

SAINT LUCIA

COMPLAINT NO. 5 OF 2006

IN THE MATTER OF A COMPLAINT AGAINST BRYAN STEPHEN, ATTORNEY-AT- LAW

AND

IN THE MATTER OF A REFERENCE BY THE DISCIPLINARY COMMITTEE TO THE HIGH COURT FOR DETERMINATION BEFORE A SINGLE JUDGE IN CHAMBERS

AND

IN THE MATTER OF SECTIONS 37 AND 39(3) OF THE LEGAL PROFESSION ACT CAP. 2.04 OF THE REVISED LAWS OF SAINT LUCIA 2001

1. Joanne Rowan
2. Paul Wheeler

Complainants

And

Bryan Stephen

Respondent

APPEARANCES: Mr. Horace Fraser for Mr. Bryan Stephen.
Mr. Dexter Theodore holding a watching brief for the Disciplinary Committee
Ms. Rene St. Rose holding a watching brief for Mr. Paul Wheeler and Ms.
Joanne Rowan

2010: 2nd & 29th June;
26th July;
17th November.

DECISION

- [1] **WILKINSON J.:** The Disciplinary Committee being of the opinion that based on the facts adduced by it, that a case had been made out against Mr. Bryan Stephen which justified punishment more severe than that which the Disciplinary Committee could impose, referred the matter pursuant to

section 39(3) of the Legal Profession Act Cap. 2:04¹ to the High Court for the imposition of punishment.

[2] The reference first came on before the Honourable Justice Ephraim Georges (Ag) on 9th October 2008, and he made the following order:

"1. The Registrar of the High Court do remove the name of BRYAN STEPHEN from the Roll of Attorneys-at-Law of Saint Lucia forthwith; and

2. That copies of this Order be published in consecutive issues of two (2) local newspapers circulating in the State as well as in the Official Gazette; and

3. That notice of the said publication be screened in a prominent place in the Registry of the High Court and other Courts in Saint Lucia."

[3] At 14th April 2010, Mr. Stephens filed *SLUHCV 2010/290 In the Matter of Bryan Stephen and In the Matter of Section 24(1)² of the Legal Profession Act* seeking an order directing the Registrar of the High Court to issue a Practicing Certificate to him forthwith. Exhibited to Mr. Stephen's affidavit in support his application was a copy of an order of the Court of Appeal made 21st October, 2009. The Court of Appeal's order stated:

"1. Appeal allowed.

2. Matter is remitted to the High Court for consideration of the reference by the Disciplinary Committee before a different judge.

3. The Appellant should be served with notice of the date and time of hearing."

In light of the application before the Court to be reinstated on the Roll, I inquired about the connection between the Court of Appeal's order and the application. Not being satisfied with the response, and being unclear as to purpose of the order, I made an order for production of the transcript from the Court of Appeal and adjourned the suit. From the transcript I ascertained my function in the present reference is to give Mr. Stephen a hearing before making a determination as to punishment.

[4] An appropriate starting point is the decision of the Disciplinary Committee and it states the following:

¹ Revised Law of Saint Lucia 2001.

² Provides for the issuance or refusal of a practicing certificate.

- "(1) The Committee having confirmed and is satisfied that the Attorney at Law was properly served with the Complaint and Affidavit in Support.
- (2) That the Applicants complied with the request contained in the Notice issued by the Secretary of the Disciplinary Committee on the 29th August, 2006 to furnish the Attorney at Law and the Secretary of the Committee with a list of all documents on which the Applicants intend to rely at the hearing.
- (3) Notice of Hearing Date, time and place of hearing on 27th August, 2006 was duly served on the Attorney at Law on the 1st September, 2006 by leaving same with his Secretary Ms. Anthea Joseph at his Chambers situate at #18 Micoud Street, Castries.
- (4) That no Response/Defence was submitted to the Secretary of the Disciplinary Committee by the Attorney at Law.
- (5) The Attorney at Law failed to comply with the request contained in the Notice to the Attorney at Law issued by the Secretary of the Disciplinary Committee on the 29th August, 2006 and served on the Attorney at Law as aforesaid."

The facts set out by the Disciplinary Committee were:

"The Attorney at Law failed to do the following:

1. To complete the matters undertaken and paid for.
2. To pay the Vendor the purchase price.
3. To refund the Applicants' monies paid including the purchase price after requested to do so by the Applicants and the Applicants' Solicitors.
4. Grossly betraying his clients' confidence to the point whereby the Applicants were forced to retain Solicitors to recover monies paid to the Attorney at Law and obtaining an injunction to freeze the Attorney's clients account albeit to no avail as it turned out that there were no funds in the said account.
5. To provide the Applicants or the Committee with any reasonable explanation for said failures.
6. Disgraceful and dishonorable behavior on the part of the Attorney of Law amounting to professional misconduct."

[5] At the hearing, counsel for Mr. Stephen opened his submissions by stating that even though the Committee was of the view that suspension or striking out was the appropriate remedy, the Court was not "ring-fenced" by the Committee's suggestion but rather the Court could make any other order. He submitted that there were some mitigating factors to which the Court ought to apply its mind before coming to a decision.

[6] He referred to Mr. Stephen's affidavit filed 11th June 2010, in suit **SLUHCV2010/290 In the Matter of Bryan Stephen**. The Court was informed that the affidavit ought to have been filed in the reference being heard and not in that suit. Indeed paragraph 1 of the affidavit stated:

"1. I make this affidavit in relation to a reference made by the Disciplinary Committee of the Saint Lucia Bar Association (hereinafter referred to as the committee) for consideration by a Judge in Chambers concerning a complaint made against me by Joanne Rowan and Paul Wheeler."

[7] There being no objection by counsel for the Committee and counsel for Mr. Paul Wheeler and Ms. Joanne Rowan to reference to the affidavit, counsel for Mr. Stephen was allowed to refer to the affidavit.

[8] Counsel highlighted from the affidavit that at the date of hearing, Mr. Stephen had up to that time been struck off the Roll for one year, ten months and nine days, the publication in the newspaper and Gazette had been detrimental to his character as an attorney-at-law, and full reimbursement had been made to Ms. Rowan and Mr. Wheeler at 7th October, 2008. There was no exhibit to support the statement that payment was made at the date stated.

[9] He further submitted that given all the circumstances he believed that the object of the Committee had been met and he said this for two reasons. The order to strike off the Roll was severe, and had all the facts been known to the Court, a different order might have been made, perhaps an order for suspension. The second reason was that he believed that the time that Mr. Stephen has been struck off the Roll, i.e. 9th October 2008, was an adequate period of suspension as a disciplinary measure. He asked the Court to treat the time since 9th October 2008, to present, in the same manner that persons who are on remand and subsequently convicted have that time credited to them on any sentence imposed. He said that Mr. Stephen's situation was a serious warning to other Members of the Bar who do not take seriously their duties, and he believed that Mr. Stephen had learnt his lesson and would not repeat the same "evils".

[10] Counsel then referred to **Re: Eastmond (Harold)**³ and Claim No:86A of 2004 **Faelleseje, A Private Danish Foundation v. Othneil R. Sylvester**⁴. He said that **Faelleseje** dealt with a sum in excess of EC\$5 million and of which the Respondent could not give account, and refused to pay.

³50 W.I.R.77

⁴ Saint Vincent and The Grenadines.

He asked the Court to compare the sum due in *Faeselleje* with the amount under discussion. A distinguishing feature between the two cases he said was that Mr. Stephens did not contest the proceedings, he acknowledged his debt, and repaid all monies paid to him.

- [11] As to **Re: Eastmond**, he said that counsel there tried to justify why he should be allowed to keep the BD\$29,100.00 demanded by his client and in that case he was suspended for 6 months and ordered to pay the sum demanded plus costs.
- [12] Counsel for the Committee said that upon perusal of the Mr. Stephen's affidavit he was not able to detect any admission of wrongdoing, or remorse. He added that while counsel for Mr. Stephen submitted that there was not likely to be a repeat of the matters which occurred, the first stage that Mr. Stephen had to overcome was to admit his wrongdoing before he could hope to be cured.
- [13] He further submitted that while counsel for Mr. Stephen argued that this was not a case so out of the ordinary, or so grave as to warrant striking off of Roll, he was of the view that this was not the principle to be gleaned from *Faelleseje*. He submitted that if counsel for Mr. Stephen felt that \$240,000.00 was not a significant sum to warrant striking off, then the question is, what is a sufficient sum? He rejected counsel for Mr. Stephen's suggestion that a penalty of one year ten months and nine days and repayment of the money could be a satisfactory penalty where the sum involved was in the region of \$200,000.00. Such a suggestion could be interpreted as it being acceptable to access clients' funds once you have the intention of repaying at some future date.
- [14] Referring to the affidavit of Mr. Stephen he expressed alarm to find that at the time of the incident which had brought the parties to Court, Mr. Stephen had only established his practice at 2001.
- [15] He disputed that Mr. Stephen had repaid the money due prior to the order of Justice Georges(Ag), and was informed by counsel for the Claimants that Mr. Stephen had paid \$120,000.00 on 16th October 2008, and \$119,600.00 on 7th July 2009. Both payments being post Justice Georges' (Ag.) order.
- [16] The position of the Committee Counsel said, was simply that clients' funds are to be kept strictly separate and apart from the attorney-at-law's funds and with no intermingling at any time. The principle was that of not dipping your hand into clients' money. The amount mattered not, be it

\$1.00 or \$1million. In the final analysis it was the integrity of the profession which it was the duty of the Court to uphold.

[17] The Committee accepted that the Court had a discretion on the matter of penalties, but whatever the ruling, the Committee wished to impress upon the Court that in its view, misbehaviour of this kind is perhaps the most serious kind of misconduct, and thus the Court should treat it as such.

[18] He also submitted that **Re: Eastmond** was not on all fours with the case before the court. The sums under discussion were very different and in **Re: Eastmond**, the attorney-at-law was arguing that the monies were fees due to him.

Law

[19] The Legal Profession Act Chap. 2.04⁵ states:

“ 35. RULES TO GOVERN PROFESSIONAL PRACTICE

- (1) The rules contained in the Code of Ethics set out in Schedule 3 shall regulate the professional practice, etiquette, conduct and discipline of attorneys-at-law.
- (2) A breach of the rules in –
 - (a) Part A of the Code of Ethics may constitute professional misconduct;
 - (b) Part B of the Code of Ethics shall constitute professional misconduct.
- (3)
- (4)
- (5) An attorney-at-law whose name is entered on the Roll shall be deemed to have notice of the provision of the Code of Ethics.

SCHEDULE 3 PART A Code of Ethics

I. IN RELATION TO THE PROFESSION AND ONESELF

1. An attorney-at-law shall observe the rules of this Code, **maintain his or her integrity and the honour and dignity of the legal profession** and encourage other attorneys-at-law to act similarly both in the practice of his or her profession and in his or her private life, **shall refrain from conduct which is detrimental to the profession or which may tend to discredit it.**(Emphasis is mine)
2.

II.

III. IN RELATION TO CLIENTS

⁵ Revised Law of Saint Lucia 2001.

20. (1) An attorney-at-law shall always act in the best interest of his or her clients, represent him or her honestly, competently and zealously and endeavour by all fair and honourable means to obtain every remedy and defence which is authorized by law, steadfastly bearing in mind that the duties and responsibilities of the attorney-at-law are to be carried out within and not without the bounds of law. [Emphasis is mine]

36. DISCIPLINARY COMMITTEE

(1) A disciplinary committee (in this Act referred to as "the Committee") is established for the purpose of dealing with complaints against attorneys-at-law.

(2)

(3)

(4)

(5) The Committee shall have the power to discipline, in accordance with this Act, all attorneys-at-law registered on the Roll.

39. POWERS OF COMMITTEE

(1) On the hearing of an application under this Part, the Committee may –

(a) dismiss the application;

(b) impose on the attorney-at-law to whom the application relates, such fine as it thinks proper; or

(c) reprimand the attorney-at-law to whom the application relates; and

(d) make such order as to costs as it thinks fit, and in addition, except where the application is dismissed, the Committee may order the attorney-at-law to pay the applicant or person aggrieved such sum by way of compensation and reimbursement and such further sum in respect of expenses incidental to the hearing of the application and the consideration of the report as it thinks fit.

(2)

(3) Where the Committee is of the opinion that the case has been made out which justifies punishment more severe than may be imposed by it under this section such as suspension from practice or removal from the Roll, the Committee shall refer the matter to the High Court for determination by a single judge in chambers.

(4)

(5)

[20] In addition to the sections of the Act cited, I adopt from *Faeselleje*:

"[4]....

Similar sentiments were expressed by Lord Esher MR in *Re:Grey* [1892] 2 Q.B. 440 at page 443. The Learned Master of the Rolls stated:

"... the Court has a punitive and disciplinary jurisdiction over solicitors, as being officers of the Court, which is exercised, not for the purpose of enforcing legal right, but for the

purpose of enforcing honourable conduct on the part of the Court's own officers. That power of the Court is quite distinct from any legal right or remedies ... **the Court has a right to see that its own officer does not act contrary to his duty.**" [My Emphasis]

Findings:

[21] Upon reviewing Mr. Stephen's affidavit, I found it to be largely filled with historical matters best suited to have been laid as defence before the Committee. As I understand my role post the Court of Appeal's order of 21st October 2009, and upon reading the transcript of proceedings at the Court of Appeal, it is to provide Mr. Stephen with a hearing before I decide what penalty I would impose. It was not to facilitate a rehearing of the matters which ought to have been properly laid before the Committee for them to consider before arriving at their decision. At this juncture I have from the Committee its decision, and the facts upon which it based the decision.

[22] I found only seven paragraphs in the affidavit of Mr. Stephen which could be referable to the proceedings before the Court. They are:

3. I obtained a Bachelors Degree in Laws from the University of London in 1998; thereafter I went on to pursue the Bar Vocational Course at B.P.P Law School in London completing the course in 1999. In November 1999 I was called to the Bar of England & Wales (a member of Lincoln's Inn). I have never practiced law in the United Kingdom neither was I ever the holder of a practicing certificate of the United Kingdom.
4. In December 1999 I was admitted to the Saint Lucia Bar which enabled me to practice in the Eastern Caribbean Supreme Court. By virtue of being called to the bar (Bar) in Saint Lucia my name was entered on the Roll of Attorneys-at-Law in Saint Lucia which allowed me to practice law with a valid practicing certificate.
5.
6. In 2001 after having read a Masters Degree in Laws and completed the six (6) months course at the Hugh Wooding Law in Trinidad I returned to Saint Lucia and set up my own practice at #18 Micoud Street Castries Saint Lucia
7.
41. The matters touching and concerning the reference have been settled. Ms. Rowan and Mr. Wheeler have (been) refunded all of their funds including all of the legal fees that were paid to me for work that was already done for and on their behalf. (i.e. the applying for and obtaining the alien's landholders licence).
42. Due to my disbarment I am deprived the opportunity to earn a living and settle outstanding

debts the benefit of which I am afforded by virtue of the Legal Profession Act. I fear that despite not having practiced for over a year and a half year due to irregular order of the court, I am placed back in the same position facing possible disbarment (again) or suspension from practice, effectively being punished twice for the same offence (double jeopardy), while currently being disbarred and unable to practice.

43. Much damage had been done to my good name and my professional reputation by the publication of the Order of Georges J (acting) and the failure of the Registrar to abide by the provisions of the Legal Profession Act.

44. In all the circumstances and in the interest of justice, I hereby urge this Honourable Court to temper justice with mercy when considering the reference. Further according to the authorities in the OECS the Judge in Chambers is clothed with all the sentencing option of the Committee as well as the power to suspend or removal from the Roll. I therefore pray that the Honourable Court exercise its powers accordingly”.

[23] I have to agree with Counsel for the Committee that nowhere in the affidavit is there a sign of contrition. No asking for forgiveness for what has occurred. The paragraphs which I have determined are the only paragraphs referable to the proceedings aside from paragraph 41 which states that the Complainants were refunded all of their monies, are all self-serving in that Mr. Stephen seeks to describe his inability to earn a living, damage to his good name and professional reputation.

[24] While repayment of the sums demanded by the Complainants is a consideration, it is not a primary consideration since the Complainants could have sought to achieve the same end by way of a civil suit.

[25] Unlike counsel for Mr. Stephen, I consider the sum of EC\$240,000.00 to be a considerable sum of money. While all matters are relative to those that they are being measured against, it would be my bet that to the average St. Lucian working as a housekeeper, hotel worker, agriculturist, clerk and so on, that this sum would be a considerable sum of money. Once again it is as counsel for the Committee stated, it matters not whether it was \$1.00 or \$1million.

[26] As to the matter of Mr. Stephen's inability to earn an income over the last two years, no authority was provided by his Counsel, and I could find none which told me such a matter is a consideration to which I must have regard. As I see it, if Mr. Stephen is not able to work as an attorney-at-law for any reason, he ought to pull up his "bootstraps" and either re-train for another profession or find some other work.

[27] Counsel for Mr. Stephen also submitted that Mr. Stephen did not contest the hearing before the Committee because he was not present. From all accounts in Mr. Stephen's affidavit he fully intended to contest or defend the complaint. He said:

"12. I was duly served with the complaint and was summoned to appear before the Disciplinary Committee of the Saint Lucia Bar Association on September 28th 2006. At all material times I intended to appear before the committee to answer to the allegations made against me and show the committee the steps that I had taken toward completions of the work that I was retained to do. [My Emphasis]

13.

14. I appeared for and represented Mr. Huggins Nicholas in a complaint matter which was adjourned for the same day that I was due to appear. Mr. Nicholas informed me and I verily believe that he sent a letter requesting an adjournment of his matter citing the unavailability of his lawyer (i.e. Bryan Stephen who appeared for him on the previous hearing date of this same matter) to attend.

15. I am informed by Mr. Nicholas and verily believe that he was granted an adjournment on the basis of his letter (he did not even appear in person on that day). That notwithstanding, my matter proceeded in my absence. It is therefore strange to me that having read the letter sent in by Mr. Nicholas (Mr. Nicholas not even appearing in person) and the reasons cited for the adjournment the committee was on notice that I wouldn't appear in my own matter, the committee proceeded with my matter and found me guilty of professional misconduct."

In view of the above, I believe that to say that Mr. Stephen did not contest or defend the complaint belies the truth of the situation. It was due to Mr. Stephen's own admitted assumptions that he was not present at the hearing at which he fully intended to contest the complaint. I believe that where one says that a party has not contested or defended proceedings, there is a clear intention of that person to not defend, and further he makes that intention known to the other party. Clearly not the situation here based on Mr. Stephen's own words. I therefore cannot accept what Counsel is seeking to imply when he says that Mr. Stephen acknowledged the debt, and did not contest or defend the complaint when it came on for hearing before the Committee.

[28] Mr. Stephen it appears has failed to understand that the legal profession, described as an "Honourable Profession" is what the Court is called upon to protect against the misbehavior of an attorney-at-law. The sentiments expressed by Lord Esther in **Re: Grey⁶** are clearly identical to that expressed in the provisions cited from Schedule 3 of the Act. The honour and integrity of the legal profession are in effect bigger than the attorney-at-law and these must be maintained.

[29] Having regard to the decision and facts laid before the Court by the Committee, having read the affidavit of Mr. Stephen, and heard his counsel, and assessing all against the need of the Court to protect the honour of the profession, I am of the view that Mr. Stephen ought not to be allowed to practice as an attorney-at-law in the State of Saint Lucia as he has not made out a case for a punishment other than being struck off the Roll.

[30] Since at the time of this decision Mr. Stephen is not on the Roll, the Court's order is as follows:

- (i) Mr. Bryan Stephen's name is not to be entered on the Roll and he is not to be allowed to practice as an attorney-at-law in the State of Saint Lucia.


ROSALYN E. WILKINSON
High Court Judge