later in my analysis. However, for immediate purposes, it is safe to say that there was sufficiently cogent evidence to cast doubt on the complainant's allegations that the appellant held the money for him and to his credit for which she should account. It cannot be said, beyond a reasonable doubt, that she assumed the responsibility to account for the investment sum that was not or ever under her control.

[62] In my view, in coming to its conclusion that the appellant should account for the money, the Committee ignored, overlooked or failed to appreciate crucial evidence pointing to a contrary conclusion equally consistent with the innocence of the appellant regarding the holding of the funds. In the light of the email correspondence that was never rebutted by any evidence to the contrary from the complainant or elsewhere, the Committee could not have been satisfied to the extent that it was sure that the appellant had the funds under her control, directly or indirectly. Therefore, the Committee was plainly wrong in its findings that the appellant had the money in her hand or somewhere else where she could effect or direct disbursement of it to the complainant.

[63] Accordingly, I find, in line with the contention of the appellant and the concession of the GLC, that the Committee erred in its conclusion that the appellant acted in breach

of canons IV(r) and VII(b)(ii) because she failed to account to the complainant for the money, she had for him under her control. The appeal also succeeds on issue (3).

Issue (4) – Whether the Committee erred when it found that the appellant acted with inexcusable and deplorable negligence in the performance of her duties (grounds d. and i.)

[64] After stating several findings of fact regarding the appellant's conduct, the Committee, at finding no. 76 of the liability judgment, found that "the [appellant], in having conduct of this transaction, acted with inexcusable and deplorable negligence in the performance of her duties". This was, of course, in breach of canon IV(s), which states that:

> "(s) In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect."

[65] The Committee, however, later framed its conclusion in this way:

> "CONCLUSIONS: In light of the above findings, the panel is persuaded to a standard of proof of 'beyond reasonable doubt' that the attorney is guilty of professional misconduct[.] **The attorney has breached canons iv(k) iv(r) vii(b) (ii) and I(b) of the Legal Profession of (Canons of Professional Ethics) Rules**.
>
> 1. …
> 2. **The attorney acted with inexcusable and deplorable negligence in the performance of her duties.**
> 3. …
> 4. … " (Emphasis added)

[66] It is noted from the emphasised portion of the extract above that the Committee in its conclusion did not list canon IV(s) as one of the Canons that was breached. It specifically named canons IV(k), IV(r), VII(b)(ii), and I(b). However, it is undeniable that canon IV(s) was not only within the Committee's contemplation during its deliberations

but was found to have been breached by the appellant. Therefore, the omission of canon IV(s) from the list of canons expressly referred to by the Committee in its conclusion was clearly an oversight and is not fatal to its decision.

[67] The crucial question now is whether it can properly be said, as the appellant contends, that she should not be held liable on the basis that she acted with inexcusable and deplorable negligence in the performance of her duties.

[68] In **Norman Samuels v General Legal Council** [2021 JMCA Civ 15, the court considered the fault required to establish professional misconduct due to inexcusable and deplorable negligence. At paras. [84] and [85] of the judgment, the court referenced several passages from pages 144-146 of the helpful work of John Gould and others in the textbook, The Law of Legal Services (2015). Those extracts are worth repeating in this case, and so I will proceed to do so here:

> "[84] The learned authors of the text, The Law of Legal Services (2015) at pages 144 – 146, helpfully noted at paragraphs 4.39 – 4.40 that there is a distinction between the fault required for professional negligence and that required for misconduct. They referenced dicta from **Saif Ali v Sydney Mitchell & Co** [1980] AC 198 at pages 218 and 220, where Lord Diplock explained that **the concept of negligence within this context involves 'advice, acts or omissions in the course of [the lawyer's] professional work which no member of the profession who was reasonably well-informed and competent would have given or omitted to do'.**
>
> [85] At page 145, paragraph 4.40 of the same text, the learned authors noted that the culpability required for misconduct does not have to amount to a lack of integrity; but it is more than simply making a mistake. Citing the words of Lord Cooke in **Preiss v The General Dental Council** [2001] 1 WLR 1926 at 1936, they continued:
>
> > 'It is settled that professional misconduct does not require moral turpitude. Gross professional negligence can fall within it. Something more is required than a degree of negligence enough to

> give rise to civil liability but not calling for the opprobrium that inevitably attaches to disciplinary offences.'"
>
> In **Re A Solicitor** [1972] 1 WLR 869, where it was decided that negligence by a solicitor may amount to professional **misconduct 'if it is inexcusable and as such to be regarded as deplorable by fellow solicitors' (**see John Gould et al, The Law of Legal Services (2015), page 145 at paragraph 4.41)." (Emphasis added)

[69] It is against this background of the standard of conduct required to ground professional negligence in the sense outlawed by canon IV(s), that the acts and omissions of the appellant have been evaluated to ascertain whether the Committee was correct in its findings that she acted with inexcusable and deplorable negligence. Obviously, the Committee's findings were significantly informed by crucial aspects of the appellant's evidence elicited during cross-examination. There, the appellant testified that:

i. she met Mr McLeod for the first time in 2008 when she was introduced to him;

ii. Mr Donovan Hunter received approval from Mr Harold Brady for the re-establishment of the JRC but she carried out no due diligence check on Mr Hunter;

iii. she carried out checks regarding Mr McLeod by contacting an attorney-at-law with whom Mr McLeod had done business as well speaking to the principal of a company that he had raised money for and to whom she was referred by the attorney-at-law;

iv. she asked for no written reference and did no police record checks regarding Mr McLeod;

v. she conducted research on Schwarzenberg Trust Services, requested and received documents from one Dr Delroy Daknu,

a trustee of the company. She shared the documents with the complainant. She was not able to find the documents.

vi. Schwarzenberg Trust Services was an overseas company not incorporated in Jamaica. She was not able to secure its original certificate of incorporation or access documents relating to it; and

vii. the nature of the company had changed in about October or November 2008 from commercial to non-commercial or private. It is still on record but the documents are not accessible.

[70] The following dialogue then ensues between the panel and the appellant:

> "Panel: Prior to your preparation of the agreement 8.8.2008 you accessed information on line [sic] of the company?
>
> Lawrence: Yes.
>
> Panel: Did you down load [sic] information of the company and keep it?
>
> Lawrence: I did not print all the documents.
>
> Panel: Did it occur to you that you should?
>
> Lawrence: I agree now. Events were unfolding in a short space of time.
>
> Panel: By the internet?
>
> Lawrence: Yes, by e-mails. It was copied to Mr. Northover in 2008.
>
> Panel: In such a complex commercial transaction you did not have anything?
>
> Lawrence: Mr. McLeod was coming to me and I had no reason to doubt him."

[71] At the end of the hearing, the appellant failed to produce the documents she said she had examined that would prove the existence and legal status of Schwarzenberg Trust Services. She also failed to provide documentary evidence establishing the connection between Sotayreeah and Schwarzenberg Trust Services. Additionally, she failed to show anything in writing evidencing a due diligence search regarding Mr McLeod and his affiliated companies.

[72] Counsel for the GLC, against this background, helpfully collated several pieces of evidence regarding the appellant's conduct that they contended are demonstrative of inexcusable and deplorable negligence. For expediency's sake, with slight modifications, I have adopted them as they accurately reflect the critical evidence that was before the Committee of the appellant's acts or omissions that would justify its findings of gross negligence amounting to professional misconduct:

(i) Failing to take steps to ensure that the JRC had approved and authorised the purported investment scheme involving Schwarzenberg Trust Services and Mr McLeod.

(ii) Failure to do due diligence and to perform the relevant and necessary enquiries and searches in relation to the existence of Schwarzenberg Trust Services before introducing it to the complainant and so failed to protect the best interests of the complainant.

(iii) Drafting a loan agreement between the complainant's company, and an overseas company, with no connection whatsoever to the jurisdiction, and of which there was no evidence that it exists or ever existed at the time she drafted the agreement.

(iv) Failure to conduct any or adequate due diligence to confirm and to establish before the Committee that Mr McLeod was a bona

fide representative of Schwarzenberg Trust Services and authorised to enter into a binding contract on its behalf especially having regard to the fact that she had only been recently introduced to him.

(v) failing to conduct due diligence as to the legitimacy of Sotayreeah, the overseas cash management company, to which she instructed the complainant to lodge the loan sum. There was no evidence that Sotayreeah had any legal status to collect deposits.

(vi) Failing to ensure and to show the connection between Schwarzenberg Trust Services and Sotayreeah although she gave evidence that Sotayreeah was owned by Schwarzenberg.

(vii) Failure to produce written instructions from Schwarzenberg Trust Services for the money to be lodged in an account at Sotayreeah.

(viii) Failing to open bank account in the BVI where the principal sum ought to have been lodged.

(ix) Failing to stamp the loan agreement and personal guarantee.

[73] The Committee also took these matters into account in assessing the appellant's conduct in the performance of her duties as an attorney-at-law and in concluding that she was professionally negligent in a manner and to an extent that it constituted professional misconduct.

[74] In addition, as highlighted by counsel for the GLC, the appellant also caused monies due to the complainant to be deposited to her husband's overseas bank account, which was not a client trust account. It is even more disconcerting that the appellant also asked her husband to issue a cheque to the complainant, which was dishonoured by the

bank. To date, that sum of US$15,000.00 has not been paid to the complainant. On the appellant's evidence, her husband was not an attorney-at-law in practice with her and neither was her name on his account at the time the cheque was drawn.

[75] Regulation 3(1) of the Legal Profession Act (Accounts and Records) Regulations 1999 ('the Accounts and Records Regulations'), requires every attorney-at-law who receives trust money to pay the money into a clients' account, forthwith. Regulation 2(1) defines 'trust money' to mean "money received by an attorney that belongs in whole or in part to a client or that is held on a client's behalf or to his or another's direction order, and includes money advanced to an attorney on account of fees for services not yet rendered or of disbursements not yet made". Further, regulation 17 states that:

> "17. Failure by an attorney to comply with any of the provisions of these Regulations shall constitute misconduct in a professional respect for the purposes of section 12 of the principal Act."

[76] I am quite cognizant that a breach of regulation 3(1) of the Accounts and Records Regulations was not one of the charges against the appellant before the Committee. The appellant's conduct in treating with the client's money in the way she did, was inexcusable not merely because it breached the accounting regulations but, more so, it resulted in money due to the complainant not being paid to him. It was a gross dereliction in duty on the part of the appellant in allowing the complainant's money to be deposited to the account of her husband to which she was not a signatory, and which was not a client trust account. This is conduct that cannot be ignored in consideration of whether the appellant acted with inexcusable and/or deplorable negligence or neglect. It is also relevant to the issue of whether her conduct fell far below the standard expected of an attorney-at-law and was such as to bring the legal profession into disrepute in breach of canon I(b).

[77] It is also necessary to say in light of all the evidence that was before the Committee that the appellant was not only acting as an attorney-at-law but also as a 'woman of business' in her dealings with the complainant, Mr McLeod and Schwarzenberg Trust. In

this regard, she actively sought investors for what now turns out to be a questionable investment scheme and acted in her professional capacity as an attorney-at-law for the lender and the borrower in the same investment scheme. The multiple roles of the appellant were fraught with inherent risks, which any competent and prudent attorney-at-law of her experience and standing, ought to have recognised. The appellant's failure to appreciate the precarious position in which she had placed herself and the complainant is enough to demonstrate that, at minimum, she lacked the sound judgment that is required of a member of the legal profession and, at worst, was grossly reckless.

[78] In the light of the evidence and the conclusions arrived at as detailed above, I am of the opinion that the Committee was justified in its ultimate finding that the appellant acted with inexcusable and deplorable negligence in the performance of her duties.

Issue (5) – Whether the Committee erred in finding that the appellant failed to maintain the honour and dignity of the profession and failed to refrain from behaviour that tends to discredit the profession of which she is a member (ground j.)

[79] The appellant contends that the Committee erred in its findings that she had breached canon I(b). The GLC's response is that the appellant had committed several acts which tend to discredit the legal profession.

[80] Canon I(b) of the Canons states that:

> "(b) An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member."

[81] As counsel for the GLC submitted, this court in **Arlene Gaynor v The Disciplinary Committee of the General Legal Council** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 72/2004, judgment delivered 28 July 2006, ("**Arlene Gaynor**') directed, at para. 35 of the judgment, that the test to be applied in determining whether the conduct of the attorney falls within canon I(b) is not whether the attorney would be liable in negligence, deceit, or innocent misrepresentation

but rather that "the code of conduct which the Canon is enshrined, requires that attorneys act with honour and propriety".

[82] The court in **Arlene Gaynor** also referenced dicta from **Re G Mayor Cooke** (1889) 5 TLR 407 ('**Re Cooke**') that:

> "A solicitor must do for his client what was best in his own knowledge, and in the way which was best to his own knowledge, and if he failed in either of those particulars, he was dishonourable."

[83] In all the circumstances of this case, it cannot reasonably be said that the appellant acted with honour and propriety in her dealings with the complainant's business. I accept the submissions of counsel for the GLC and find that all the matters highlighted above in establishing professional negligence against the appellant along with additional conduct on her part, as manifested on the evidence, constitute adequate proof that she failed to maintain the honour and dignity of the legal profession.

[84] She failed to do what was best for the complainant in conducting due diligence search as to the legal standing and bona fides of the parties she invited him to contract with and to whom he entrusted his money. She prepared an agreement in which Sotayreeah was never named as a third party through whom payments were to be made but yet she directed payments to that company with no supporting documentation establishing a legitimate nexus between it and Schwarzenberg Trust Services. She also failed to ensure that the loan agreement and guarantee she drafted for the complainant effectively safeguarded his interest, including its enforceability at law.

[85] The learned authors of The Law of Legal Services (2015), at paras. 9.12 and 9.13, by reference to decided cases, noted that:

> "9.12 Where a client negotiates a transaction in which his solicitor was not involved, this does not necessarily relieve the solicitor of the duty of pointing out to his client any legal issues of which his client might have been unaware, and

> drawing his client's attention to any hidden pitfalls [**Pickersgill v Riley** [2004] 1 Lloyd's Rep 795 at para. 11].
>
> 9.13 A solicitor owes a duty to his client on the contents of relevant documents; to check that his client understands the effect of any document which is being negotiated; and depending on the circumstances, to be able to correct any misunderstanding relating to the important elements of the transaction [**Marplace (Number 512) v Chaff Street (A Firm)** [2006] EWHC 1919 Ch p. 79]."

[86] In this case, it was the appellant who brought the transaction to the complainant and prepared the legal documents relative to it. She held herself out as having knowledge of the investment scheme. She was promoter/marketer for Mr McLeod and his company. The burden was even heavier on her to do for the complainant "what was best in her own knowledge" and "in the way it was best to her own knowledge". She failed to do so. Following the strong guidance of **Re Cooke**, it can safely be said that the appellant acted dishonourably.

[87] Also connected to the unsatisfactory conduct of the appellant, which would further support this finding that she acted dishonourably, was the letter of 12 September 2008 that she wrote to the complainant. In that letter, she explicitly asserted that she had received the money for transmission to the complainant. The appellant went as far as to inform the complainant that:

> "**The funds required for use in Jamaica are en route to BNS by wire transfer from our Citibank account in Miami**, and the principal remains in the cash management company for onward transmission to the BVI. **The wire transfer to Jamaica is being done in two parts for greater banking convenience and less visibility**." (Emphasis added)

[88] The appellant was, therefore, saying that she had not only received the money but she, in turn, had sent it from her own account in Miami (held jointly with her husband, it seems) to Jamaica. It turned out, on her own admissions, that nothing she said, in the letter, regarding the money was true. In essence, the appellant gave an undertaking to

pay money over to the complainant based on false information and with full knowledge at the time that she was not in a position to do so. This seriously undermined her credibility and trustworthiness as an attorney-at-law. Her actions were such as to bring the legal profession into disrepute.

[89] In my view, the Committee did not err in finding that the appellant failed to maintain the honour and dignity of the profession and had behaved in a manner that would tend to discredit the legal profession in breach of canon 1(b). On this issue, the appeal fails.

Conclusion on liability

[90] I cannot accept the argument of counsel for the appellant that once the charge of dishonesty or fraud is not made out against the appellant, all else should fail, and so the Committee's decision cannot stand. Mr Small was quick to highlight, and rightly so, that some findings of the Committee were posited on the basis of dishonesty or fraud, while some were posited on the basis that the conduct of the appellant fell short of the standards required of an attorney-at-law, even in the absence of dishonesty. Mr Small further submitted that there is no legal basis that supports the position of the appellant that if the Committee erred on the findings of dishonesty, then its findings as to negligence must also be impeached. He maintained that despite the GLC's concession that the Committee's finding on the issue of dishonesty was flawed, there was still an abundance of evidence of gross negligence, conflict of interest and lack of candour on the part of the appellant that warrants the disciplinary sanctions imposed on her. The Committee's findings regarding these other breaches were unassailable and should be upheld, Queen's Counsel argued.

[91] I accept Mr Small's arguments as sound and compelling. I find that there was enough evidentiary material before the Committee that strongly supports a finding of professional misconduct on the part of the appellant on bases other than fraud or dishonesty. The complaint against her was not based on dishonesty only but also, among other things, inexcusable and deplorable negligence and dishonourable conduct that

tends to bring the profession into disrepute. These charges were made out to the requisite standard. Therefore, I conclude that the Committee was justified in its decision that the appellant was guilty of professional misconduct, even though the dishonesty alleged, regarding her involvement in persuading the complainant to invest in the investment scheme, was not made out to the requisite standard.

[92] Accordingly, the Committee would have been justified in imposing appropriate sanctions for those breaches. It is to a consideration of the appropriateness of the sanctions to which I will now proceed.

B. The sanction judgment

Issue (6) – Whether the Committee erred in imposing the sanctions that it did on the appellant (grounds e., f., h., k., l., m., n., and o.)

[93] Canon VIII(d) of the Canons (as amended) states that:

> "Breach by an Attorney of any of the provisions of Canons I(b), (g), II(a), (b), (d), (e), (f), (g), (h), (j), (k), (m), III(d), (e), (h), (k), IV(a), (e), (g), (j), (o), (p), (r), (s), (t), V(e), (f), (g), (h), (i), (m), (n), (s), VI(c), (cc), (d), (e), (h), (i), (j), VII(a), (b), VIII(b) 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."

[94] In turn, section 12(4) of the Legal Profession Act states that:

> "12. – …
>
> (4) On the hearing of any such application the Committee may, as it thinks just, make one or more of the following orders as to –
>
> (a) striking off the Roll the name of the attorney to whom the application relates;
>
> (b) suspending the attorney from practice on such conditions as it may determine;

(c) the imposition on the attorney of such fine as the Committee thinks proper;

(d) subjecting the attorney to a reprimand;

(e) the attendance by the attorney at prescribed courses of training in order to meet the requirements for continuing legal professional development.

(f) the payment by any party of costs of such sum as the Committee considers a reasonable contribution towards costs; and

(g) the payment by the attorney of such sum by way of restitution as it may consider reasonable,

so, however, that orders under paragraphs (a) and (b) shall not be made together."

[95] Against this background, Lord Gifford contended that the findings of the Committee are findings of criminal misconduct, fraud and unjust enrichment. He, however candidly accepted that if the evidence justified those findings, then the sanctions of striking off and restitution with payment of compound interest, were inevitable. However, Queen's Counsel argued that the concession by the GLC on the issue of fraud has caused the entire finding of the Committee to be poisoned and so the sanctions should be set aside.

[96] Queen's Counsel maintained that if the court was to conclude that the appellant was guilty of the other breaches, the sanction of striking off would, in any event, be inappropriate and should be set aside. Nothing the appellant did warrants the ultimate sanction, he submitted.

[97] With regard to the order for restitution, Queen's Counsel submitted that the only money received by the appellant was US$66,000.00, out of which she paid US$34,000.00 to the complainant and retained the balance of US$32,000.00 on account of fees due from the borrower. He contends that the sanction of restitution should, therefore, be

limited to the sum of US$32,000.00, if the court upheld the Committee's decision on liability.

[98] In response, Mr Small submitted that even with the absence of dishonesty, the sanction of striking off is still warranted in all the circumstances. He relied on the case of **Bolton v Law Society** [1994] 1 WLR 512 ('**Bolton**') in support of this argument.

[99] With regard to the order for restitution, Mr Small further argued that even where it is found that the funds were not handled by the appellant, it would not have prevented the Committee from making an order for restitution as such an order is permitted by section 12(4)(g) of the Legal Profession Act. He contended that the same principles applicable to the exercise of the Committee's discretion apply to this court.

[100] Counsel also placed reliance on **Salsbury v Law Society** [2009] 1 WLR 1286 ('**Salsbury**'), in submitting that absent any error of law, an appellate court should be reluctant to interfere with the sanctions imposed by the disciplinary body, an expert and well-informed tribunal, which is well placed to assess what measures are to be imposed for professional misconduct and how to protect the public's interest. The Committee, he submitted, has committed no error of law in the instant case.

The standard of review

[101] In the Privy Council decision of **Colin Kenneth McCoan v General Medical Council** [1964] 1 WLR 1107, the Board, at page 1113, stated that:

> "Their Lordships are of the opinion that Lord Parker C.J. may have gone too far in *In re a Solicitor* [1960] 2 Q.B. 212 when he said that the appellate Court would never differ from sentence in cases of professional misconduct but their Lordships agree with Lord Goddard C.J. in *In Re a Solicitor* [1956] 3 A.E.R. 516 at 517 when he said that **it would require a very strong case to interfere with sentence in such a case, because the Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct**." (Emphasis added)

[102] However, in **Salsbury**, the English Court of Appeal in the wake of the European Convention on Human Rights ('the Convention') stated after a review of the earlier authorities, including **Bolton**:

> "30 From this review of authority I conclude that **the statements of principle set out by the Master of the Rolls in Bolton remain good law, subject to this qualification. In applying the Bolton principles the Solicitors Disciplinary Tribunal must also take into account the rights of the solicitor under articles 6 and 8 of the Convention. ...It is now an overstatement to say that 'a very strong case' is required before the court will interfere with the sentence imposed by the Solicitors Disciplinary Tribunal.** The correct analysis is that the Solicitors Disciplinary Tribunal comprises an expert and informed tribunal, which is particularly well placed in any case to assess what measures are required to deal with defaulting solicitors and to protect the public interest. **Absent any error of law, the High Court must pay considerable respect to the sentencing decisions of the tribunal. Nevertheless if the High Court, despite paying such respect, is satisfied that the sentencing decision was clearly inappropriate, then the court will interfere**." (Emphasis added)

[103] This court, in **Michael Lorne v The General Legal Council (Ex parte Olive C Blake)** [2021] JMCA Civ 17, recognised the slight change in perspective presented by **Salsbury** in recognition of the impact of the Convention on proceedings before the Tribunal. F Williams JA, speaking for the court, noted that a perusal of later cases after **Bolton** has conveyed "the impression that the modern-day approach is somewhat less hidebound than it originally was". He further highlighted the similar impact our Charter of Fundamental Rights and Freedoms would have on proceedings before the Committee, especially the section 16 due process provisions, and opined at para. [29]:

> "Reference to the provisions in the Convention and the Human Rights Act just seems to us to call for a greater awareness on the part of disciplinary tribunals of the rights of persons appearing before them and to try as much as possible to ensure that the requirements of due process are followed."

[104] Additionally, I have found the statement of the relevant principles of law that govern the approach that should be employed to appeals against sanctions in cases such as these, in **Fuglers LLP and others v Solicitors Regulatory Authority** [2014] EWHC 179 (Admin) ('**Fuglers**'), superbly helpful. At para. 13 of that judgment, Popplewell J expressed the applicable principles that have been derived from various cases, including **Bolton**, **Salsbury** and **Solicitors Regulation Authority v Anderson** [2013] EWHC 4021 (Admin) ('**Anderson**'). The principles have been modified and adopted for current purposes to be 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 in the future, and the reputation and standing 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 that a very strong case is required before the court will interfere (see **Salsbury** at para. [30], per Jackson LJ),

> nevertheless, the test is a high hurdle (see **Anderson** at para. [65], per Treacy LJ).

[105] Accordingly, for this court to interfere with any of the sanctions imposed, the Committee must have made an error of law or the sanctions it had imposed are clearly inappropriate. It is against the background of this established standard of review of decisions from the Committee that I have evaluated the grounds of appeal challenging the Committee's sanction decision.

The approach to sentencing

[106] The appellant's complaint in grounds of appeal l. and m. is that the Committee erred when it refused to take into account modern principles of sentencing such as those contained in the Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017 ('the Sentencing Guidelines') utilised in criminal cases, and mitigating circumstances on the basis that it is a concept that is limited to civil proceedings. She also contends in ground n. that the Committee erred when it found that its primary objective in disciplinary proceedings is to protect members of the public and the general reputation of the profession as distinct from dealing justly with the rights of the attorney and the complainant.

[107] It is not unfair to say that the Committee did not explicitly record a step-by-step approach it had taken in sentencing the appellant, which would demonstrate that its reasoning accords with the modern approach as seen in the jurisprudence of the Solicitors' Disciplinary Tribunal in the United Kingdom and the decisions from the courts dealing with appeals from that tribunal. I think the time has come for a more methodical approach to sentencing in disciplinary proceedings before the Committee in keeping with the modern thrust as evidenced by the sentencing guidelines in criminal cases and the Solicitors Disciplinary Tribunal Guidance Note on Sanctions (2021), 9th edition ('the SDT Guidance Note'), which is available online. This guidance note and earlier editions, provide a model that the Committee could well emulate. At the time of the sanction judgment,

the SDT Guidance Note (2016), 5th edition, would have been available and could have been utilised as persuasive material.

[108] However, in the absence of a similar guidance note in Jamaica, in considering the complaint regarding the approach of the Committee and the propriety of the sanctions imposed, I have had regard to the purposes of sentencing established by Sir Thomas Bingham MR in **Bolton** as being:

(a) punishment;

(b) personal and general deterrence;

(c) removal of the risk of re-offending; and most fundamentally of all

(d) maintaining the reputation of and public confidence and trust in the legal profession.

[109] In **Fuglers**, Popplewell J, at paras. 28. to 33., instructively established a commendable approach to determining the appropriate sanctions in these cases. This approach has also been endorsed and utilised by the UK Solicitors Tribunal since 2012. I see no reason that would bar the Committee from employing the same or a similar approach to its sanctions regime. It would create greater transparency, certainty and uniformity in approach and clarity to the sentencing process.

[110] Popplewell J recognised that there are three stages to the approach, which I will summarise by application to the role of the Committee, for ease of reference. They are:

(i) assess the seriousness of the misconduct;

(ii) bear in mind the purpose for which sanctions are imposed by the Committee; and

(iii) choose the sanction that most appropriately fulfills that purpose for the seriousness of the offence.

[111] In assessing the seriousness of the offending at the first stage, the most important factors, according to Popplewell J, would be:

(1) the culpability for the misconduct in question;

(2) the harm caused by the misconduct, which is not measured wholly, or even, primarily by financial loss caused to any individual or entity. A factor of the greatest importance will be the impact of the misconduct upon the standing and reputation of the profession as a whole. Moreover, the seriousness of the misconduct may lie in the risk of harm to which the misconduct gives rise;

(3) aggravating factors (eg previous disciplinary matters); and

(4) mitigating factors (eg mitigation at an early stage or making good any loss).

[112] At the second stage of the enquiry, the Committee must have in mind that "by far the most important purpose of imposing disciplinary sanctions is addressed to other members of the profession, the reputation of the profession as a whole, and the general public who uses the services of the profession, rather than the particular attorney-at-law whose misconduct is being sanctioned".

[113] At the third stage, the Committee is to first consider which category of sanction is appropriate from the range, which is available.

[114] The Committee must also have regard to the principle of proportionality that undergirds all sentencing regimes. The SDT Guidance Note at para. 9. proves useful in this regard. It reads:

> "The Tribunal is a 'public authority' for the purposes of the Human Rights Act 1998, and it seeks to uphold and promote the principles of the European Convention on Human Rights in accordance with the Act. In deciding what sanction, if any, to impose the Tribunal should have regard to the principle of proportionality, weighing the interests of the public with those of the practitioner. The interference with the solicitor's right to practise must be no more than necessary to achieve the Tribunal's purpose in imposing sanctions..."

[115] Although the Committee did not explicitly adopt a sentencing approach along the lines utilised in similar disciplinary proceedings in the UK, I cannot agree with the appellant that the appropriate guidance was to be obtained from the criminal Sentencing Guidelines. Those guidelines are not applicable. Therefore, the contention of the appellant that they should have been applied by the Committee (ground l.) is without merit. Also without merit is the complaint that the Committee failed to take into account mitigating circumstances on the basis that it is a concept that is limited to civil proceedings (ground m.). The Committee had regard to evidence of the appellant's good character and her work history and found her curriculum vitae to be impressive. The Committee further considered counsel's arguments regarding the duty of the complainant to mitigate. It was correct in its reasoning on this issue that "the duty to mitigate damages imposed on a claimant in certain civil proceedings does not apply in disciplinary proceedings".

[116] Additionally, the Committee did not err in its reasoning that the primary factor in determining the sentence should be the protection of the public and the general reputation of the profession (ground n.). In **Bolton**, Sir Thomas Bingham MR made it clear, at page 518 of the report, that the most fundamental purpose of all in sentencing in such proceedings is:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission."

There is, therefore, no merit in ground n. that the Committee "erred as a matter of fair trial" by giving effect to what, to my mind, is a clear principle of law in keeping with the pronouncements of Sir Thomas Bingham in **Bolton** and other cases.

[117] There is also not one iota of merit in the appellant's contention in ground o. that the Committee demonstrated actual bias which rendered its decision unsafe.

Whether the sanctions imposed by the Committee are clearly inappropriate

[118] Given my acceptance that the Committee did not adopt a methodical approach to sentencing in keeping with the modern trend as shown to exist in the UK, it behooves this court to investigate whether the sanctions imposed can be said to be clearly inappropriate based on the approach utilised by the Committee.

(i) Seriousness of the breaches

[119] I have already concluded that the Committee erred in its finding that the appellant acted dishonestly and in breach of canons IV(r) and VII(b)(ii). Therefore, any sanction to be imposed cannot reflect any culpability for these offences. Accordingly, our consideration of the seriousness of the misconduct and the appropriateness of the sanctions imposed by the Committee must be confined to the findings relating to the following remaining breaches:

(i) that the appellant acted as attorney-at-law for two clients in a matter where their interests were likely to conflict or her independent professional judgment was likely to be impaired in breach of canon IV(k);

(ii) that the appellant acted with inexcusable and deplorable negligence in the performance of her duties in breach of canon IV(s); and

(iii) that the appellant failed to maintain the honour and dignity of the profession and failed to refrain from behaviour that tended

to discredit the profession of which she is a member in breach of canon I(b).

a. Breach of canon IV(k) – conflict of interest

[120] In the light of canon VIII(d), where an attorney-at-law is charged for a breach of the Canons, the Committee may apply sanctions pursuant to section 12(4) of the Legal Profession Act only where the attorney-at-law is found to be in breach of the canons specifically outlined in canon VIII(d). It is noted, however, that canon IV(k) is not one of the canons outlined in canon VIII(d). Accordingly, it seems that a breach of canon IV(k) ought not to attract any of the orders contained in section 12(4) of the Legal Profession Act. The omission of canon IV(k) from section 12(4) of the LPA has piqued my curiosity because the rationale for the omission is not readily apparent to me.

[121] However, it seems safe to say that the circumstances of this case, which have led to a breach of canon IV(k) may be considered as forming part and parcel of the conduct of the appellant that rendered her inexcusably and deplorably negligent (canon IV(s)). It can also be seen as being connected to the breach of canon I(b). So the overall conduct of the appellant, in treating with the complainant's transaction in her multiple roles as investment promoter/financial advisor and attorney-at-law, who drafted the loan agreement for the complainant to pursue that investment opportunity, would include her clear conflict of interest and lack of sound judgment in representing both parties as the Committee found.

[122] Given the nature of the transaction and the serious harm it has caused and is continuing to cause to the complainant and, potentially, to the reputation of the profession, this breach on the part of the appellant was serious. Even if, by itself, it is not a weighty a breach, it becomes more serious when it is combined with the other breaches for which she is liable.

b. Breach of canons IV(s) and I(b) - inexcusable and deplorable negligence, dishonourable behaviour and failure to maintain the honour and dignity of the profession

[123] It is convenient to simultaneously evaluate the seriousness of the findings regarding breach of canons IV(s) and 1(b). The circumstances surrounding the appellant's breach of those canons are of a serious nature, for reasons I have already expressed in considering the various instances of her negligent conduct, which is such as to bring the legal profession into disrepute.

[124] On the facts accepted as true by the Committee, the appellant was a seasoned attorney-at-law in commercial law practice at the time of the transaction in question. She was dealing with a client who was 22 years old and with whom she has had contact, up to then, in her capacity as an attorney-at-law acting on his behalf. She was the one who introduced to him the investment idea and encouraged him to invest in the project on the basis that it was a good and safe investment from which he would secure very favourable returns. She introduced him to major players in the proposed arrangement, especially Mr McLeod, who she did not know before. Her husband, who is not an attorney-at-law, was also a part of her dealings involving Mr McLeod and the complainant. She was instrumental in giving instructions for the wiring of the investment sum to a third-party company, whose legal capacity and legitimate connection to Schwarzenberg Trust Services she did verify. It is evident that, from day one, the appellant, in approaching the complainant about the purported investment project, had stepped out of her role as an attorney-at-law into a role as investment promoter and financial advisor.

[125] Therefore, having encouraged the complainant to invest in the project, in her obvious capacity as promoter and financial advisor, the appellant then stepped back in her official role as attorney-at-law and drafted the relevant loan documents to give effect to the investment. She took steps, as the Committee accepted, to ensure the smooth transmission of the funds through a third-party institution, outside the jurisdiction, purportedly for the borrower, who was also outside the jurisdiction. This was all in a context where the appellant did not recommend that the complainant should seek

independent legal and financial advice. She acted as the lone attorney in the transaction for both parties with potentially conflicting interests. As Mr Small so aptly summed it up, by taking on all these roles, the appellant was "attempting to run with the hares and hunt with the hounds".

[126] Having embarked on that risky undertaking by "running" with both borrower and lender, the appellant failed to protect the interests of the complainant by conducting the necessary due diligence checks and research regarding the entities with whom the complainant was dealing and who she said she represented. She knew he was not investing a paltry sum. On top of that, she failed to have the relevant loan documents stamped in accordance with the law to ensure or secure the enforceability of the loan in the complainant's favour in the event of a dispute.

[127] Consequently, in my view, the appellant's conduct stands as a serious breach of not only canon IV(k) but canon IV(s). Cumulatively, these breaches, within the context of the totality of the evidence, constitute an equally serious breach of canon I(b), which is to say, the appellant had failed to, at all times, maintain the honour and dignity of the profession and abstain from behaviour that may tend to discredit the profession of which she was a member.

[128] The breaches of canons IV(s) and I(b) would subject her to the penalty regime prescribed in section 12(4) of the Legal Profession Act.

(ii) The appropriateness of the sanctions imposed bearing in mind their purpose

[129] The Committee had ordered restitution of the principal sum of the loan with compound interest and a striking off of the appellant's name from the roll with costs to the complainant. It is well-established that the most obvious reason for a striking off sanction is dishonesty unless there are exceptional circumstances (see **Bolton** and **Salsbury**).

[130] The sanctions imposed by the Committee, in the instant case, were substantially informed by its finding that the appellant had acted dishonestly. It stated at page 6 of the sanctions judgment that:

> "…When the panel looks at the misconduct of which it has found the respondent guilty, it is utterly unacceptable. **The panel found that the attorney acted dishonestly, and was involved 'in a dishonest scheme to persuade the complainant to part with his funds in pursuit of what turned out to be a fictitious investment**.'
>
> The panel further found 'that at every stage of the proceedings the attorney was the main actor who engineered and facilitated the creation and performance of the Loan Agreement and the disbursement of the funds.' **It is not correct for counsel for the respondent to draw any conclusion that the respondent was only found guilty of inexcusable and deplorable negligence and that she should really not be penalized for that infraction**.
>
> **Our findings go much further and demonstrate that the panel is of the opinion that the most material actions of the attorney were deliberate and deceitful**…
>
> **The misconduct of the attorney has to attract sanctions that are justified on the evidence and in law and send a message that such conduct will not be condoned or tolerated in the profession**…" (Emphasis added)

[131] Having already concluded that the finding of dishonesty by the Committee was unsupported by the evidence, the question that remains is whether the sanctions imposed are unjustified, disproportionate and clearly inappropriate to warrant the intervention of this court.

a. The order for restitution

[132] The basis for the Committee making an order of restitution against the appellant was seen in the conclusion of its judgment where it opined that:

> "3. The attorney shall account to his client for all the monies in the hands of the attorney for the account or credit of his client whenever reasonably required to do so.
>
> …
>
> **In light of the finding at paragraph (3) the attorney is obliged to account to the complainant for the sum of US$498,000.00. Interest is payable on that sum.**" (Emphasis added)

[133] Therefore, it is clear that the Committee's order for restitution was based on its finding that the appellant had received the sum of US$498,000.00 for the account or to the credit of the complainant and that she failed to account to him for this sum.

[134] The basis for making an order for restitution is grounded in the principle against unjust enrichment. In **Dargamo Holdings Ltd and another v Avonwick Holdings Ltd and others** [2021] EWCA Civ 1149, the court stated that:

> "54. Despite its evolutionary nature, the common law claim in unjust enrichment can, for present purposes, be summarised as follows: …**a claimant has a right to restitution against a defendant who is unjustly enriched at the claimant's expense. The purpose of the claim is to correct normatively defective transfers of value, usually by restoring the parties to their pretransfer positions**…
>
> 55. Courts and commentators have broken down the conceptual structure of a claim in unjust enrichment into four elements: i) Has the defendant been enriched? ii) Was the enrichment at the claimant's expense? iii) Was the enrichment unjust? iv) Are there any defences? (See *Goff & Jones* at 1-09)." (Emphasis added)

[135] This court has found that the appellant was in receipt of US$66,000.00. This is not in dispute. It is also not disputed that from that sum, she took US$32,000.00 purportedly as fees. That sum should be paid to the complainant as restitution. The appellant had also asked her husband to issue the US$15,000.00 cheque to the complainant. She claimed she expected these funds to have been available to him. The cheque was issued, as intended, but was dishonoured. This payment remains outstanding. I have viewed the

appellant's incoherent evidence regarding the circumstances surrounding the issuance of this cheque, in which she seems to be suggesting that the cheque was issued in the belief that Mr McLeod had made the payment to her husband's account. However, regardless of her explanation, by directing that the cheque be issued to the complainant, which was actually done, she would have held herself out as having received the funds from Mr McLeod for repayment and, thereby, would have raised in the complainant a justifiably legitimate expectation that he would have been paid that sum of money for which he was given the cheque in hand. Therefore, in my view, the complainant should also be paid the sum of US$15,000.00 as restitution.

[136] Accordingly, I would set aside the order for restitution in the total sum of US$498,000.00 and, in substitution, make an order for restitution in the sum of US$47,000.00 being the US$32,000.00 she retained as fees purportedly due from the borrower and the US$15,000.00 she attempted to pay by way of the dishonoured cheque.

b. The award of compound interest

[137] The appellant complained in grounds of appeal f. and k. that the Committee erred in awarding compound interest. The GLC countered that compound interest is payable and that the Committee was correct in awarding it. Counsel for the GLC relied on **Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v Inland Revenue Commissioners and another** [2007] 4 All ER 657. They contend that the House of Lords noted that in circumstances where there has been a breach by a fiduciary, an award of compound interest is usually necessary to achieve full restitution and hence a just result. Counsel also relied on this court's decision in **Joy Charlton & others v Air Jamaica & other** (unreported), Court of Appeal, Jamaica, Supreme Civil Appeal No 27/1996, judgment delivered 29 July 1997, which recognised the principle that where a fiduciary relationship exists, it may be appropriate to award compound interest (see para. 32 to 35 of the judgment). These two cases were applied by the Committee. Counsel argued that the findings of fact justified the award of compound interest as they demonstrate that there was, in fact, a breach of fiduciary duty committed by the appellant as the attorney-at-law

for the complainant. Additionally, they contend, as found by the Committee, that compound interest on the funds was payable by virtue of clauses 4.1, 4.2 and 4.3 of the loan agreement. Therefore, to fully compensate the complainant for his losses, an award of compound interest is appropriate given that he would have earned such interest under the loan agreement had its terms been upheld.

[138] I accept the submissions of the GLC. The Committee applied the correct principles of law on the facts before it in making an award of compound interest. I see no reason to depart from that aspect of the order given all the circumstances. The appellant is to pay compound interest on the sum of US$47,000.00 at the rate of 2% per annum and for the period as ordered by the Committee.

c. The striking off order

[139] The seriousness of the offending conduct as detailed above in looking at the seriousness of the breaches is a material consideration in considering the appropriateness of the striking-off order. As the Committee had found, the appellant was integral in the creation and performance of the loan agreement and the disbursement of the funds. However, everything regarding Schwarzenberg Trust Services and Sotayreeah was presented to the Committee by the appellant by word of mouth which, to date, stands unsubstantiated and unverified. This is even after she had called Mr McLeod as a witness at her sanction hearing. Mr McLeod remained silent at the hearing, purportedly in his own self-interest and, therefore, made no effort to explain the disappearance of the money in question. The appellant's effort at an explanation was based on hearsay evidence, in the absence of Mr McLeod testifying on her behalf. Therefore, her explanation that losses were sustained in the financial meltdown of 2008 was of no evidential value.

[140] At the end of the hearing before the Committee and to this day, many questions have been left unanswered, especially regarding the whereabouts of the proceeds of the loan and the cause for its dissipation. It cannot be denied that the absence of a paper trail and evidence of verification of the legal capacity of the entities, which the appellant

encouraged the complainant to conduct business with, have served to cast a continuing blot on her reputation. A heavy dark cloud continues to hang over the appellant's dealings with the complainant's affair as an experienced commercial lawyer who claimed she was acting as lawyer for the borrower.

[141] Also connected to this, which raises questions as to her suitability to remain a member of the profession, is the letter dated 12 September 2008 that she wrote to the complainant advising him that she had disbursed money to him knowing fully well she did not. She also indicated that money was in the Sotayreeah account for disbursement to the BVI, when she had no direct knowledge or proof of that. The fact that there was no evidence of dishonesty on her part in persuading the complainant and assisting him to invest in the scheme does not negate the lack of candour she displayed in the letter she sent to him regarding the returns of his funds. What she did was not far removed from dishonesty and was almost as egregious. As the Committee found, her conduct was inexplicable.

[142] However, the missteps of the appellant did not stop there with the letter. Her conduct in taking steps to have the complainant's funds deposited to the account of her husband, which was not an express term of the written agreement, is also cause for grave concern. But to make matters even worse, the cheque of US$15,000.00 that was issued to the complainant from that account was dishonoured and remained, to this day, unsatisfied.

[143] There are several aspects of the appellant's conduct that have operated together to raise serious questions as to her competence, judgment, veracity and trustworthiness. These are all indispensable qualities necessary for the execution of her duties as an attorney-at-law. The appellant must have known or ought reasonably to have known that her conduct was in material breach of her obligations to protect her client, the public confidence in the profession and the reputation of the profession.

[144] The absence of dishonesty does not preclude a striking out order. Guidance for this is derived from **Bolton** in which Sir Thomas Bingham MR opined at page 518:

> "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… **If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case**, **but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case …** (Emphasis added)

[145] Further, and even more recently, in **The Law Society (Solicitors Regulation Authority) v Ambrose Emeana and others** [2013] EWHC 2130 (Admin), Moses LJ helpfully stated at paras. 25 and 26 that:

> "25. I did not find this process of assistance. Of course, the disciplinary tribunal must strive for consistency. But uniformity is not possible. The sentences imposed are not designed as precedents. The essential principle is that which was identified by Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 1286. **The profession of solicitor requires complete integrity, probity and trustworthiness. Lapses less serious than dishonesty may nonetheless require striking off, if the reputation of the solicitors' profession "to be trusted to the ends of the earth" is to be maintained.**

> 26. The principle identified in *Bolton* means that in cases where there has been a lapse of standards of integrity, probity and trustworthiness a solicitor should expect to be struck off. Such cases will vary in severity. It is commonplace, in mitigation, either at first instance or on appeal, whether the forum is a criminal court or a disciplinary body, for the defendant to contend that his case is not as serious as others. That may well be true. But the submission is of little assistance. **If a solicitor has shown lack of integrity, probity or trustworthiness, he cannot resist striking off by pointing out that there are others who have been struck off, who were guilty of far more serious offences. The very fact that an absence of integrity, probity or trustworthiness may well result in striking off, even though dishonesty is not proved, explains why the range of those who should be struck off will be wide. Their offences will vary in gravity. Striking off is the most serious sanction but it is not reserved for offences of dishonesty**." (Emphasis added)

[146] The STD Guidance Note, which is informed by these cases, also states at para. 56 that striking off can be appropriate where in the absence of dishonesty, the seriousness of the misconduct is itself very high; and the departure by the attorney from the required standards of integrity, probity and trustworthiness is very serious. An overall look at the totality of the misconduct is necessary.

[147] Therefore, if, in looking objectively and fairly at the evidence that was before the Committee, regarding the appellant's conduct, it is clear that it is necessary for the protection of the public interest that her name be removed from the Roll, then the striking off order should stand even though dishonesty has not been made out in the sense found by the Committee.

[148] When the circumstances are examined, the appellant would have displayed an alarming level of neglect and impropriety in dealing with the complainant's affairs that rendered her conduct nothing less than egregious for someone of her experience and knowledge. Having considered the evidence, I find that it is undeniable that the appellant's conduct fell far below the standard of skill, competence and trustworthiness

that is required of attorneys-at-law for the protection of the public and upholding the dignity of what is to be an honourable profession.

[149] Unfortunately, this unsatisfactory state of affairs cannot be sufficiently mitigated by the appellant's hitherto unblemished disciplinary record and impressive curriculum vitae, disclosed at the sanction hearing. The authorities are clear that even if an attorney-at-law is of pristine character, that does not obviate the need for the Committee to seek to maintain the public confidence in the integrity of the legal profession if the conduct is such as to cause such harm. As Sir Bingham MR stated in **Bolton:**

> "Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again... **All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness... The reputation of the profession is more important than the fortunes of any individual member.** Membership of a profession brings many benefits, but that is a part of the price." (Emphasis added)

[150] I have a strong sense of assurance that even in the absence of a finding of dishonesty and with the appellant's unblemished record, the Committee would have, nevertheless, made the striking off order based on the nature, extent and effect of the misconduct. I cannot justifiably say that the striking-off sanction is clearly inappropriate and so there is no legitimate basis for this court to disturb the Committee's order striking the appellant from the Roll.

[151] Accordingly, the striking-off order should stand. The appeal fails on this ground.

Compensation to the complainant

[152] The reduction in the sum awarded to the complainant for restitution, which is far less than his losses, leaves open the question of whether this court in setting aside the full restitution should make a compensatory order in its stead. Section 12(4) does not prohibit a combination order except for a suspension and striking off. The only statutory provision, however, that would facilitate some measure of compensation by the Committee is section 12(4)(c), which permits the imposition of a fine. This provision is extended by section 12(5)(a) to be compensatory. This section states that the Committee had the power to direct that the fine or part of it be paid to the complainant in full or partial satisfaction of any damage caused to him by the act or default giving rise to the application.

[153] The circumstances in which a fine is appropriate is taken from the SDT Guidance Note, which I find to be of tremendous persuasive worth. It states that:

> "26. A Fine will be imposed where the Tribunal has determined that the seriousness of the misconduct is such that a Reprimand will not be a sufficient sanction, but neither the protection of the public nor the protection of the reputation of the legal profession justifies Suspension or Strike Off."

[154] In this case, the imposition of the ultimate sanction is upheld. The Committee, like this court, is duty-bound to pay regard to the principle of proportionality, having weighed the public's interest against that of the appellant. In my view, the additional imposition of a fine by way of compensation to the complainant as a sanction would be disproportionate.

[155] The complainant has a more appropriate avenue through which to seek compensation, which he has pursued. The Supreme Court, in the context of those civil proceedings, will be better able to determine the compensation, if any, to which he is entitled by reference to the applicable principles of law and relevant authorities treating

with the questions of the scope of the appellant's liability in tort and/ or contract. Therefore, I do not consider it the remit of this court to embark on such an enquiry for the purpose of ensuring that the complainant is adequately compensated.

[156] The GLC's submissions for the full sum to be repaid to the complainant in these proceedings cannot reasonably be accepted. Accordingly, I would make no order for any further sums to be paid to the complainant as compensation beyond the order for restitution of US$47,000.00 with interest as specified.

Costs before the Committee

[157] The complainant was awarded costs in the sum of $750,000.00 before the Committee. That remains undisturbed as there was no ground of appeal or submissions challenging it.

Disposal of the appeal

[158] I would allow the appeal, in part. The conclusion of the Committee that the appellant acted dishonestly and in breach of canon IV(r) and VII(b)(ii) is erroneous and should be set aside.

[159] The findings of the Committee that the appellant acted for two clients with conflicting interests in breach of canon IV(k); acted with inexcusable and deplorable negligence in breach of canon IV (s); and acted dishonourably in breach of canon 1(b), are unimpeachable. The findings of the Committee on these matters should, therefore, be affirmed.

[160] The order of the Committee for the appellant to pay to the complainant the sum of US$498,000.00 as restitution is an error of law based on the erroneous finding of fact that the appellant had money in her hand or under her control to reimburse or to direct reimbursement of it. The restitution order for the appellant to pay US$498,000.00 should be set aside and substituted therefor should be an order that the appellant pay over to

the complainant, the sum of US$47,000.00 with compound interest at the rate of 2% per annum as ordered by the Committee.

[161] The order of the Committee striking the appellant from the Roll of Attorneys-at-Law entitled to practice in the several courts of the island of Jamaica is also justified and should be affirmed. Her conduct, even though not classified as fraudulent or dishonest, is, nevertheless, so grossly negligent, or, indeed reckless, so as to be sufficiently weighty to warrant the ultimate sanction of striking off.

[162] All other orders of the Committee should remain the same.

[163] With respect to the question of the costs of this appeal, in the light of the fact that neither party is entirely successful, and no submissions were made on costs of the appeal, I believe that the parties should be permitted to address the court on the issue unless they are both agreed that each party should bear its own costs.

[164] Therefore, I would order that if any party is of the view that another order for costs should be made other than that each party should bear its own costs, that party seeking an order for costs should file its submissions within 14 days of the date of this order and the responding party to file its submissions within 14 days of service of the opposing party's submissions. Unless the court receives submissions within 14 days of the date of this order, the final order on costs shall be each party to bear its own costs.

[165] In closing, it is incumbent on me to express sincere regret for the delay in the delivery of this judgment. Although I am mindful that no excuse or explanation would be enough to remedy the anxieties and inconvenience the delay might have caused, I will, nevertheless, extend profound apologies to the parties, including the complainant, for the delay.

P WILLIAMS JA

[166] I have read, in draft, the judgment of McDonald-Bishop JA. I agree with her reasoning and conclusion, and have nothing to add.

EDWARDS JA

[167] I, too, have read, in draft, the judgment of McDonald-Bishop JA. I agree with her reasoning and conclusion. There is nothing I could usefully add.

MCDONALD-BISHOP JA

ORDER

1. The appeal from the decision of the Disciplinary Committee ('the Committee') of the General Legal Council made on 2 March and 26 May 2018 is allowed, in part.

2. The decision of the Committee that the appellant acted dishonestly and in breach of canons IV(r) and VII(b)(ii) is set aside.

3. The decision of the Committee that the appellant breached canons IV(k), IV(s) and 1(b) and is guilty of professional misconduct is affirmed.

4. Order (a) of the Committee that the appellant do pay over to the complainant the sum of $498,000.00 in the currency of the United States is set aside and substituted therefor is an order that the appellant do pay over to the complainant the sum of $47,000.00 in the currency of the United States.

5. Orders (b) and (c) of the Committee, that compound interest is payable at the rate of 2% per annum from 25 September 2008 until payment, are affirmed.

6. Order (d) that costs of $750,000.00 are awarded to the complainant against the appellant is affirmed.

7. Order (e) of the Committee that the appellant is struck from the Roll of Attorneys-at-Law entitled to practice in several courts of the Island of Jamaica is affirmed.

8. If any party is of the view that another costs order should be made other than that each party should bear its own costs, that party should file its submissions within 14 days of the date of this order and the responding party to file its submissions within 14 days of service of the opposing party's submissions.

9. Unless the court receives submissions within 14 days of the date of this judgment, the final order on costs shall be for each party to bear its costs.