JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL NO 6/18

APPLICATION NO 107/2018

BETWEEN	**IAN H ROBINS**	**APPLICANT**
AND	**THE GENERAL LEGAL COUNCIL**	**RESPONDENT**

Miss Nancy Anderson for the applicant

Miss Carlene Larmond instructed by Rattray, Patterson, Rattray for the respondent

17 October and 29 November 2018

IN CHAMBERS

PHILLIPS JA

[1] Mr Ian Robins (the applicant) sought the following orders in his amended application:

> "(1) That the sanction of the Disciplinary Committee of the General Legal Council made against him on May 5 2018 be stayed pending the hearing of the Appeal herein; and
>
> (2) That the decision and sanction decision of the Disciplinary Committee made against him on April 14, 2018 and May 5 2018 be removed from the Respondent's website pending the hearing of this Appeal, or alternatively that the Respondent also

publish the order granting the stay if the stay is granted."

Background facts

[2] The background facts to this application are set out by way of helpful assistance of counsel, particularly the applicant's chronology which was provided to the court.

[3] On 19 July 2017, the complainant, Mr Allan Wood QC, being a member of the respondent, the General Legal Council (GLC), filed a form of application against the applicant, pursuant to section 12(1) of the Legal Profession Act (LPA). The complaint was that the applicant had failed to deliver to the Secretary of the GLC an accountant's report in respect of the financial years 2000 and 2005-2016, contrary to rule 16(1) of the Legal Profession (Accounts and Records) Regulations, 1999. The complainant deponed that, in those circumstances, he had reasonable grounds to believe that the applicant had been guilty of misconduct in a professional respect, having regard to rule 17 of the said Regulations. Thereafter the following transpired:

1. On 24 July 2017, by letter, the complaint with enclosures was sent to the applicant by registered post.
2. On 10 September 2017, by letter, the applicant was informed that the complaint was to be placed before the Disciplinary Committee (the Committee) of the GLC's monthly meeting in September.

3. On 15 September 2017, by letter, the applicant replied indicating that he was out of the jurisdiction and requested time to respond to the allegations.

4. On 8 November 2017, the applicant wrote a letter to the GLC requesting information as to what had transpired at the September monthly meeting.

5. On 11 December 2017, by letter, the Committee informed the applicant and the complainant that the matter had been directed to be set down for hearing but no date had been set.

6. On 22 December 2017, notice dated the 20 December 2017 was sent to the applicant by way of registered post indicating that the date for the hearing of the complaint had been set by the Committee for 3 February 2018;

7. On 3 February 2018, the hearing of the matter took place. The applicant was not present.

8. On 6 April 2018, email communication was sent to the applicant with attached notice for hearing of the Committee scheduled for 14 April 2018.

9. On 14 April 2018, the hearing of the Committee took place; the applicant was present and filed an affidavit

sworn to on 13 April 2018, along with letters from four character witnesses.

10. On 5 May 2018, the Committee gave its decision, and ordered that the applicant be struck from the roll of attorneys entitled to practice in Jamaica.

11. On 17 May 2018, the applicant filed appeal against the sanction imposed by the Committee.

12. On 21 May 2018, the applicant applied for stay of sanction under section 12A of the LPA.

13. On 21 May 2018, the applicant filed an amended notice and grounds of appeal.

14. On 22 May 2018, the application for stay of sanction was ordered by the President of the Court of Appeal for *inter partes* hearing.

15. On 25 May 2018, the application for stay of sanction was served on the Committee.

16. On 29 May 2018, an order was made for stay of sanction by consent before Pusey JA (Ag) with conditions, until 5 October 2018, and a case management conference was set for 2 October 2018.

17. On 4 June 2018, declarations for years 2015, 2016, and 2017, were filed with the GLC; an affidavit with

information in respect of the accountant (one of the conditions of the consent order) was filed (copied to the GLC).

18. On 18 June 2018, the application to discharge the consent order was filed together with affidavit in support from Daniella Gentles-Silvera;

19. On 25 September 2018, accounting records for years 2005-2014 were filed.

[4] It may be prudent, bearing in mind how this application unfolded, to set out details of the terms of the order for the stay of sanction by consent before Pusey JA (Ag) on 29 May 2018. The terms of the order are as follows:

> "1. By consent of the parties the sanction of the Disciplinary Committee of the General Legal Council against the applicant [made] on 5th May 2018 be stayed until 5th October 2018 or further order on condition that:
>
> a) The applicant files with the [GLC] the declarations under the Legal Profession (Accounts and Records) Regulations, 1999 for the years 2015, 2016 and 2017 on or before 4th June 2018.
>
> b) The applicant to file and serve an affidavit disclosing the particulars of the accountant employed by him to prepare the accounting reports for the years 2000 and 2005 to 2014 on or before 4th June 2018.
>
> c) The applicant undertakes to limit his legal practice to the case of The Queen V Misick in the Turks & Caicos Islands; and

d) The applicant is required to file with the [GLC] accounting reports for the years 2000 and 2005 to 2014 on or before 24th September 2018.

2. The matter is set for Case Management Conference and the review of the [applicant's] compliance with the orders on 2nd October 2018 at 10:00 am.

3. The [GLC's] attorney-at-law to prepare, file and serve this order."

[5] At the case management conference on 2 October 2018, an application to discharge the consent order, and the affidavit of Daniela Gentles-Silvera in support of that application were brought to my attention. It was the contention of the GLC that the applicant had provided inaccurate information to the GLC in the declarations filed in the years 2015, 2016 and 2017. He had also given evidence by affidavit before the Committee that he had only been engaged professionally since 2015 in one matter, and that was one which was outside of the jurisdiction, namely, in the Turks and Caicos Islands. He indicated that he had not practiced in this jurisdiction for over two years. The GLC contended that it had been discovered that that information was incorrect, as the applicant had been counsel on record for Medimpex Jamaica Limited, and had appeared for that company in Claim No CL2002/P040, on various dates between September 2016 and November 2017.

[6] The GLC stated that the consent order made between the parties before Pusey JA (Ag) on 29 May 2018, had therefore been made based on false assertions by the applicant, and as a consequence, the GLC filed the said application seeking to have the

order discharged. The applicant filed an affidavit on 26 September 2018, wherein he stated at paragraphs 5 and 6 that he had incorrectly stated in his affidavit filed 13 April 2018, before the Committee, that he had not practised in Jamaica for over two years. It was his contention (contrary to the assertion of the GLC) that consent to the order by the GLC, before Pusey JA (Ag) was not based on his not having practiced in Jamaica for two years, as that had not been mentioned in the hearing before the court. It was his understanding that the basic and most important fact under consideration was whether, during the years 2015-2017, he had been in receipt or possession of any client funds.

[7] At paragraphs 8 and 9 of his affidavit, he deponed that Medimpex was the only matter in Jamaica in respect of which he had continued to represent a client. He had appeared as junior counsel to Dr Lloyd Barnett, which representation had commenced in 2002, continued to the Privy Council in 2014, and further continued in Jamaica for an assessment of damages in 2015-2017, which was completed in November 2017. His retainer, he said, had ended then. An appeal had been filed in the matter, but he was not involved in the representation of the client in the appeal, which had been fixed for hearing on 13 December 2017. He indicated that he regretted the error that he had made, asked that it not be considered as a factor against him in the hearing for the discharge of the sanction imposed by the Committee. He maintained that no client moneys had been received by him over the many years mentioned in his affidavit.

[8] On 2 October 2018, there was discussion between the parties and myself with regard to the way forward on the application, but as there was no resolution on that, the matter was adjourned to see if it could be resolved between the parties through

further discussion. The matter was fixed for 4 October 2018, but was not heard through no fault of the parties. It was fixed for teleconference the next day on 5 October 2018, when the stay of execution of the sanction imposed by the Committee by consent had lapsed, and as no further consent appeared possible, I granted an interim stay of the said sanction until 17 October 2018, when the matter could be heard *inter partes*, on the condition originally imposed by Pusey JA (Ag), that the applicant undertook to limit his legal obligations to the case of the **The Queen v Misick** in the Turks and Caicos Islands. The application was heard *inter partes* on 17 October 2018, after which the matter was adjourned *cur adv vult*, and the stay extended until the determination of this application.

[9] The applicant filed an affidavit on 10 October 2018, wherein he deponed that he had been practising in Jamaica since November 1979. He indicated that he had practised in the law firms Clinton Hart & Company and then in Tenn, Russell, Chin Sang, Hamilton and Ramsay until 2003. He thereafter practised as a sole practitioner and considered himself semi-retired. He recounted the history of the matter and the order of the Committee given on 5 May 2018 when he had been struck off the roll of attorneys-at-law for breaches of the Legal Profession (Accounts and Records) Regulations, 1999 for failure to file reports for the years 2000, and 2005-2016. He said that he had apologised to the Committee and had submitted testimonials of his good character from four persons. He said that he had filed an appeal against the sanction imposed as he had considered it harsh and oppressive.

[10] He referred to the stay granted on 29 May 2018, and averred that he had complied with all but one of the conditions imposed on the grant of the stay. He had filed declarations in respect of the years 2015, 2016 and 2017. He had filed an affidavit setting out information concerning the chartered accountant who had been working on providing the accounting records, which he had since filed in respect of years 2005-2014. The only condition which he had not been able to satisfy was the filing of the accounting report in respect of the year 2000. At that time, he said that he had been practising with the law firm of Tenn, Russell, Chin Sang, Hamilton and Ramsay and an accountant had been employed at the firm to maintain the accounting records, and to see to their preparation and returns. He said that he had not been able to locate that accountant to assist with providing the necessary report but he continued to try to locate him.

[11] He stated that save as set out above, he had therefore complied with the filing of all declarations and accountant reports. He endeavoured to explain the inaccurate information which he had provided in respect of the declarations submitted relating to the years 2015, 2016 and 2017. He said that the format of the declaration that previously existed had not required one to speak to whether one was engaged in the practice of law; the focus was whether one had handled client funds. He had prepared those declarations and had attempted to submit them to the GLC. He deponed that they had not been accepted in that format and he had been required to fill out the forms in the amended format. In his anxiety, he said, to comply with the required time frame, he completed the forms in haste, and had incorrectly answered question

numbered two, which he had explained in his earlier affidavit filed 26 September 2018 was in error. He attached to his affidavit the forms that he had endeavoured to file, and the forms eventually filed to demonstrate the difference between the format of one form to that of the other. He also attached the declarations that he had since filed providing the corrected information, receipt of which had been confirmed by the GLC.

[12] He indicated that the sanction imposed on him by the Committee affected his appearance in the case that he was in the process of conducting in the Turks and Caicos Islands, and the case had reached the stage where his assistance was required. The sanction not only affected his client, but his standing before the court there. He claimed that he would suffer great irremediable professional loss and harm, financially and otherwise, if a stay was not granted pending the appeal. He maintained yet again that although he had failed to file the required reports there had been no allegation against him in respect of any misuse of clients' funds, and even more importantly, he stated he had had no sanctions imposed against him by the GLC in his over 38 years of practice.

The applicant's submissions

[13] Counsel for the applicant referred to the chronology of events in this matter as set out previously. Counsel referred to the fact that the applicant had complied with nearly all of the conditions which had been imposed on him on the grant of the stay on 29 May 2018. She referred to his affidavit explaining the inaccuracy in the declarations in respect of those three years and pointed out the difficulty that the accountant had been experiencing with regard to the year 2000.

[14] Counsel then referred to the grounds of the application. She relied on the authorities of **Dalfel Weir v Beverly Tree (also known as Beverly Weir)** [2011] JMCA App 17 and **Paulette Warren-Smith v The General Legal Council** [2014] JMCA App 22, for the proposition which is well known, that is, that the applicant must demonstrate that he has complied with the two-prong test: (i) that he has some prospects of success in the appeal filed by him; and (ii) without the stay he will suffer harm or be ruined.

[15] With regard to the prospect of success on appeal, counsel referred to **C Dennis Morrison v Audley Earl Melhado** (unreported), General Legal Council, Jamaica, Complaint No 72/2007, judgment delivered 12 February 2011, wherein the attorney had failed to file outstanding accountant's reports for five years. Counsel indicated that the matter had been adjourned many times and even though the attorney had been absent, he had been given time to file the outstanding reports. That attorney was struck off for failure to file those outstanding accountant's reports. However, on appeal to this court, that sanction was reduced to suspension for a period of nine months. Counsel also submitted that in the instant case, the Committee had failed to take into account the mitigating factors, for instance the applicant's good character, the years without any proceedings having been taken against him, and his promise to comply with the filing of the outstanding records.

[16] Counsel submitted that it was an important principle of fairness, that the punishment should be proportionate to the gravity of the offence. She submitted that there had been other cases where attorneys had not filed accountant's reports and they

had not been struck off the roll of attorneys. She referred to a table of cases attached to her submissions containing information supportive of that submission.

[17] With regard to the severe consequence likely to be suffered by the applicant, counsel referred yet again to the case currently being conducted by the applicant in the Turks and Caicos Islands and the loss he would experience if he were not allowed to continue with the conduct of that case. Counsel submitted that, to the contrary, the respondent would suffer no detriment if the stay was not granted, and she referred to the oft cited speech of Lord Phillips in the **Combi (Singapore) Pte Ltd v Sriram and Another** [1997] EWCA 2162.

[18] Counsel also referred to the fact that when the stay was granted on 29 May 2018, the decision of the Committee had not been posted on the respondent's website. However, subsequent to the grant of the stay of the sanction, the order had been published. As a consequence, counsel requested that the posting of the decision of the Committee be removed until the determination of the appeal.

The Respondent's submissions

[19] Counsel referred to the affidavit of Dahlia Davis sworn to on 28 May 2018 setting out the chronology of events, which essentially attached the affidavit of the complainant, all the correspondence between the Committee and the applicant, the decision of the Committee, and the formal order dated 21 May 2018, stating the decision of the Committee that the applicant had been struck from the roll of attorneys entitled to practice in the several courts of Jamaica.

[20] Counsel also referred to the affidavit of Daniella Gentles-Silvera, filed 18 June 2018 which had pointed out the inaccurate information posited by the applicant in his declarations filed in respect of the years 2015-2017 to which I have already referred. Counsel submitted the bases on which an application for stay is generally granted namely: (i) the merits of the appeal; and (ii) the balance of the risk of injustice to the parties. She said the court should also examine the interests of justice generally.

[21] In dealing with the merits, or whether the applicant can show that he has a real chance of success on appeal, counsel noted that the appeal in the matter was only with regard to whether the sentence imposed was manifestly excessive and harsh and should be set aside, or whether perhaps a reprimand ought to be imposed instead in respect of the sundry breaches of the rules. Counsel referred to the case of **Chandra Soares v The General Legal Council** [2013] JMCA Civ 8 and the statement of Dukharan JA at paragraphs [30]-[33], relating to the approach of the appellate court in proceedings of this nature.

[22] The issue, counsel posited, was whether the Committee was plainly wrong in the sanction that it had imposed. Counsel submitted that the conduct of the applicant in the proceedings must be a relevant consideration. She emphasised the chronology of events, particularly the fact that the applicant had failed to file accounting reports for a period of over 13 years.

[23] Counsel traced the history of the correspondence between the parties to point out the recalcitrance of the applicant in being absent from the hearing of the matter

without explanation, in spite of being notified of the same, so that the Committee proceeded in his absence. He had been found guilty of the alleged breaches. The matter had been adjourned for the delivery of the decision of the Committee in writing. The appellant attended on the adjourned date and admitted his breaches of the Regulations, apologised to the Committee for the same, and promised to fulfil all requirements of the GLC rules in the future. Counsel also referred to the character references that had been provided.

[24] Counsel contended that it would be important for the court to examine the situation as it obtained at the material time before the Committee. Counsel pointed out that the applicant had provided no explanation for his failure to file the reports and when they would be provided in the future. Added to that failure, counsel submitted, was the inaccurate information provided in the documentation submitted to the Committee and the GLC referred to previously. Counsel also pointed out, that although the applicant complained that the Committee had failed to take into consideration the mitigating factors brought to its attention by him, that was not correct as the Committee had done so in its decision. Counsel therefore submitted that the appeal would have no real chance of success.

[25] Counsel submitted that the instant case differed somewhat from that of **Audley Earle Melhado** as Mr Melhado had made no admissions and, in any event, the late production of accounting records ought not to automatically reduce the sentence imposed. Counsel referred to two other cases in which the Committee had ruled, and on which the applicant had relied, namely **C Dennis Morrison QC v Dorcas White**

(unreported), General Legal Council, Jamaica, Compliant No 110/2005, judgment delivered 29 July 2006, and **Dr Eileen Boxill v Jennes Anderson** (unreported), General Legal Council, Jamaica, Complaint No 123/2006, judgment delivered 26 April 2014, and submitted that there were substantial differences between those cases and the instant case as the reports were only outstanding for a period of five years in both cases, and the reports had been produced before the matter had been heard by the Committee. In both cases, the attorneys had given explanations for the non-filing of the reports, and in the case of Ms White, the reports were filed within 10 days of the filing of the complaint. In those cases, it was reasonable for the Committee to only have reprimanded the attorneys with costs.

[26] Counsel submitted forcefully that the court should view the conduct of the applicant in filing an inaccurate affidavit before the Committee on 13 April 2018, and also the filing of accountant reports for years 2015, 2016, and 2017 containing inaccurate information relating to his not having practised for over two years, as unacceptable. Especially since, counsel argued, no explanation had been given to date with regard to the filing of the inaccurate affidavit before the Committee. Counsel argued further that although the applicant had tendered the explanation of filing in haste as the reason for the inaccurate filing of the reports in respect of the years 2015-2017, the court should also view that conduct as entirely unacceptable. Counsel posited that one must ask the question, why would the applicant give this false information when he was the attorney on record for Medimpex at the material time? These, counsel

stated are important factors to be considered when exercising the discretion to grant or refuse a stay of execution of sanction in these particular circumstances.

[27] With regard to balancing the risk of injustice, counsel referred to the applicant's testimony that he would be severely prejudiced if he was unable to continue to participate in the proceedings in the Turks and Caicos Islands, but stated that the dicta in the English Court of Appeal case of **Andrew Bolton v The Law Society** [1993] EWCA Civ 32 and the decision of a single judge of this court in **Arlean Beckford v Disciplinary Committee of the General Legal Council** [2014] JMCA App 27 make it clear that the court must not look at that fact in isolation, but must consider also the interests of justice.

[28] Counsel once more drew to the attention of the court, that even though the applicant had complained about the prejudice and loss that he would suffer if the stay was not granted, the court must still keep in mind the extent of the breaches, in that the Regulations have existed for over 18 years, and the applicant had been in breach of the Regulations for over 13 of those years. The Committee, she said, had described the evidence of the conduct of the applicant as "gross".

[29] The Committee's duty, counsel entreated, was to uphold the Regulations, and the applicant should not be allowed to proceed to practice in the face of such breaches and with such failure to provide explanations for the delay in his actions as stated. Counsel also expressed her concern, and said that the court should also be concerned, when faced with the applicant's ability to overcome what may have seemed to be

insurmountable hurdles in the space of four months, when admittedly he had been unable to do so in 13 years. The risk of injustice, she submitted, should not in the circumstances be considered in his favour. The application for stay therefore should be refused.

Discussion and analysis

[30] I accept that the filing of an appeal does not operate as a stay of execution of a judgment of the court below except so far as the court or a single judge of appeal may otherwise direct (rule 2.14 of the Court of Appeal Rules 2002 (CAR)). There have been many statements made by this court as to the approach the court ought to take with regard to the grant of a stay. This court endeavours to follow the dictum of Lord Phillips in **Combi** where he said:

> "In my judgment the proper approach must be to make that order which best accords with the interest of justice. If there is a risk that irremediable harm may be caused to the plaintiff if a stay is ordered but no similar detriment to the defendant if it is not, then a stay should not normally be ordered. Equally, if there is a risk that irremediable harm may be caused to the defendant if a stay is not ordered but no similar detriment to the plaintiff if a stay is ordered, then a stay should normally be ordered. This assumes of course that the court concludes that there may be some merit in the appeal. If it does not then no stay of execution should be ordered. But where there is a risk of harm to one party or another, whichever order is made, the court has to balance the alternatives in order to decide which of them is less likely to produce injustice."

[31] This dictum was qualified in **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] EWCA Civ 2065, where Clarke LJ said at paragraph [22]:

> "...Whether the court should exercise its discretion to grant a stay will depend upon all the circumstances of the case, but the essential question is whether there is a risk of injustice to one or other or both parties if it grants or refuses a stay..."

[32] This principle has been endorsed in several cases in this court namely **Peter Hargitay v Ricco Gartmann** [2015] JMCA App 44., and **Western Cement Co Ltd v National Investment Bank of Jamaica and Others** [2013] JMCA App12 and it is now settled that in deciding whether or not to grant a stay the applicant must show that the appeal has a real prospect of success and there is a minimal risk of injustice to one or both parties recovering or enforcing the judgment.

[33] This case is somewhat different, in that, five months earlier a consent order was entered for a stay of the said sanction imposed by the Committee before Pusey JA (Ag). As indicated, conditions were imposed on the grant of the stay. All those conditions have been complied with save the production of the accountant's report in respect of the year 2000, which relates to some 18 years ago. The errors in the declarations filed in respect of years 2015-2017 have been explained and rectified. While one may wonder at the lapse in recollection, the haste for completion or otherwise which resulted in the errors in the documents, that notwithstanding, it appears at this time that there is only one matter in Jamaica, in which the applicant was involved. Although

he may have been on the record for the client, he has explained his role as one of junior counsel in the matter, which he had completed in April 2017, and the matter was then adjourned *cur adv vult*. He appears to have had little to do with the matter since. He was not involved with taking the matter to appeal, which is where it is now. It was not a matter which involved the collection of trust moneys by him and he has indicated that he has not been involved in any matter involving trust monies for some time, and certainly it would appear not since the decision of the Committee or the consent order granting the stay of sanction which was made on 29 May 2018.

[34] The accountants' report for the year 2000 remains a problem, but the applicant has indicated his efforts to produce the report and has stated that he continues to try to locate the accountant who ought to have assisted in the production of the report. He has stated that those records are supposed to be with the firm Tenn, Russell, Chin Sang, Hamilton and Ramsey as he was an associate with that firm at that time. However that was a long time ago. The rules require the preservation of such records for not less than nine years after the date of the last entry (rule 7(2) of the Legal Profession (Accounts and Records) Regulations, 1999). The request in 2017 for an accountant's report relating to the year 2000 could therefore appear *prima facie* to have been ultra vires the Committee, being outside of the required period stated in the Regulations. Nonetheless, the order to produce the same was made by consent, and that would therefore have to remain a consideration. However, the information ordered in relation to the accountant who was responsible for the accounts in respect of the other years has been provided.

[35] The accountant reports therefore, save the report in relation to year 2000, have all been filed. However suspicious it may appear, as submitted by counsel for the respondent, that the applicant has been able to file the same in four months having not been able to do so in 13 years, is not a matter for me. In my view, one ought not to cast aspersions on the work of another professional without more. The conditions have simply been completed within the time frame, initially set by Pusey JA (Ag). The court no doubt would have reviewed the stay and the conditions imposed at the case management conference, fixed for 2 October 2018, but the application to discharge the same intervened, and then the consent not being a factor anymore, the stay initially granted, lapsed. The application for a stay of sanction was therefore renewed before me. The history of the matter, however, cannot be ignored. The stay was granted previously although by consent on certain conditions which essentially have been met. So although the application is being considered anew, it is against the backcloth of what had occurred previously.

[36] That having been said, nonetheless, the real question before me still is whether there is any real prospect of success on appeal. That aspect deals with the issue of whether the sanction imposed was harsh and manifestly excessive.

[37] Counsel for the applicant has argued that the applicant has practised for in excess of 38 years without blemish or complaint and his character references should have informed the mitigating factors, which had the Committee dealt with them properly, counsel argued, the sanction of striking the applicant from the roll of attorneys could not have occurred. Additionally, counsel posited that the offence did not

fit the sanction imposed. There have been other attorneys-at-law who have offended the Regulations similarly, and have been treated much less harshly. The role of the Committee should be, counsel submitted, equally fair in all the cases that come before it. In my opinion, these are all arguments with some prospects of success. I am mindful of the powerful words of caution given by Lord Bingham in the English Court of Appeal case of **Bolton v The Law Society**. He stated at paragraph 16 that:

> "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 adduce a wealth of glowing tributes from his professional brethren. He 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. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. 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..."

[38] There is no question that the Regulations must be obeyed and that the role of the Committee is to protect the members of the public, and to endeavour to uphold the reputation of the profession by maintaining standards. But that notwithstanding, as this is not a matter of dishonesty, or a failure to account for clients funds which would in my view be more egregious and reprehensible, and deserving of the ultimate sanction, it

seems to me that in spite of the several cases that do say that the appellate court must give credence, respect and deference to the decisions of the Committee, the sanction imposed in the instant case *prima facie* does appear as if it may be disproportionate to the offence. In my view, the matter could benefit from the full court's examination and determination of this aspect of the Committee's work.

[39] I find it compelling that there have been other matters before the court (see **Audley Earl Melhado v The General Legal Council** (unreported), Court of Appeal, Civil Appeal No 35/2011, judgment delivered 22 September 2014) where the sanctions have been reduced on the production of the outstanding accountant reports. That is of itself telling. It is also a matter for me to consider whether the refusal of the stay will result in irremediable harm, and whether the applicant will suffer more if he is unable to pursue his only outstanding matter in which he has legal obligations which is in the Turks and Caicos Islands. If the role of the Committee is to protect the members of the public in Jamaica, I do not see how the applicant appearing in that case in the Turks and Caicos Islands will affect the Committee's obligations in any significant way here in Jamaica, save that it would mean that one more attorney had by his professional misconduct, been removed from the roll of attorneys. This would no doubt taint or adversely affect the reputation of attorneys enrolled to practice in Jamaica generally, and consequentially, the Turks and Caicos Islands specifically, all of whom are governed by the GLC, as the regulating authority in Jamaica established under the LPA.

[40] In the circumstances, I would grant the stay of sanction as sought, however the appeal would have to be heard at the earliest possible opportunity, and I would be

prepared to conduct a case management conference forthwith, as the record of appeal has already been filed, and set dates for the hearing of the appeal, the filing of submissions and authorities on which the parties intend to rely, and to make orders relating to oral submissions before the court, if required.

[41] It is important that I place on record the fact that, as indicated, the applicant had requested in the application before me, that I order that the decision of the Committee relating to the removal of his name from the roll of attorneys entitled to practise law in Jamaica, which had been placed on the GLC's website whether prior or subsequent to the order made in 29 May 2018 granting the stay, be removed therefrom pending the appeal. The applicant had also sought an order in the alternative, that if the stay of sanction were granted that I direct that that order also be published on the GLC website. I must say that I am not aware of any provision in CAR which grants the power to give those directions to a single judge of appeal. Counsel for the respondent however has indicated that if the stay of sanction was granted, she had instructions from the GLC that the decision of the Committee would be removed from the GLC website pending the appeal. Given the order that I am about to make I am sure that the position taken by the GLC will obtain. I commend the GLC for that approach taken to this aspect of the case.

[42] In the light of all of the above, I hereby grant the stay of sanction of the decision of the Committee made on 5 May 2018 on the condition that the applicant is limited to the practice of the one matter in which he has outstanding legal obligations which is currently being conducted by him in the Turks and Caicos Islands, namely **The Queen**

v Misick until the determination of the appeal. I would make no order of costs on this application.