EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

GRENADA

GDAHCVAP2013/0036

In the Matter of the Legal Profession Act No. 25 of 2011

and

In the Matter of the Council of Legal Education Act Cap. 71 of the 2010 Edition of the Revised Laws of Grenada

and

In the Matter of an Application by Joseph Ewart Layne to be admitted to practise as an Attorney-at-Law of the Supreme Court of Grenada and The West Indies Associated States

Before:

The Hon. Mde. Louise Esther Blenman	Justice of Appeal
The Hon. Mr. Mario Michel	Justice of Appeal
The Hon. Mr. Paul Webster, QC	Justice of Appeal [Ag.]

Appearances:

Mr. Ruggles Ferguson with him, Ms. Claudette Joseph, Ms. Deborah St. Bernard, Mrs. Deborah Mitchell, Mr. Peter David and Ms. Luann Harford for the Appellant
Mr. Dwight Horsford, Solicitor General with him, Mr. Adebayo Olowu for the Attorney General
Mr. James Bristol with him Mr. Alban John, Ms. Kim George and Mr. Rohan Phillip for Grenada Bar Association

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2014: July 19;
2015: June 15.

Civil appeal – Legal Profession Act, 2011 – Whether the learned judge erred in failing to admit the appellant to the Bar – Whether the learned judge erred in the exercise of her

discretion – Whether the learned judge erred in failing to case manage the application for admission to the Bar – Whether the learned judge had jurisdiction to appoint a friend of the court to make written submissions in the application before the court

Mr. Joseph Ewart Layne ("Mr. Layne") was, in 1986, convicted by the High Court in Grenada of ten counts of murder arising out of the events surrounding the Grenada Revolution in 1983. He was initially sentenced to death; however at a sentence rehearing, his death sentence was commuted to 40 years in prison. Based on remission of sentence earned for exemplary conduct in prison, he was released in September 2009 after having spent approximately 23 years in prison. By this time, Mr. Layne had obtained degrees in Accounting (first class honours from Oxford Brookes University) and Law (second class honours by the University of London), including a Master's in Law (with merit in commercial and corporate law from the University of London). On his release, he pursued and was granted a Legal Education Certificate with merit and received various prizes for academic excellence.

Mr. Layne filed a fixed date claim seeking an order to be admitted to practise as an attorney-at-law in the Supreme Court of Grenada. The learned judge deferred Mr. Layne's application and invited written submissions from counsel for Mr. Layne and from Mr. John Carrington, QC, ("Mr. Carrington") whom the judge had requested to assist as amicus curiae in relation to the application. She received written submissions from both counsel and also heard oral submissions from counsel for Mr. Layne. The judge had initially requested written submissions from members of the Grenadian Bar; they however declined the court's invitation.

The learned judge examined section 17 of the Legal Profession Act, 2011 ("LPA") and recognised that there were two requirements that Mr. Layne needed to meet in order to be admitted to the Bar – the academic and the good character requirement. She found that Mr. Layne had met the academic requirement of the LPA but needed to satisfy the good character limb.

The learned judge distilled the principles from the cases that were cited and held that the good character requirement had two aspects: the objective and the subjective aspect. The subjective element relates to whether the applicant is a person of integrity, honesty and reliability while the objective element relates to the reputation of the profession. Additionally, the judge found that no one has the right to be admitted as an attorney-at-law and it is for an applicant to discharge the burden of satisfying the test of good character and suitability. She held that Mr. Layne, though satisfying the subjective aspect of the good character test, failed to satisfy the objective criterion of the good character test. As a consequence of this failure, the learned judge exercised her discretion and refused to admit Mr. Layne to the Bar.

Mr. Layne is aggrieved and has appealed against the learned judge's decision on the basis that the judge erred in the exercise of her discretion by failing to admit him to the bar. He has also appealed against the decision of the judge on the ground that the judge was

wrong to have invited a friend of the court to provide submissions in relation to Mr. Layne's application. Mr. Layne also complained that the judge should have managed the fixed date claim, and by failing to do so, acted improperly.

Held: dismissing the appeal, that:

1. In relation to applications to be admitted to the Bar, an applicant must satisfy the court of specific conditions, one such condition being that he is of good character. The test of good character is a necessarily high test and has both an objective and subjective element. The subjective element relates to academic achievements and the objective element relates to the reputation of the profession. Where the offence for which the applicant was convicted is very serious, this factor should be accorded significant weight when balancing it against the fact that the applicant is rehabilitated. The learned judge correctly applied the principles extrapolated from the cases to hold that Mr. Layne, though surpassing the subjective element with his excellent scholastic achievements, failed to satisfy the objective element of the good character test. Given that Mr. Layne was convicted of ten counts of murder, despite his excellent qualifications, the learned judge cannot be faulted for placing great weight on the very serious convictions. Moreover, section 17 of the LPA conferred this discretion on the learned judge. In this regard, the judge was entitled to conclude that Mr. Layne had not demonstrated that he was of the required character to be admitted and therefore could have properly refused to have admitted him.

   Section 17 of the **Legal Profession Act, 2011** applied; **Bolton v Law Society** [1994] 1 WLR 512 applied; **Christian Jideofo et al v The Law Society et al** [2007] EW Misc 3 applied; **Re Gossage** (2000) 23 Cal 4th 1080 considered; **Re Hamm** 123 P 3d 652 considered.

2. The function of the appellate court is one of review. It is not open to an appellate court to seek to interfere with an exercise of the learned judge's discretion merely upon the grounds that it may have exercised the discretion differently. An appeal against a judgment given by a trial judge in the exercise of a judicial discretion will not be allowed unless the appellate court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (2) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong. It is only if these conditions are satisfied that it is open to an appellate court to seek to exercise its discretion afresh.

   Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 followed; **Attorney General et al v Geraldine Cabey** MNIHCVAP2008/0008

(delivered 12th January 2009, unreported) followed; **George Allert et al v Joshua Matheson et al**, GDAHCVAP2014/0007 (delivered 24th November 2014, unreported) followed; **Tafern Ltd. v Cameron-McDonald and Another Practice Note** [2000] 1 WLR 1311 applied; **Enzo Addari v Edy Gay Addari**, BVIHCVAP2005/0021 (delivered 23rd September 2005, unreported) followed; **Charles Osenton et al v Johnston** [1942] AC 130 applied; **Bellenden (formerly Satterthwaite) v Satterthwaite** [1948] 1 All ER 343 applied.

3. The learned judge took into account the outstanding positive factors in favour of Mr. Layne, his tremendous rehabilitation, the fact that he was young at the time of the offences and his brilliant scholastic achievements. At the same time, the judge quite properly bore in mind that Mr. Layne was convicted of ten counts of murder. It is clear that the judge took into account the relevant considerations and did not take into account any irrelevant consideration. In addition, it was open to the judge to attach the weight that she did to the requirement to satisfy the objective aspect of good character and thereby to refuse the application. The appellant has not met the required threshold in order to persuade this Court that the judge committed an error of principle, therefore there is no basis to interfere with the learned judge's exercise of discretion.

   Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188 followed; **Attorney General et al v Geraldine Cabey** MNIHCVAP2008/0008 (delivered 12th January 2009, unreported) followed; **George Allert et al v Joshua Matheson et al**, GDAHCVAP2014/0007 (delivered 24th November 2014, unreported) followed; **Tafern Ltd. v Cameron-McDonald and Another Practice Note** [2000] 1 WLR 1311 applied; **Enzo Addari v Edy Gay Addari**, BVIHCVAP2005/0021 (delivered 23rd September 2005, unreported) followed; **Charles Osenton et al v Johnston** [1942] AC 130 applied; **Bellenden (formerly Satterthwaite) v Satterthwaite** [1948] 1 All ER 343 applied.

4. It is within the discretion of a judge to determine the procedure to be adopted for the hearing of a fixed date claim. The court is clothed by part 26 of the **Civil Procedure Rules 2000** ("CPR") with case management powers which enable the court to dispense with any aspect of a procedure it sees fit. What is essential is for the judge to determine the procedure to be adopted bearing in mind the overriding objectives and the need to manage cases justly. The court must seek to ensure that all persons are given a fair hearing and that there is a proportionate use of its resources. In the case at bar, the application raised a short point which the court required to be addressed, namely whether Mr. Layne had met the good character requirement of the statute. In relation to this issue, the learned judge heard oral submissions from counsel for Mr. Layne which supplemented his written submissions. Further, learned counsel for Mr. Layne had sight of the opinion of the amicus curiae. Given the procedure that the judge adopted in seeking to resolve the sole issue, it cannot be said that the process was either flawed or unfair.

Part 26 of the **Civil Procedure Rules 2000** applied.

5. There was nothing wrong or improper in the learned judge seeking the opinion of the amicus curiae. Counsel who appeared on behalf of Mr. Layne was served with the opinion and filed comprehensive written submissions, after receipt of this opinion, which addressed the sole issue and legal principles that were applicable. Further, CPR 26 enabled the judge to determine the manner in which a claim should progress. In the case at bar, there was no unfairness in the process utilised by the judge.

   Part 26 of the **Civil Procedure Rules 2000** applied.

JUDGMENT

Introduction

[1] **Blenman, JA**: This is an appeal by Mr. Joseph Ewart Layne ("Mr. Layne") primarily against the exercise of the discretion by the learned Justice Margaret Price-Findlay wherein she refused his application to be admitted as an attorney-at-law in Grenada. Indeed, he is dissatisfied with the decision of the learned judge and has filed an appeal against the decision complaining that the learned judge erred in the exercise of her discretion.

[2] Mr. Horsford, the learned Solicitor General, appearing on behalf of the Attorney General, urges the Court to uphold the decision of the judge on the basis that she did not err in the exercise of her discretion in refusing to admit Mr. Layne.

[3] The Grenada Bar Association filed submissions in which they referred to the applicable legal principles. However, in their submissions the Bar did not appear to take any view on whether or not the learned judge erred in refusing to admit Mr. Layne.

Background

[4] The substance of the application that was before the court below can be summarized as follows: Mr. Layne, through counsel, filed a fixed date claim form, which was supported by affidavit evidence, to be admitted to practise as an attorney-at-law in the Supreme Court of Grenada. He had applied together with other persons to be admitted to the Bar. It appears as though the other persons' applications were granted while his application was deferred. The learned judge invited written submissions from counsel for Mr. Layne and from Mr. John Carrington, QC,[1] whom the judge had requested to assist as amicus curiae in relation to the application. Also, learned counsel, Mr. Ferguson, on behalf of Mr. Layne filed submissions after having received submissions made by Mr. Carrington, QC.[2]

[5] For the purposes of this appeal, it is useful to set out Mr. Layne's background and educational qualifications in some detail. Mr. Layne is a citizen of Grenada. In December 1986, he was convicted by the High Court in Grenada of ten counts of murder arising out of the tragic events during the Grenada Revolution in 1983. Mr. Layne, who at that time was in his early twenties, was the Operational Commander of the People's Revolutionary Army ("PRA") and was the one who had issued the directive to recapture the PRA's military headquarters which culminated in the execution-styled murder of a number of Grenadian citizens including the then Prime Minister, Maurice Bishop, and several of his cabinet colleagues. Mr. Layne was later tried and convicted for the murders of Maurice Bishop and nine others. He was sentenced to death; however in 2007, following the Privy Council's decision in **Bernard Coard et al v The Attorney General**[3] in which it was held that the mandatory death sentence which was imposed on Mr. Layne was unconstitutional; a sentence rehearing was later ordered. At the resentencing hearing, Mr. Layne's death sentence was commuted to 40 years in

[1] Mr. Carrington, QC in addition to being Her Majesty's Council is admitted to practise in Grenada.
[2] It must be noted that the judge had requested other senior lawyers in Grenada to appear amicus but they declined the invitation on the basis that they were too close to the situation.
[3] [2007] UKPC 7.

prison. Based on remission of sentence earned for exemplary conduct in prison, he was released in September 2009 after having spent approximately 23 years in prison.

[6] It is important to give some more insight into Mr. Layne's background in particular his excellent academic achievements. During his incarceration, he worked as a carpenter, counselor and as a teacher. He also attained degrees in Accounting (first class honours from Oxford Brookes University) and Law (second class honours from the University of London), including a Master's degree in Law (with merit in commercial and corporate law from the University of London). On his release from prison, Mr. Layne worked as a legal research assistant and paralegal for two years before commencing studies at the Hugh Wooding Law School in 2011. Mr. Layne excelled during his time at law school; he graduated with a Legal Education Certificate of merit and he also obtained various prizes for academic excellence. It is undisputed that Mr. Layne's outstanding and stellar educational qualifications would surpass the academic requirements for admission to the Bar of Grenada. This much is not the issue; satisfying the educational qualification requirement is only one of the two conditions to be satisfied for admission to the Grenada Bar. The other requirement as found by the judge was the element of good character. The issue therefore before the judge was whether he met the good character requirement under section 17(1)(a) of the **Legal Profession Act, 2011** ("**LPA**")[4] which states that:

> "Subject to the provisions of this Act, a person who makes an application to the Supreme Court, and satisfies the Supreme Court that he–
>
> (a) is of good character; and either
>
> (i) holds the qualifications prescribed by law, or…
>
> shall be eligible to be admitted by the Court to practise as an attorney-at-law in Grenada."

[7] The learned judge, having heard the submissions by counsel, rendered a judgment in which she refused Mr. Layne's application to be admitted as attorney-

[4] No. 25 of 2011.

at-law in Grenada on the basis that he had failed to satisfy the objective aspect of the good character requirement of the **LPA**. In rendering her judgment, the learned judge paid regard to Mr. Ferguson's submissions and the evidence that was placed before the court. The judge also received assistance on the applicable legal principles from Mr. Carrington, QC. Mr. Carrington, QC, in the legal opinion, distilled the legal principles that were relevant to the determination of good character. He referred the court to cases from the Commonwealth including the following authorities **Re Application of Edwards Alleyne**,[5] **Bolton v Law Society**,[6] **Law Society v Claire Louise Wilson**[7] and **Christian Jideofo et al v The Law Society et al**.[8] He extracted the relevant principles from the cases and listed them but did not seek to recommend to the judge the manner in which she should exercise her discretion.

[8] I propose to refer to the judgment below.

The judgment below

[9] The judge indicated that she reviewed the relevant authorities and agreed that the principles which were applicable were those set out by Mr. Carrington, QC. Learned counsel, Mr. Ferguson, also referred the judge to cases and urged the court to apply the principles that were stated in those cases. The judge also referred to the principles that Mr. Ferguson relied on. What is clear is that the judge though relying on the principles to be found in the cases did not specifically refer to all of the names of the cases.[9] The judge only referred to a few of the cases by name even though the principles that she stated were to be found in several of the other cases from the Commonwealth.

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[5] [1997] ECLR 340, 342F.
[6] [1994] 1 WLR 512, pp. 518, 519.
[7] [2006] EWHC 1022.
[8] [2007] EW Misc 3.
[9] While in no way criticising the judge's style of writing, it is clear that most of the statements that were made by the judge had as their bases case law that was drawn to her attention. It is regrettable that the judge did not see it fit to specifically refer to the cases from which the legal principles were extracted. This may well have had a different response by Mr. Layne since it would have been very apparent that this was being done.

[10] The learned judge examined the relevant statutory provisions governing the admission to the Bar of Grenada and found that there were two limbs to the admission process: (1) the academic and professional educational development, and (2) the requirement that Mr. Layne be of good character. The learned judge stated that the legislation confers eligibility but not an entitlement to practise and the court retains discretion as to whether a person ought to be admitted to practise notwithstanding that he/she has met the statutory requirements. The learned judge recognized that good character has two aspects, one subjective and the other objective. She opined that the sole issue that was before the court was whether Mr. Layne was a fit and proper person to be admitted to the Bar.

[11] In seeking to determine whether Mr. Layne had met the requirements of being a fit and proper person[10] to be admitted to the bar, the learned judge extracted various principles from English cases. She defined good character as a pre-requisite to admission to the practice of law, an absence of proven conduct or acts which have been historically considered as manifestation of moral turpitude.[11] Critically, she found that the test of good character is a very high test; it is whether there is a potential risk to the public, or more importantly, whether there will be damage to the reputation of the profession. The standard of proof is the civil standard, i.e. on a balance of probabilities. Moreover, good character has both a subjective and an objective element - subjective element relates to whether the applicant is a person of integrity, honesty and reliability (evidence of past convictions for serious criminal offences are relevant to the proof of this element); objective element relates to the reputation of the profession. She stated that the onus is on an applicant to prove that he or she is of good character.

[12] The learned judge in rendering her judgment made some general observations based on legal principles which were extrapolated from the cases and stated that the court will deny an applicant admission to the Bar if the court believes that said

[10] See section 17(1)(a) of the LPA.
[11] She adopted this definition from Black's Law Dictionary.

applicant does not possess the requisite character to be so admitted. She stated that the court has no rule automatically barring someone who has been convicted of an offence from the practice of law in Grenada. The learned judge held that while offences involving dishonesty are generally regarded as most relevant to the test of character, any conviction is relevant. In this regard, it becomes a qualitative issue whether the offence of murder should be regarded as more, less or equally serious than the deprivation of a person of his material property.

[13] The learned judge made a number of observations regarding Mr. Layne based on the submissions of his counsel, Mr. Ferguson:

(i) that the offences were thirty years ago;

(ii) that Mr. Layne made full and frank disclosure of the offences convicted in his record to the court as part of his application;

(i) that the offences occurred in exceptional political circumstances;

(ii) that the offences were committed when Mr. Layne was relatively young;

(iii) the likelihood of reoccurrence is extremely remote;

(iv) Mr. Layne did not personally kill anyone;

(v) the evidence of rehabilitation since the offences was overwhelming; and

(vi) the application was uncontroverted, particularly by the Attorney General and the Grenada Bar Association.[12]

[14] The learned judge determined that the nature of the crimes for which Mr. Layne had been convicted of, although they took place over thirty years ago, were

[12] The application was later opposed by the Attorney General when the Court of Appeal, on 2nd April 2014, invited that office to make submissions on the matter.

relevant to the determination of both the subjective and objective elements of good character. "Recommendations, glowing tributes (including academic accolades) and attempts to re-establish himself in society [are] all relevant considerations but will carry little weight in the Court's considerations if the Court is of the view that the reputation of the profession as a whole would be adversely affected by the admission of the Applicant. The fortunes of an Applicant must always give way to the need to maintain the collective reputation of the profession. This the learned judge held at paragraph 20 of her judgment.

[15] The learned judge also listed a number of factors that were based on the submissions of the amicus. She said that while rehabilitation is important, a show of rehabilitation in the face of past serious misconduct may be impossible to make. She relied on the case of **Re Gossage**[13] where it was stated:

> "…where serious or criminal conduct is involved, positive references about the applicant's moral character are more difficult to draw, and negative character inferences are stronger and more reasonable."

[16] The learned judge stated that Mr. Layne had a level of maturity at the time of the incident. She stated that to give the orders which he gave to "liquidate them", and in the circumstances in which they were given, a position away from the actual scene itself, portrays a lack of moral judgment on his part. In relation to this statement, learned counsel, Mr. Ferguson, complains that there was no evidential basis upon which the judge could have properly come to the conclusion that Mr. Layne gave directions to liquidate them. I will address this complaint shortly.

[17] The learned judge went on to note that the crime of murder is the most serious known to the criminal law and that it may attract the harshest penalty known to law. She pointed out that Mr. Layne was convicted of ten counts of murder. The judge referred to the United States case of **Re Wright**[14] in which the court declined admission to an applicant convicted of second degree murder "despite

[13] 99 Cal Rptr 2d 130, (2000) 23 Cal 4th 1080.
[14] 102 Wash 2 d 855 (1984), 690 P 2d 1134.

his perseverance and despite apparently successful efforts at rehabilitation". The legal profession in that case had no objection to the admission of the applicant.

[18] The learned judge held that the public must have confidence in the Bar as admitting an applicant to practise sends the message that the applicant is worthy of the public trust. She indicated that had Mr. Layne committed these acts while a practicing attorney, he would have been disbarred as disbarment has occurred for less egregious conduct. The learned judge held that to allow Mr. Layne to be admitted to the Bar would send an inconsistent message to members of the public and to the profession as a whole. She adopted the words of Bingham MR in **Bolton v Law Society**,[15] that "the reputation of this profession is more important than the fortunes of any individual member". She also quoted from the case of **In Re Rowe**:[16]

> "Lawyers play a critical role in sustaining the rule of law and thus it is necessary that the legal profession maintain its unique ability to do so by earning the respect and confidence of society."

The learned judge, having referred to the said cases, applied the relevant principles to the factual circumstances and refused to admit Mr. Layne to the Bar.

Grounds of Appeal

[19] Mr. Layne, being aggrieved with the decision of the learned judge, appealed the judgment on eleven grounds which can be conveniently crystallized into the following three grounds:

(i) Whether the learned judge erred in the exercise of her discretion;

(ii) Whether the learned judge erred in failing to case manage his application for admission to the Bar in accordance with the provisions of the **Civil Procedure Rules 2000** ("CPR");

[15] [1993] EWCA Civ. 32.
[16] 80 Ny 2d at 340, 640 Ne 2d at 730.

(iii) Whether the learned judge had jurisdiction to appoint a friend of the court to make written submissions in the matter;

I propose now to address each of the grounds of appeal seriatim.

Submissions

Ground of appeal (i) - Whether the learned judge erred in the exercise of her discretion?

Appellant's submissions

[20] The gravamen of Mr. Layne's complaint is that the learned judge erred in the exercise of her discretion when she failed to admit him to the Grenada Bar and in so doing she committed errors of principle. Learned counsel, Mr. Ferguson, in his written submissions, objected to the judge's exercise of her discretion and the manner in which she purported to do so. He complains that good character, one of the requirements for admission to the Bar, means present good character. Learned counsel stated that this principle is expressly stated in the American case of **In the Matter of Harvey Prager**.[17] Mr. Ferguson accepted that there are two limbs to the good character test: the risk to the public limb and the reputation of the profession limb. However, Mr. Ferguson argued that the learned judge's reasoning that it would send an inconsistent message to members of the public and to the legal profession as a whole, does not amount to a finding that Mr. Layne is not a person of present good character. Learned counsel, Mr. Ferguson, contended that the finding by the judge that Mr. Layne poses a risk due to his past record is unreasonable and irrational and goes against the weight of the evidence.[18] He submitted that this is so in view of the fact that the offences, which arose out of a political context of revolution, were thirty years ago; Mr. Layne has no record before or after the offences; the relative youthfulness of Mr. Layne at the time of the offence made him presumptively capable of change; the evidence of rehabilitation is overwhelming; and Mr. Layne has exhibited remorse.

[17] SJC-06931 (1996).

[18] There is nothing in the judgment to indicate that the judge made any such finding. There was no evidence presented by Mr. Ferguson which showed that the judge held that Mr. Layne poses a risk to society.

[21] Mr. Ferguson did not point to any factors which the judge ought to have taken into account in the exercise of her discretion but failed to do so. However, he stated that she gave too much weight to his past convictions and too little weight to his present character.

[22] Learned counsel, Mr. Ferguson, submitted that there was no opposition from the Attorney General and or the Grenada Bar Association. It must however be noted that on 2nd April 2014, the Court of Appeal invited the Grenada Bar Association and the Attorney General to make written submissions on the appeal and the Attorney General, in their written submissions, agreed with the conclusion of the learned judge and argued against overturning the judge's decision.[19] These submissions will be addressed shortly. As indicated earlier, the Grenadian Bar did not take a position one way or the other in this appeal.

[23] Learned counsel, Mr. Ferguson, accepted that a criminal record must be considered in determining whether an applicant has present good character. Further, a court would need to be satisfied that admitting an applicant would not gravely damage the reputation of the legal profession in the eyes of the public and the Bar. He submitted that whilst this is so, a past criminal conviction is not a bar to present good character. In learned counsel's view, there was no rational basis on the evidence for any adverse finding with regard to the present character of Mr. Layne in relation to his admission. The learned judge, by focusing almost exclusively on Mr. Layne's past convictions, which were over thirty years ago, fell into error. While the learned judge was entitled to start with the offences from thirty years ago in determining Mr. Layne's present character, she started and ended there.

[19] It is noteworthy that the appeal documents were served on the Attorney General before this order and the Solicitor General, on 19th March 2014, filed an affidavit in which he indicated that the Attorney General's chambers did not wish to be heard in the proceedings. In any event, the Attorney General's chambers did, on 20th June 2014, comply with the Court's order.

[24] Learned counsel, Mr. Ferguson, submitted that the judge's ruling that the test of character has nothing to do with redemption was a misdirection[20] as one of the key aspects of assessment of present character with regard to a person with a criminal record, in the position of Mr. Layne, is the evidence of rehabilitation. This reflected on the learned judge's treatment of the issue of redemption which was to disregard it and focus on the character of Mr. Layne thirty years ago as opposed to the present character.

[25] Mr. Ferguson accepted further that the Grenadian position is as stated in **In The Matter of Harvey Prager** namely, that a prior conviction is not an absolute bar to admission as no offense is so grave as to preclude a showing of present moral fitness. This principle, he argued, does not give rise to an irrebuttable presumption and does not remove the need to analyse and appropriately weigh the evidence to make a determination whether the presumption has been rebutted on the totality of the circumstances. He said that the learned judge erred in making no sufficient attempt to analyse the evidence to assess whether the presumption of unfitness had been rebutted. Instead, she focused almost exclusively and placed too much weight on the nature of the offences. In addition, the judge's complete disregard of Mr. Layne's acceptance to the law school was in error. Where an applicant possesses a criminal record and is accepted by the Council of Legal Education ("CLE") to pursue its courts, Mr. Ferguson contended that it must be presumed that the CLE has concluded that despite the convictions the applicant would meet the character requirement to be accepted to the Bar. Mr. Ferguson made that complaint even though he accepted that the finding of the CLE to accept an applicant is not binding on the court and it is for the judge to exercise the discretion in determining whether to admit Mr. Layne.

[26] Mr. Ferguson also took issue with the learned judge's application of cases originating from the jurisdiction of the United States. He contended that the

[20] Christian Jideofo et al v The Law Society et al [2007] EW Misc 3 – the learned judge mainly reflected the ratio of Christian Jideofo et al v The Law Society et al in the judgment.

learned judge failed to take into account the specific statutory requirement and regulatory framework of the cases she relied on, particularly **Re Wright**, **Re Gossage** and **Re Hamm**[21]. Mr. Ferguson posited that these cases are distinguishable from the present case and reliance ought not to have been placed on them.

[27] Finally, in his written submissions, Mr. Ferguson posited that Mr. Layne had satisfied the requirements under section 17 of the **LPA** and had thereby established his eligibility to be called to the Bar. The main thrust of learned counsel, Mr. Ferguson's, oral submissions which supplemented his written submissions was that the judge did not assess Mr. Layne's present character but rather placed too much emphasis on his past record. He says that the good character requirement in section 17 of the **LPA** means present good character. In support of this proposition, Mr. Ferguson referred the Court to **Bolton v Law Society** and **Christian Jideofo et al v The Law Society et al**.

[28] He also criticized the judge for relying on cases which he said had dishonesty as a main feature and that in none of the cases upon which the judge had relied no more than ten years had elapsed since the offending acts and the date of applications for admission. Mr. Ferguson also complained that the judge failed to distinguish the facts of **Re Gossage** and **Re Hamm** from the present case. He complained that the judge referred to only three cases which were from the United States of America and this led her to exercise her discretion improperly.

[29] He conceded however that the judge could properly have looked at the past character of Mr. Layne in assessing his present character but should have paid more regard to his present rehabilitation. He also reminded the Court that Mr. Layne, several years ago, had expressed his apologies. Mr. Ferguson said the learned judge used a balancing act and focused on past character and fell into error.

[21] 123 P 3d 652, 655 (Ariz 2005).

[30] Finally, Mr. Ferguson commended the High Court judgment of **Selwyn Strachan**[22] **v The Law Society**[23] to the Court which arose out of an application by Selwyn Strachan for a certificate of enrolment as a student from the Solicitors Regulation Authority in England to pursue the legal practice course. Mr. Strachan's application was initially denied at three stages; he however appealed to the High Court at which stage his application was granted. Mr. Ferguson made it clear that he did not intend to go into that judgment but would ask the Court to take it into account. His more critical submission was that this Court should allow the appeal since the learned judge exercised her discretion improperly, and importantly, misapplied the authorities. He also referred the Court to the good character evidence that was filed by Mr. Layne and the affidavit evidence of Mr. Andrew Hopper, QC in support of the application.

[31] In learned counsel, Mr. Ferguson's, submissions filed pursuant to the court order dated 2nd April 2014, he maintained that the learned judge gave too much weight to the convictions recorded thirty years ago and no or no sufficient weight to factors favorable to Mr. Layne. He submitted that there are adequate grounds for the decision of the judge to be reversed without the Court looking at the reasonableness of the judge's conclusion. Mr. Ferguson argued that if this Court would have exercised its discretion differently from the learned judge, this alone would be a proper basis for allowing the appeal. Alternatively, or further he stated that the Court of Appeal is in as good a position as the learned judge since the exercise of her discretion did not involve seeing, hearing and assessing witnesses. Mr. Ferguson urged the Court to set aside the decision of the learned judge and make an order admitting Mr. Layne to the Bar of Grenada.

Submissions on behalf of the Attorney General

[32] The learned Solicitor General, Mr. Horsford, on behalf of the Attorney General, reminded the Court that the appeal before the Court is essentially an appeal

[22] He was one of the Grenadian 17 who was convicted alongside Mr. Layne for the killings.
[23] [2014] EWHC 1181.

against a judge in the exercise of her judicial discretion. Such an appeal will not be allowed unless the appellate court is satisfied that in exercising her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations and that, as a result of the error or the degree of the error, in principle the judge's exercise of discretion exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong. Learned Solicitor General relied on the case of **Dufour and Others v Helenair Corporation Ltd and Others**[24] in support of his contention that there is no basis for this Court to conclude that the judge erred in the exercise of her discretion. The Solicitor General maintained that there is no basis upon which it can be concluded that the judge took into account irrelevant factors or omitted to take into account relevant factors or did not accord appropriate weight to the relevant factors; to the contrary the judge acted in accordance with the principles extracted from the applicable cases.

[33] Learned Solicitor General stated that the statutory requirement of "good character" in section 17 of the **LPA** is construed to mean that an applicant must be a fit and proper person to be admitted to the Bar. The determination of whether a candidate is of good character is expressly entrusted to the court. Critically, in determining this question, immediate, recent and more distant behavior may be taken into account. Mr. Horsford argued that it is not possible to draw a line at some point of time and to prevent the court from looking behind that line as the overarching consideration for the court when exercising this jurisdiction is that there is a serious responsibility to the court, to the rest of the profession, to its suitors and to the whole community to be careful not to accredit any person as worthy of public confidence who cannot satisfactorily establish his right to that credential.

[24] (1996) 52 WIR 188.

[34] Learned Solicitor General submitted that it is not a question of what Mr. Layne has suffered in the past but one of his worthiness and reliability for the future. He further submitted that the learned judge appeared to have given weight to the fact of Mr. Layne's conviction and also to his excellent scholastic achievement. He indicated that though the judge did not specifically indicate what weight she attached to the evidence of rehabilitation and to what extent such evidence failed to displace the adverse conclusions to be drawn on Mr. Layne's character from his murder convictions thirty years ago, she clearly considered these factors in coming to her conclusion. It must be borne in mind that the judge had to consider two aspects of the good character requirement. Learned Solicitor General maintained that when placed against the underlying principle of protection of the reputation of the profession and the public from those who are not properly qualified to be entrusted with the duties and responsibilities of attorney-at-law, it could not be said that the learned judge's conclusions exceeded the generous ambit within which reasonable disagreement is possible.

[35] Learned Solicitor General, Mr. Horsford, indicated to the Court that the recent High Court decision of **Selwyn Strachan v The Law Society** was brought to the attention of the Honourable Attorney General and while the Attorney General's Chambers did not file any submissions on its utility, he drew the attention of the Court to the following:

(1) that was a decision in which the applicant was refused a certificate to enrol as a student without which he could not have participated in a legal practice course. The decision was made by a Panel of Adjudicators Sub-Committee of the Solicitors Regulation Authority. He drew the Court's attention to the "decisive weight" that the High Court judge in England placed on the Amnesty Report and indicated that that report was not before the learned judge, Justice Price-Findlay, and in any event, is not relevant to the important question of whether or not the applicant

demonstrated that his application for admission to the Bar should have been granted;

(2) in seeking to persuade the High Court in England to permit Mr. Strachan to pursue the legal practice course in England, Mr. Strachan had assured the court that he did not intend to practise in England (with which the Solicitor General took issue);

(3) despite some of the comments that Justice Charles made in the **Strachan v The Law Society** judgment at paragraph 75 he recognised that the court in Grenada was best suited to determine the issues of good character and suitability to practise in Grenada;

(4) the High Court judge in England was dealing with codified Solicitor's Regulation when he was engaged in the consideration of suitability of the applicant;

(5) Mr. Justice Charles in the **Strachan v The Law Society** judgment indicated that the ability to consider exceptional circumstances as provided by the statute allowed him to consider the safety of the convictions on the basis of the Amnesty Report and to conclude that there is the possibility that the convictions were unsafe;

(6) the learned Solicitor General, Mr. Horsford, was adamant that neither the High Court of Grenada nor this Court could properly go behind the safety of the convictions and make any comments that remotely resembled the comments that Justice Charles felt able to make;

(7) the comments the High Court judge in England made about the Court of Appeal in Grenada and in particular some of the inappropriate comments that were made by the High Court Judge;

(8) in the case of **Bernard Coard et al v The Attorney General**, the Law Lords, in the highest court of the land, refrained from making any such comments as made by Justice Charles and indicated that the decisions of the Court of Appeal in Grenada were final.

[36] Finally, the learned Solicitor General urged the Court to conclude that based on the material that was placed before the judge, she took into account all of the relevant factors and attached the appropriate weight to all those factors in exercising her discretion properly. Accordingly, she did not commit an error in principle. He therefore submitted that the appeal should be dismissed on this ground.

Submissions on behalf of the Grenada Bar Association

[37] In the opinion filed on behalf of the Grenada Bar Association, it was stated that the critical consideration in all matters pertaining to the subject of admission to practise as an attorney-at-law appears to be what constitutes as good character. Reliance was placed on the case of **Christian Jideofo et al v The Law Society et al** where Sir Anthony Clarke MR stated that (1) the test of character and suitability is a necessarily high test; (2) character and suitability test is not concerned with punishment, reward or redemption but with whether there is a risk to the public or a risk that there may be damage to the reputation of the profession; and (3) no one has the right to be admitted as a solicitor and it is for the applicant to discharge the burden of satisfying the test of character and suitability.

[38] The Grenadian Bar opined that the same considerations as obtained for applications to strike out a practitioner from the Roll, equally applies for applications for admission. The Bar referred the Court to **In the matter of Harvey Prager**, a United States case, at page 91:

> "As with decisions of reinstatement after disbarment, the inquiry is one of public interest. The question is not whether the respondent has been 'punished' enough. To make that the test would be to give undue weight

to his private interests, whereas the true test must always be the public welfare."

And at page 92:

"…the law rightfully requires us to focus upon the question of Prager's rehabilitation. The concept that human redemption is possible and valuable is both well established in law and premised upon longstanding, even ancient traditions. Thus, the issue before us is whether the applicant has sufficiently proved such rehabilitation - that he currently possesses the necessary moral character to be admitted to the bar of the Commonwealth."

[39] The Bar submitted the 1985 case of **In Re Manville**,[25] a first instance judgment, in which Justice Belson, the associate judge, had this to say at page 1296:

"We do not… adopt the position that a conviction of homicide, per se, requires denial of Manville's application. Indeed, no jurisdiction has adopted a policy of per se exclusion in such cases… We merely recognize, and agree with the suggestion of the Committee, that applicant Manville has much to overcome in order to prevail by a preponderance of the evidence…

Courts generally reject a rigid rule that evidence of criminal convictions conclusively evinces an applicant's lack of good moral character. They do so because the ultimate determination to be made is whether, at present, an applicant has the good moral character required for admission to the Bar. That the absence of good moral character in the past is secondary to the existence of good moral character in the present is a cardinal principle in considering applications for original admission to the Bar… As a matter of due process and equal protection, every qualification for bar admission – good moral character included – must bear a rational relationship to an applicant's fitness or capacity to practice law… Thus, rather than taking the view that prior serious misconduct invariably requires disqualification, courts tend to consider the facts of each case in light of the totality of circumstances surrounding an application for that admission…

… evidence of criminal convictions usually suggests unfitness and therefore should be considered in the overall assessment of an applicant's fitness to practice law. Evidence of the applicant's reform and rehabilitation must also be taken into account."

[25] 494 A 2d 1289 (DC) 1985.

[40] The Bar Association pointed out that by the time Manville's application for admission to practise was being considered, he had been released from prison for ten years. The Bar was of the opinion that the question of whether there is a risk to the public or a risk that there may be damage to the reputation of the profession should Mr. Layne be admitted to practise at the Bar, is a matter for the Court.

[41] The Bar refrained from indicating one way or another whether the trial judge exercised her discretion properly or improperly.

Discussion and Analysis

[42] Having examined the judgment at first instance together with the documents which form the appeal record and given deliberate consideration to the helpful submissions of all learned counsel, I will address some preliminary matters before dealing with the substantive grounds of appeal. In the judgment, the learned judge was quite extensive in stating the relevant factors that she took into account in seeking to determine whether Mr. Layne had satisfied the good character prerequisite of the **LPA** and was therefore entitled to be admitted as an attorney-at-law. There can be no doubt from a careful and close reading of the judgment that the trial judge took all the relevant factors into account in determining whether Mr. Layne should be admitted to the Bar, and the one that gave her cause for pause was the potential risk of damage to the reputation of the legal profession if Mr. Layne were to be admitted bearing in mind that he had been convicted of ten counts of murder. The judge remained alive throughout the judgment to Mr. Layne's significant rehabilitation and excellent scholastic achievements which were fortified by the fact that the offences for which he had been convicted had occurred in excess of thirty years.[26]

[43] In a word, the subjective aspect of the good character requirement the learned judge found was met and surpassed by Mr. Layne. Even though the learned judge

[26] See paras. 21, 23 and 26 of the lower court judgment.

reviewed the historical context in which the offences were committed, I have no doubt that the judge was convinced that the threshold of rehabilitation and academic achievements was outsoared by Mr. Layne. Therefore, it is incorrect to say that the learned judge held that Mr. Layne would be a potential risk to the public. To the contrary, the judge did not so conclude. At paragraph 39 of the judgment where the judge stated that "[t]he test which the Court has to apply is whether there is a potential risk to the public or, more importantly, whether there will be damage to the profession's reputation", she was merely reciting the relevant principles that were enunciated in **Christian Jideofo et al v The Law Society et al**. The difficulty was in the objective element of good character - the effect on the collective reputation of the legal profession and the public confidence in the legal profession in Grenada.

[44] Let me say that it would be impossible for any appellate court in reviewing a judgment of first instance not to find things that could have been expressed differently or that should never have been said at all. However, the function of an appellate court is not to seek to define the language that the judge should have used. In this regard, Mr. Ferguson complains that the judge placed weight on a matter that was not in evidence before her, namely that Mr. Layne and others gave orders "to liquidate them". This complaint is without merit. The judge had before her the affidavit of attorney-at-law, Mr. Ferron C. Lowe, in support of the application. He deposed at paragraph 2 that:

> "…Mr. Layne was a Lieutenant Colonel in, and Operational Commander of, the People's Revolutionary Army of Grenada. He was convicted on the basis that he was part of an agreement to commit the offences having used his position as commander of the army to issue orders to certain members of the army to retake the Fort which was the place where the offences occurred."

The judge also had before her, counsel's skeleton argument in support of the application which contains the following statement at paragraph 3:

> "The offences for which the Applicant was convicted arose out of the tragic events over 30 years ago which led to the demise of the 1979, Grenada Revolution. The Applicant was a Lieutenant Colonel and day-to-

> day commander of the People's Revolutionary Army, (Grenada's legitimate army) at the time of the events. He gave the orders to recapture the military headquarters after it was overrun by civilians. Several persons lost their lives, including the then Prime Minister, Maurice Bishop, and other cabinet colleagues, then in control of the headquarters, They were executed shortly after the recapture. The Applicant was not present on the military headquarters but was convicted for his alleged role as being part of the group ordering the executions."

[45] Therefore, there was evidence, and indeed submissions, before the judge that Mr. Layne gave the order to recapture the fort and the appellant's complaint against the use of those words "to liquidate them" by the judge can be nothing more than a criticism of the judge's choice of words and would not satisfy the threshold of irrelevant considerations. It is not open to the Court to seek to impugn the exercise of discretion of a lower court on the basis of misquotation or misuse of words. More critically, I am not of the view that the words used by the trial judge could have impacted negatively on her treatment of the objective limb of the good character test which was of great concern to the judge. In my view, whether or not Mr. Layne had given the instructions to liquidate the persons who were killed cannot impact the objective test limb of good character.

[46] Further, in Mr. Layne's affidavit evidence which was filed based on the leave that was granted to him to adduce fresh evidence he stated that, "my orders authorized the soldiers to use lethal force if necessary to accomplish the mission of recapturing the headquarters". The Court of Appeal assumes the role of the High Court in a rehearing and is entitled to consider the fresh evidence which Mr. Layne has adduced which evidence supports the conclusion which the learned judge came to. In this regard and in light of Mr. Layne's evidence that he authorised the soldiers to use "lethal force", the judge's misuse of the words "liquidate them" can only be de minimis.

[47] Throughout her judgment, the learned judge referred to the fact that the offences of murder of which Mr. Layne was convicted occurred over thirty years before his application. She took into account the outstanding positive factors in favour of Mr.

Layne, his tremendous rehabilitation, the fact that he was young at the time of the offences and his brilliant scholastic achievements. At the same time, the judge quite properly bore in mind that Mr. Layne was convicted of ten counts of murder.[27]

[48] The judge also referred to **Re Wright** and **Re Gossage** in which the court declined admission to an applicant convicted of second degree murder "despite perseverance and despite successful efforts at rehabilitation". The judge at paragraph 35 stated, "[t]he United States Courts in **Re Wright & Gossage** were not swayed even though the profession had no objection to the admission of these applicants". Also, the judge, quite properly, referred to **Re Hamm**, a United States case, and stated that "[t]he point of admission is to select the persons who will handle the law with honesty and with competence, but also not to diminish the role and reputation of the legal profession".

[49] The critical views of the judge are found in paragraphs 41 to 46 of the judgment. Taken together, the learned judge was saying even though thirty years had elapsed and Mr. Layne had lived an exemplary life, the reputation of the Bar must be weighed in the round in determining whether admission should be allowed. At paragraph 41 of the judgment the learned judge said "[l]awyers play a critical role in sustaining the rule of law and thus it is necessary that the legal profession maintain its unique ability to do so by earning the respect and confidence of society. In re Rowe[7] *[80 Ny 2d at 340, 640 Ne 2d at 730]*". There can be no doubt that the judge formed the view that the reputation of the legal profession would have been affected if the person who had been convicted of ten counts of murder were to be admitted despite the excellent rehabilitation of the offender.

[27] We have not been provided with any case from the Commonwealth which, in our view, is comparable to Mr. Layne's in so far as to the seriousness of the several convictions.

[50] It is not fair to say that the judge did not take all of the relevant factors into account.[28] The judge acknowledged the principle that recommendations, academic accolades and flowing tributes and rehabilitation are all relevant considerations but will carry little weight if the court is of the view that the reputation of the profession as a whole would be adversely affected by the admission of an applicant.[29]

[51] It is common ground that at the heart of this appeal lies the complaint against the exercise of the judge's discretion. The applicable legal principles in relation to an appeal against the exercise of a judge's discretion are well known.[30] They are helpfully stated by Sir Vincent Floissac in **Dufour and Others v Helenair Corporation Ltd and Others**:

> "… an appeal against a judgment given by a trial judge in the exercise of a judicial discretion… will not be allowed unless the appellate court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations, or by taking into account or being influenced by irrelevant factors and considerations; and (2) that, as a result of the error or the degree of the error, in principle the trial judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong."[31]

[52] In so far as this is an appeal from the exercise of discretion, the Court of Appeal must not interfere with it merely upon the grounds that it may have exercise the discretion differently. The function of the appellate court is one of review in seeking to ascertain whether the judge erred in principle in exercising her

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[28] See paras. 42, 43, 44, 45 and 46.

[29] See para. 23 where the learned judge said "[w]hile I commend this Applicant for the efforts that he has made to rehabilitate himself in the some thirty years since the convictions for murder, I have to consider the preservation of the integrity of this profession". See also para. 39 where the learned judge said, "[t]he test which the Court has to apply is whether there is a potential risk to the public or, more importantly, whether there will be damage to the profession's reputation".

[30] George Allert et al v Joshua Matheson et al, GDAHCVAP2014/0007 (delivered 24th November 2014, unreported); Tafern Ltd. v Cameron-McDonald and Another Practice Note [2000] 1 WLR 1311; Enzo Addari v Edy Gay Addari, BVIHCVAP2005/0021 (delivered 23rd September 2005, unreported); Charles Osenton et al v Johnston [1942] AC 130; Bellenden (formerly Satterthwaite) v Satterthwaite [1948] 1 All ER 343.

[31] At pp. 189-190.

discretion and in doing so got it blatantly wrong. It is only if those two conditions are satisfied that it is open to an appellate court to seek to exercise its discretion afresh.[32]

[53] Indeed, this principle was adopted by Gordon JA in the case of **Attorney General et al v Geraldine Cabey**[33] where, at paragraph 16, he examined the two conditions:

> "The first condition was explained by *Viscount Simon* L.C. in **Charles Osenton & Co. v Johnston** (1941) 2 AER 245 at 250. There, the noble Lord Chancellor said:
>
> > "The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. If however, the appellate tribunal reaches the clear conclusion that there had been a wrongful exercise of discretion, in that no weight, or no sufficient weight, has been given to relevant considerations such as those urged before us by the appellant, then the reversal of the order on appeal may be justified."
>
> The second condition was explained by *Asquith L.J.* in **Bellenden** (formerly **Satterthwaite) v Satterthwaite** (1948) 1 AER 343 at 345 in language which was approved and adopted by the House of Lords in **G v G** (1985) 2 AER 225 and which I have gratefully adopted in this judgment. *Asquith L. J.* said:
>
> > "…We are here concerned with a judicial discretion, and it is of the essence of such a discretion that on the same evidence two different minds might reach widely different decisions without either being appealable. It is only where the decision exceeds the generous ambit within which reasonable disagreement is possible, and is, in fact, plainly wrong, that an appellate body is entitled to interfere."

[54] In **Bolton v Law Society**[34] Sir Thomas Bingham MR, with whom the other members of the Court agreed, made a number of pronouncements about the importance of maintaining the reputation of the solicitors profession, namely that:

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[32] See Attorney General et al v Geraldine Cabey, MNIHCVAP2008/0008 (delivered 12th January 2009, unreported) per Gordon JA.

[33] MNIHCVAP2008/0008 (delivered 12th January 2009, unreported).

(i) a profession's most valuable asset is its collective reputation and the confidence which it inspires;

(ii) the essential issue, when considering re-admission, is the need to maintain amongst members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness;

(iii) the reputation of the profession is more important than the fortunes of an individual member. Membership of a profession brings many benefits but that is part of the price.

[55] In **Christian Jideofo et al v The Law Society et al**[35] the then Master of the Rolls made the following enunciations at paragraph 16:

(i) that the test of character and suitability is a necessarily high test;

(ii) that the character and suitability test is not concerned with 'punishment', 'reward', or 'redemption', but with whether there is a risk to the public or a risk that there may be damage to the reputation of the profession; and

(iii) that no one has the right to be admitted as a solicitor and it is for the applicant to discharge the burden satisfying the test of character and suitability.

[56] It is noteworthy that in the court of first instance Mr. Ferguson, in his skeleton submissions which were filed after receipt of the amicus' submissions, had conceded at paragraphs 14 and 15 that such factors were relevant.

[57] The cases of **Bolton v Law Society** and **Christian Jideofo et al v The Law Society et al** indicate that this is the primary concern of the courts and that they should be given more weight than the individual factors of an applicant. This

[34] [1994] WLR 512.
[35] [2007] EW Misc 3.

indicates that in seeking to determine whether the individual should be admitted to the Bar, greater weight should be given to the second limb of the good character test, that is, reputation of the profession. The judge found those cases to be very instructive and stated that where it is probable that public confidence in and the reputation of the profession are likely to be gravely affected by admission of an applicant then personal factors such as achievements, good testimonials and evidence of rehabilitation would not per se "weigh heavily".

[58] There was overwhelming evidence before the learned judge that Mr. Layne was a rehabilitated offender whose scholastic accomplishments were excellent. However, her concern was in relation to the second limb re, the risk to the reputation of the profession and it was in this regard that she paid regard to the total circumstances of the application and the circumstances of the offender as she was entitled to do.

[59] In so far as Mr. Ferguson conceded that the reputation of the profession in the eyes of the public is of paramount consideration, the judge was alive to the fact that Mr. Layne had been convicted of ten counts of murder and had been rehabilitated. Even though he does not pose a risk to the public, the judge was entitled to conclude that he had not demonstrated that he was of the required character to be admitted and that in any event to permit someone who had ten convictions of murder would have a negative impact on the reputation of the profession. The judge concluded, based on the fact that the profession requires persons to have certain integrity and probity since they have to uphold the law and show fidelity to the rule of law, that despite all of the other relevant circumstances, it was self-evident that the reputation of the legal profession in Grenada would be damaged by admitting someone to practise as an attorney-at-law who had been convicted of ten counts of murder.

[60] I do not agree with learned counsel, Mr. Ferguson, that an appellate court is at liberty to reverse the exercise of discretion by the first instance judge on the main

basis that the appellate court may have exercised this discretion differently. Applying the discretion principles extracted from the cases to the appeal, there is no basis to conclude that the learned judge erred in principle by, for example, excluding or failing to take into account a relevant matter or taking into account an irrelevant matter. Neither is there any basis upon which it can be said that the judge plainly got it wrong.[36] Furthermore, I fail to see how it could be said that the cases that dealt with dishonesty and on which the judge relied were far more serious than Mr. Layne's since in those cases a mere ten years had elapsed since the commission of the offences whereas in Mr. Layne's case he had a lengthy respite in excess of thirty years and he had been fully rehabilitated. Also, Mr. Ferguson urged the Court to conclude that the judge had erred in the exercise of her discretion by utilizing the cases in support of her decision in circumstances where the decisions in those cases were based on acts of dishonesty.

[61] It seems to be self-evident that ten counts of murder must be considered as grave and more serious than even three counts of dishonesty. So while Mr. Layne is no doubt a totally rehabilitated offender, in view of the seriousness of the offences of which he has been convicted, the learned judge cannot properly be criticized for exercising her discretion in the manner in which she did, taking into account the totality of the circumstances including the highly persuasive jurisprudence in the cases of **Bolton v Law Society** and **Christian Jideofo et al v The Law Society et al**.

[62] The legal profession in Grenada, as it is in England, is a noble and honourable one. The legislature in its wisdom has given the discretion to the High Court in Grenada to determine who should be admitted to practise as an attorney-at-law. It is for the High Court in Grenada to ensure that the reputational standard of the Bar

[36] Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188. In fact to the contrary the learned judge took into account all of the relevant factors and while Mr. Layne excelled in relation to the subjective aspect of the good character he failed in relation to the objective aspect of good character. The statute in Grenada does not indicate how the aspects of good character are to be weighted but left it in the exclusive discretion of the judge to determine what weight to attach to each aspect.

in Grenada is maintained. I accept the submission of the learned Solicitor General Mr. Horsford that the learned judge did not err in the exercise of the discretion.

[63] I am not of the view that the judge was wrong to refuse to admit Mr. Layne to the Bar. I am not convinced that once the back history of Mr. Layne was known, that is, ten convictions of murder, his tremendous rehabilitation coupled with the passage of thirty years, if he were to be admitted as a lawyer, members of the public faith or confidence of the profession will not be shaken. En passant, the good reputation of the profession is something that is totally fundamental for the continuing welfare of the legal profession. This is not something which has to be tested by evidence.

[64] In relation to the **Selwyn Strachan v The Law Society** case, a High Court judgment, I find attractive the submissions made by the learned Solicitor General. Indeed, there are troubling and distinguishing features from that case to the present case. In that case, Justice Charles, dealing with an appeal against a Panel of Adjudicators, held that the Solicitors Regulation Authority suitability test allowed admission to persons to enrol for studies even if they have had a criminal conviction once there was evidence of exceptional circumstances. It is significant to note that Mr. Strachan's case was premised on the fact that he did not intend to practise in England and Wales.

[65] Having referred to the Amnesty Report, Justice Charles stated at paragraphs 60 and 61 of the judgment:

> "In my view, whatever arguments and assertions can be made to support the fairness of the trial of the Grenada 17 and the soundness and safety of their convictions these factors and the Amnesty International Report read as a whole make very troubling reading, particularly to anyone familiar with the rule of law and who is concerned, like the Law Society and the SRA, to ensure that the students and solicitors it enrols must "*uphold the rule of law and proper administration of justice*" (the first mandatory principle within the Suitability Test referred to by the Committee in its Decision).

> Also, I suggest that these factors and the Amnesty International Report read as a whole make it clear that:
> i) the conviction of the Grenada 17 cannot fairly or sensibly be treated by the SRA or the court as if it was a conviction by an English criminal court that was upheld on appeal in England ,
> ii) the convictions may be unsound or unsafe, and
> iii) it is obvious that Mr Strachan's application engaged exceptional circumstances."

[66] The learned judge improperly made comments about the constitutionality and fairness of the convictions in Grenada. He made other comments which cumulatively are very unfortunate in and of themselves and more so coming from a High Court judge who felt able to do so even though Her Majesty's Privy Council refrained from making any such comments on the convictions. At the very least judicial comity ought to have been observed by Justice Charles. Be that as it may, at paragraph 63 of the judgment Justice Charles held that to be admitted to act as attorney-at-law in Grenada (where the profession is fused) Mr. Stachan would have to satisfy the Grenadian court that he was of good character.[37]

[67] The affidavit of Mr. Hopper, QC and the comments of Justice Charles in relation to the court in Grenada makes interesting reading and seem not to be in keeping with professional courtesies that are accorded to another justice system. However, it must be borne in mind that the **Selwyn Strachan v The Law Society** case is distinguishable in that it did not address the issue of good character and suitability to practise in Grenada. In fact, it is very clear that the major aspect of the decision was that since Mr. Strachan had indicated that he did not intend to seek to practise as a solicitor now or in the future in England and Wales, allowing him to pursue the course of studies in England, so as to be able to practise in Grenada, will not affect the reputation of the English legal profession. The entire thrust of his appeal to the High Court was that since he did not intend to ever practise in England the reputation of the legal profession in England could never be affected by Mr.

[37] It is of some concern that inferentially based on the comments made by Justice Charles in the Selwyn Strachan v The Law Society judgment it seems as though there is the view that there is one standard that is acceptable in England and perhaps a different standard may well be acceptable in Grenada.

Strachan being allowed to pursue the studies in England. Mr. Strachan had deposed to this and Mr. Hopper who appeared on his behalf assured the High Court in England that he did not intend to seek to practise in England and will never seek to do so.

[68] Critically, despite the seemingly unnecessary and unfortunate comments that were made by the High Court judge about the justice system in Grenada, Justice Charles was correctly mindful of the fact that whether Mr. Strachan had met the good character requirement to be able to practise in Grenada was a matter that fell exclusively within the courts in Grenada.

[69] Counsel for Mr. Layne, Mr. Ferguson, during his oral and written arguments, submitted that if it is possible that another judge having examined the entire circumstances of the case could possibly come to a different conclusion from the learned judge, this would be a good basis for the Court of Appeal to allow Mr. Layne's appeal. With the greatest of respect, that submission runs contrary to the well-established principles that address the function of an appellate court in relation to the exercise of discretion by the High Court. I remind myself that in order for an appellate court to be able to impugn the exercise of discretion by the lower court it is not only necessary for the applicant to satisfy the appellate court that the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations or by taking into account or being influenced by irrelevant factors and considerations but also that, as a result of the error or the degree of the error, in principle the judge's decision exceeded the generous ambit within which reasonable disagreement is possible and may therefore be said to be clearly or blatantly wrong.[38] There are two limbs to the test. It is necessary for Mr. Layne to satisfy the Court of this two prong test. Nothing less will suffice.

[38] Dufour and Others v Helenair Corporation Ltd and Others (1996) 52 WIR 188.

[70] The learned judge carefully referred to the applicable principles that were extrapolated from the cases including **Bolton v Law Society**, **Christian Jideofo et al v The Law Society**, **Re Gossage** and **Re Hamm**. The principles show that where the offence for which the applicant was convicted is very serious, this factor should be accorded significant weight when balancing it against the fact that the applicant is rehabilitated. Given the factual matrix of this case, namely that Mr. Layne was convicted of ten counts of murder and that he has lived a reformed life for the past thirty years and excelled academically, the learned judge cannot be faulted for placing great weight on the very serious convictions. While the learned judge did not expressly indicate the amount of weight she attached to the factors, it is clear that she applied the principles stated in the cases of **R v Hamm**, **Christian Jideofo et al v The Law Society et al** and **Re Gossage** in exercising her discretion not to admit Mr. Layne on the basis of the risk to the reputation of the profession.

[71] It was entirely open to the learned judge to attach appropriate weight to the fact of the murder convictions in the entire scheme of this application. Accordingly, Mr. Layne has not satisfied this Court that the learned judge committed an error of principle by either taking into account irrelevant factors or by failing to take into account relevant factors or yet still attaching inappropriate weight to any of the relevant factors. He therefore has not satisfied the first limb of the two conditions which concern the appellate courts interference with the exercise of discretion by the first instance judge. In relation to the second limb, contrary to what learned counsel, Mr. Ferguson, urged on this Court, I have no doubt that Mr. Layne has failed to attain the threshold of either of the conditions required in order for this Court to find that the learned judge has erred in the exercise of her discretion. In any event, there is no basis for this Court to conclude that the learned judge got it blatantly wrong. Accordingly, it is not open to this Court to seek to exercise its discretion afresh. This ground of appeal must fail.

[72] I now propose to address the second ground of appeal.

Ground (ii) - Whether the learned judge erred in failing to case manage Mr. Layne's application in accordance with the provisions of the CPR?

Appellant's submissions

[73] Learned counsel, Mr. Ferguson, complained that once the learned judge determined that the matter was unable to be dealt with summarily she ought to have fixed a case management conference to give directions. By failing to case manage Mr. Layne's application and thereby define the issues which the learned judge had concern, Mr. Layne was denied a fair opportunity to put his case in a matter that could address those concerns and issues.

[74] In his submissions filed pursuant to the court order dated 2nd April 2014, Mr. Ferguson submitted that under part 26 of the CPR a judge is given wide case management powers and a wide discretion in exercise of those powers. The learned judge ought to have employed the case management powers of the court in dealing with Mr. Layne's application.

Submissions on behalf of the Attorney General

[75] Learned Solicitor General Mr. Horsford submitted that the proceedings concerned with Mr. Layne's application for admission to the Bar and the conduct of same were necessarily within the exclusive control of the learned judge. Admission proceedings are not directed to the resolution of some contest as to the private rights of disputing parties as is usually the case with civil proceedings. In any event, submitted Mr. Horsford, the right to practise in the court is such that, on an application for admission, the court concerned must ensure, so far as possible, that the public is protected from those who are not properly qualified.

[76] Learned Solicitor General posited that both the nature and purpose of admission indicate that, unless and save to the extent that specific procedures are laid down by statute or by rules of court and subject to the requirements of procedural fairness, they may be conducted in whatever manner the court considers

appropriate to the matter before it. The case of **Wentworth v New South Wales Bar Association**[39] was referred to by learned counsel as underpinning this principle. Mr. Horsford argued that since the procedure is entirely in the hands of the court, once the court ensures procedural fairness, the court is entitled to seek and receive assistance from such persons as, in the opinion of the court, are capable of providing it. He argued that the learned judge acted fairly and cannot be properly criticized.

Discussion and Analysis

[77] Even though learned counsel, Mr. Ferguson, did not seem to place great reliance on this ground of appeal, he however referred the Court to his written submissions which dealt with this ground. It is therefore necessary to address this point in some detail.

[78] It is incontrovertible that Mr. Layne's application to be admitted to the Bar was brought by way of fixed date claim. While it is indisputable that the judge is clothed with the power to manage the fixed date claim, it would be open to a judge to determine the procedure to be adopted for the hearing of the claim. It would be quite unusual for the court to engage in a full fledge case management for an admission to the Bar. In fact, these are usually pretty routine applications. In the case at bar, the application raised a short issue which the court required to be addressed, namely whether Mr. Layne had met the good character requirement of section 17 of the **LPA**.

[79] Learned counsel, Mr. Ferguson, complains that the judge ought to have given directions for the matter to be tried. It would be very surprising if the judge had treated this application as a contentious fixed date claim and given elaborate directions. It was well within the discretion of the court to determine the procedure to be adopted. What is essential is for the judge to determine the procedure to be adopted bearing in mind the overriding objectives and the need to manage cases

[39] (1992) 176 CLR 239.

justly and fairly. The court must seek to ensure that all persons are given a fair hearing and that there is a proportionate use of its resources.

[80] The learned Solicitor General, Mr. Horsford, quite properly opined that what was required was for the court to ensure the fairness of the procedure. I agree with him. The court is clothed by CPR 26 with case management powers which enable the court to dispense with any aspect of a procedure and it was open to the judge in the case before her to dispense with the need for any extensive case management since this was not a complex application. The judge cannot be properly criticized for the method in which she chose to resolve the sole issue.[40]

[81] Indeed, a review of the procedure used by the learned judge indicated that there would have been no doubt that what was in issue was whether or not Mr. Layne had met the objective limb of the good character requirement of the statute. It was in relation to this same point that the amicus opinion was sought and attained. There was no issue in relation to his exceedingly scholastic achievements and his great rehabilitation. It is clear that the judge ensured that learned counsel who was appearing on behalf of Mr. Layne was served with a copy of the opinion.

[82] It is noteworthy that learned counsel, Mr. Ferguson, in the submissions that were filed after receipt of the amicus' opinion, indicated that he was not filing submissions in reply but nevertheless indicated that the issue for consideration was whether or not Mr. Layne had satisfied the good character prerequisite of the legislation.

[83] There was therefore no doubt as to the issue that was of concern to the learned judge. Indeed, Mr. Ferguson in his helpful written submissions addressed the relevant issue and filed cases in support of his client's application. In addition, the

[40] It would have been very strange if the judge had proceeded with a full fledge hearing of the fixed date claim as if it were an adversarial trial when indeed it was not. In fact, it is quite usual for High Court judges to dispense with some steps of case management in simple cases. This was one such case in which it was appropriate to do so.

court heard oral submissions. Given the procedure that the judge adopted in seeking to resolve the sole issue, it cannot be said that the process was either flawed or unfair. In fact, there is not a scintilla of evidence upon which it can be said that the learned judge acted unfairly to Mr. Layne in hearing his application to be called to the Bar. The learned judge acted quite prudently in deferring the call in order to be satisfied that Mr. Layne had met the requirements of section 17 of the **LPA**. Mr. Layne's appeal also fails on this ground.

[84] For the sake of completeness, I will now address the third ground of appeal.

Ground (iii) - Whether the learned judge had jurisdiction to appoint a friend of the court to make written submissions in the matter?

Appellant's submissions

[85] Learned counsel, Mr. Ferguson, said that given the public interest in the legal profession the interest of the Attorney General is clear and obvious. Further, section 4 of the **LPA** imposes an obligation on the Grenada Bar Association to protect the interests of the legal profession. As such, the proper parties to appear as a friend of the court, if a friend of the court was indeed required, would have been the Attorney General and the Grenada Bar Association. If the Attorney General and the Grenada Bar Association were invited to appear and declined to do so, then in the interest of transparency and justice, Mr. Layne ought to have been informed of the invitation and of the refusal and of the reasons for the refusal. The fact that the two parties with a bona fide interest and standing to appear would refuse to do so ought to have weighed heavily against the appointment of a friend of the court.

[86] In his oral submissions, Mr. Ferguson recognized that the court has an inherent jurisdiction to appoint a party to appear in the proceedings as a friend of the court. He argued however that this jurisdiction must be used sparingly and is generally more suited to appellate proceedings with a public law dimension; the party must have a bona fide interest in the matter; and the party must be able to assist the

court to handle the matter by way of written and/or oral submissions. He relied on the case of **HI v Minister for Justice, Equality and Law Reform**[41] for this proposition.

[87] However, in this particular case there was a procedural error due to the fact that learned Queen's Counsel who appeared amicus revealed that his posture was not one of a neutral party but of a party opposed to the application. In his written submissions filed pursuant to the court order dated 2nd April 2014, learned counsel, Mr. Ferguson, maintained that it was a failure on the learned judge's part in bypassing the Grenada Bar Association and the Attorney General and appointing amicus counsel who had no material connection with Grenada.[42] This approach was even more fatal as one of the issues the court had to resolve was whether the reputation of the Bar in Grenada would be gravely affected by the admission of Mr. Layne.

Submissions on behalf of the Attorney General

[88] Mr. Horsford, Solicitor General, argued that, since admission proceedings are not adversarial, to limit the court's discretion in the conduct of the proceedings is neither required by the CPR strictly, as the proceedings were sui generis, nor consistent with the notion that the court can determine its procedure according to its perception of the most appropriate course in the particular case. Learned Solicitor General submitted that the court was entitled to enlist the assistance of Queen's Counsel as amicus. Mr. Layne was not denied the opportunity or facility to make representations in support of the application for admission.

Discussion and Analysis

[89] During the hearing of the appeal learned counsel, Mr. Ferguson, did not appear to pursue this ground too vigorously. However, in so far as he has raised it as a

[41] SC 61 of 2003.
[42] This submission was made despite learned counsel, Mr. Ferguson, accepting that the Grenadian Bar had declined the court's invitation to for submissions in this case.

ground of appeal and has made written submissions on this ground, it is prudent to address it. I have no doubt that there is nothing to prevent a court from seeking to obtain assistance by way of amicus from any member of the Bar. In the case at bar, it was even more critical for the judge to do so given the seeming reluctance of eminent and prominent members of the Grenadian Bar who (for very good reason) had declined the court's invitation.[43] It is noteworthy that the amicus counsel whose assistance the learned judge had sought, in addition to being one of Her Majesty's Counsel, has acted on several occasions as a High Court judge and in recent years as a Court of Appeal judge. There could be no question as to his competence or otherwise to assist the High Court in seeking to resolve the issue of whether or not Mr. Layne ought to be admitted as a member of the Grenadian Bar. The amicus counsel has also been admitted to practise in Grenada.

[90] It should be said that learned Queen's Counsel, Mr. Carrington, in the amicus opinion that he had proffered, had refrained from indicating to the court whether or not Mr. Layne should be admitted to the Bar. This was quite wise and proper of Queen's Counsel since the discretion resides exclusively with the learned judge and no one else. In fact, he merely assisted the court with the relevant legal principles that were applicable; this was quite commendable. There was nothing wrong or improper in the learned judge seeking the opinion of the amicus. In the final analysis, legal counsel Mr. Ferguson appearing on behalf of Mr. Layne was served with the opinion and he quite admirably filed comprehensive written submissions which addressed the sole issue and legal principles that were raised in the amicus opinion. In my view, there was no unfairness in the process utilised by the judge. In any event, CPR 26 enables the judge to determine the manner in which a claim should progress. It was clearly open to the judge to adopt the procedure that she did; moreover there was no prejudice to Mr. Layne. This ground of appeal is without merit and is dismissed.

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[43] During Mr. Ferguson's oral arguments at the application to adduce fresh evidence this was indeed confirmed.

Conclusion

[91] In the premises, all grounds of appeal having failed, the appeal against the judgment is dismissed.

[92] The Court gratefully acknowledges the tremendous assistance of all learned counsel.

Louise Esther Blenman
Justice of Appeal

I concur.

Mario Michel
Justice of Appeal

I concur.

Paul Webster
Justice of Appeal [Ag.]