

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2018/0596

BETWEEN:

IN THE MATTER OF SECTION 16 OF THE LEGAL PROFESSION ACT, NO. 22 OF 2008

and

**IN THE MATTER OF THE APPLICATION OF KENROY ST. CLAIRE HYMAN TO BE ADMITTED TO
PRACTICE AS AN ATTORNEY-AT-LAW OF THE EASTERN CARIBBEAN SUPREME COURT**

Appearances:

Mr. Warren Cassell and with him, Mr. Pete-Samaj McKnight for the Applicant
Mr. Justin L Simon Q.C amicus curiae for the President of the Bar and the Bar Council
Mrs. Carla Brookes-Harris for the Attorney-General.

2019: May 1st
September 19th

JUDGMENT

- [1] **WILKINSON J.:** On 20th December 2018, pursuant to the **Legal Profession Act, 2008** (“**the LPA**”), the Applicant, Mr. Kenroy St. Claire Hyman (Mr. Hyman) filed his fixed date claim and therein he claimed to be entitled to practice as an Attorney-at-Law of the Eastern Caribbean Supreme Court of Antigua and Barbuda. A document titled “Notice of Application” was also filed. The document was by its content really a notice of hearing. It reads:

"Notice is hereby given that Application has been made on behalf of Kenroy St. Claire Hyman to be admitted to practice as an Attorney-at-Law of the Eastern Caribbean Supreme Court and that the said application will be heard on... day of 201...at...am/pm at the High Court of Justice, Parliament Drive, Factory Road, St. John's, Antigua.

A draft of the order sought is attached

An affidavit in support accompanies this Application.

Any person wishing to make representation concerning this Application must lodge notice of the same with the Registrar of the High Court no later than 9.00a.m. on The day of 201..

Dated the 20th day of December 2018

(signed)
Lawrence Daniels
Daniels, Phillips & Associates
Attorneys-at-Law"

[2] On said 20th December 2018, Mr. Hyman filed another document titled "Application". It reads:

"I, the above-named Kenroy St. Claire Hyman of Olveston, Montserrat, HEREBY APPLY to be admitted to practice as an Attorney-At-Law of the Eastern Caribbean Supreme Court in Antigua and Barbuda.

Dated the 19th day of December 2018

(signed)
KENROY ST CLAIRE HYMAN"

[3] Also on the 20th December 2018, Mr. Hyman filed what can now be described as his first affidavit in support of his fixed date claim form, and 2 applications. Therein he deposed:

"1. That I am the person applying for admission to practice as an Attorney-at-Law of the Eastern Caribbean Supreme Court in Antigua and Barbuda.

2. That I am a Citizen of Montserrat and I'm upwards of forty-five years of age. A copy of the relevant page of my passport is hereto attached and marked "KH!".

3. That I am a practicing Attorney-at-Law, currently working with the Office of Director of Prosecutions, situated in Brades, Montserrat.

4. That I am a graduate of the De Montfort University, having obtained a Bachelor of Laws Degree on the 11th day of September 2003. A copy of my degree is hereto attached and marked "KH2".

5. That I am a graduate of the Norman Manley Law School having obtained a Legal Education Certificate of the Council of Legal Education on the 27th day of August 2007. A copy of the said Certificate is hereto attached and marked "KH3".

6. That I was admitted as a Barrister and Solicitor at law in Montserrat on the 7th day of December 2007 and have been practicing law in Montserrat for upwards of ten years. A copy of my latest certificate of enrollment is attached and marked "KH4".

7. That I have never been convicted of a disciplinary offence by a professional or regulatory body nor are there any disciplinary proceedings pending against me anywhere in respect of such offence.

8. That I am a person of good and sound character, integrity, honesty and probity of conduct, and I verily believe that I am in every way a fit and proper person to be admitted to the roll of Attorneys-At-Law in Antigua.

9. That I have never had any bankruptcy order made against me nor entered into an individual voluntary arrangement with creditors.

10. In accordance with the provisions of the **Legal Profession Act, 2008** (No.22 of 2008) and the **Legal Profession Regulations 2011 (No.1 of 2011)** the admission fee of Five Hundred Eastern Caribbean Dollars (EC\$500.00) has been paid to the Registrar of the High Court. The Receipt thereof is attached and marked "KH5".

11. That I undertake to serve copies of my application for admission to practice as an Attorney-at-Law of the Eastern Caribbean Supreme Court in Antigua and Barbuda on the Honourable Attorney General and the President of the Antigua and Barbuda Bar Association in accordance with the practice of this Honourable Court and to file proof of service of same before the hearing of my said application.

12. That I make these statements from my personal knowledge and verily believe and declare the same to be true. These statements are made in support of my Application to practice as an Attorney-at-Law of the Eastern Caribbean Supreme Court in Antigua and Barbuda."

[4] On 11th January 2019, Mr. Hyman filed his second affidavit. Therein he deposed:

"1. On the 20th day of December 2018, I made an affidavit in support of my application to be admitted to practice as an Attorney-at-Law of the Eastern Caribbean Supreme Court in Antigua and Barbuda.

2. Through inadvertence, I omitted to apply for, refer and attach to my affidavit a certificate of good standing from the Registrar of Montserrat.

3. I have since made application for such certificate and hereby attach it to this affidavit marked "KH1".

[5] Mr. Collin Meade, Registrar of the High Court at Montserrat provided the following certificate of good standing. It reads:

"BRITISH OVERSEAS TERRITORY OF MONSERRAT

A.D. 2019

CERTIFICATE OF GOOD STANDING

This is to certify that Kenroy Hyman was on the 07th day of December 2007 Called to Bar in the Overseas Territory of Montserrat.

The said Kenroy Hyman:-

i) Has no proceedings pending against him for professional negligence or disgraceful conduct:

ii) Has not been adjudged guilty of disgraceful conduct in a professional capacity by a Committee of Inquiry but has a Magisterial Conviction for Assault dated 26th April 2011;

iii) Is entitled to practice Law in Montserrat and his name has not been removed from The Roll of Attorneys At Law of Montserrat

Dated the 08th day of January 2019.

(Seal)

(signed)
Collin Meade
Registrar of the High Court
Eastern Caribbean Supreme Court
(Montserrat Circuit)"

[6] On 12th March 2019, Ms. Carla Brookes-Harris, the Deputy Solicitor General wrote to Mr. Warren Cassell, Counsel for Mr. Hyman as follows:

"12th March 2019

Mr. Warren Cassell
Daniels, Phillips and Associates
Attorneys-at-Law
St Mary's Street
St. John's

Antigua

Dear Mr Cassell,

Re: Application to call to the Bar in Antigua and Barbuda – Kenroy St. Claire Hyman

Reference is made to your correspondence dated March 11th 2009 (2019) concerning the captioned matter.

Please be advised that the Honourable Attorney General is unable to file a Notice of Consent as the application is still not in order.

Please be guided accordingly.

Yours truly,
(signed)
Carla Brookes-Harris
Deputy Solicitor General

cc. President of the Bar Association
Registrar of the High Court”

[7] On 1st April 2019, the President of the Antigua and Barbuda Bar Association, Mr. Lenworth Johnson filed a Certificate of Inquiry pursuant to section 16(4) of the **LPA**. It reads:

“I, LENWORTH JOHNSON, President of the Antigua and Barbuda Bar Association hereby certify that the Applicant KENROY ST. CLAIRE HYMAN has fulfilled all the conditions for admission as set out in the **Legal Profession Act, 2008**.

Dated the 1st day of April 2019.

(signed)
Lenworth Johnson
President
Antigua & Barbuda Bar Association.”

[8] On 12th April 2019, the Attorney General, Mr. Steadroy Benjamin filed a Notice of Consent. It reads:

“NOTICE OF CONSENT

NOTICE is hereby given that Application has been made on behalf of KENROY ST. CLAIRE HYMAN to be admitted to practice as an Attorney-At-Law of the Eastern Caribbean Supreme Court of Antigua and Barbuda, and duly served on the Attorney General’s Chambers, the Attorney General pursuant to section 16(4) of the Legal Profession Act, 2008 **HEREBY CONSENTS** to the Application being granted.

Dated the 10th April 2019

(signed)
Mr. Steadroy Benjamin
Attorney General of Antigua and Barbuda”

[9] On 16th April 2019, Ms. Sherrie-Ann Bradshaw, Vice President of the Antigua and Barbuda Bar Association issued a letter addressed to the Registrar of the High Court. It reads:

“16th April 2019

Registrar of the High Court
High Court of Justice
St. John’s, Antigua

Dear Madam Registrar,

Re: High Court Claim No.: ANUHCV 2018/0596
In the Matter of the Application of Kenroy
St. Claire Hyman to be admitted to practice
as an Attorney-at-Law of the Eastern Caribbean Supreme
Court in Antigua and Barbuda

In regards to the above-referenced matter, I write to you pursuant to a decision of the Council of the Antigua and Barbuda Bar Association taken at a meeting of the Council held today, 16th instant.

Please be advised that the Certificate of Inquiry dated and filed the 1st day of April 2019 and signed by the President of the Bar in the above-reference matter, did not represent a decision of the Council. Further, at the said meeting of the Council today a decision was taken to withdraw the said Certificate of Inquiry pending further enquiry by the Council in relation to whether the Applicant has met the requirements of ss.16(1)(a) and 16(1)(e) of the **Legal Profession Act, No. 22 of 2008**.

Accordingly, please find attached a revised Certificate of Inquiry filed in the said matter as directed by (the) Council.

Respectfully yours,

(signed)
Sherrie-Ann Bradshaw
Vice President.”

[10] Attached to the letter was a Withdrawal of Certificate of Inquiry dated 16th April 2019. It reads:

“Withdrawal of Certificate of Inquiry

I, SHERRIE-ANN BRADSHAW, Vice President of the Law Council of the Antigua and Barbuda Bar Association, hereby withdraw the Certificate of Inquiry filed herein on the 1st day of April 2019 and signed by the President of the Law Council. We hereby confirm enquiry by the Law Council as to whether the Applicant KENROY ST. CLAIRE HYMAN has fulfilled all the conditions for admission as set out in the Legal Profession Act, 22 of 2008 is ongoing.

Dated the 16th day of April 2019.

(signed)
Sherrie-Ann Bradshaw
Law Council
Antigua & Barbuda Bar Association”

[11] On said 16th April 2019, Ms. Bradshaw filed her first affidavit. Therein she deposed:

“1. I am the Vice President of the Council of Antigua and Barbuda Bar Association (“the Council”) and depose to this Affidavit in capacity as said Vice President.

2. I have read the application, affidavit in support of same and supplemental affidavit of Mr. Hyman as it relates to the above matter.

3. It has been brought to my attention that a Certificate of Inquiries pursuant to section 16(4) of the Legal Profession Act No. 22 of 2006 (2008) was submitted to the Registrar and signed by the President of the Bar Association, Mr. Lenworth Johnson, as to whether the Council is of the view that the Applicant herein has fulfilled all of the conditions laid down by the law for admission to the Bar.

4. In fact, the matter of whether the Applicant had so fulfilled the said conditions came to Council for consideration. In the absence of a formal meeting, the matter was discussed via email among Council members, and (the) majority of Council members expressed the view that they required further inquiry to be made before making any determination as to whether the Applicant has fulfilled the requirements of section 16(1) of the Legal Profession Act, with particular reference to section 16(1)(a) and 16(1)(d).

5. This was based on a number of concerns raised by Council members including:

a. The fact that the Applicant had not at the time of the Application herein disclosed that he had had a Magisterial conviction for assault dated 26th April 2011, which conviction was subsequently disclosed by him indirectly by way of information contained in a Certificate of Good Standing exhibited by the Applicant in his supplemental affidavit dated 11th January 2019;

b. The fact that the Applicant failed to provide to the Court any evidence of the details of the said conviction, related sentencing and rehabilitation, and whether said conviction is a spent conviction pursuant to the **Criminal Records (Rehabilitation of Offenders) Act, No.19 of 2013**.

6. Upon research Council gleaned further information as the nature of the conviction and related sentence from the Montserrat Court of Appeal judgment **MRCAP 2011/002 – Kenroy Hyman v. Commissioner of Police** by which the Council learned that the Applicant (the Appellant therein) had been sentenced as follows:

(1) Conditional discharge on entering into recognizance in the sum of \$1000.00 on surety, to be of good behaviour and to appear for sentencing when called any time during the period of one year.

(2) The appellant was required to undergo counselling for self-control provided by the Health Department of Montserrat, with attendance at such session on a monthly basis.

(3) Supervision of the appellant was to be conducted by the Probation Officer and a monthly report on attendance was to be provided by (to) the court.

(4) The appellant was also ordered to pay compensation in the sum of EC\$500.00 to the complainant for pain, suffering and the injury of loss of hair and resulting sore, to be paid within two weeks or 1 week imprisonment in default.

7. A conviction for assault is not necessarily, in and of itself, a barrier to the admission of an applicant pursuant to section 16 of the **Legal Profession Act**. However the issue of character and the assessment thereof is one which the Council must, consistent our **Code of Ethics**, take very seriously. I believe that the decision of the Judicial Committee of the Privy Council in **Layne v. Attorney-General of Grenada [2019] UKPC 11** is instructive in this regard.

8. The Council is not aware as to whether the Applicant's sentence has been fulfilled and requires clarification as it relates to the same and further whether the said conviction is a spent conviction. Pending such information, Council has not taken any decision as to whether the Applicant has met the requirements of section 16(1) of the **Legal Profession Act** and, without additional information is not yet in a position to take such a decision.

9. Further, upon making enquiries of members of the Bar in Montserrat, it came to the Council's attention in mid-February 2019, that the Applicant had an unpaid civil judgment of the Magistrate's Court in Montserrat. Council was advised by its President and I verily believe that the President of Council thereupon raised the matter with Applicant's Counsel as a matter of relevance for Council's consideration in the Application herein. Subsequently, Council received from the President certain limited explanation which he advised had been received by him. Further, in March 2019, Council received a copy of a receipt (No. 187437) issued by the Montserrat Magistrate's Court showing that "compensation" in Magistrate's Court **Claim No. NMIMCV2018/0061** has been paid by the Applicant in the sum of \$345.60 on the 19th March 2019 (A copy of the said receipt is attached hereto and marked Exhibit "SAB1"). Council has received no information as to the specifics of the civil claim, whether the Applicant appeared in Court to answer the Civil Claim or the circumstances in which judgment was rendered precisely. Council further has received no information as to how long the civil judgment was outstanding before it was paid, but it appears on the face of the said receipt that payment of same was made by the Applicant sometime after the matter was brought to the Applicant's Counsel's attention by

the President of the Council as a matter potentially relevant to Council's deliberations in respect of the Application herein.

10. In light of all the aforesaid, (the) majority of Council have formed the view that the above-mentioned Certificate of Inquiries submitted to the Registrar herein was issued in error as it did not reflect a decision of the Council and ought not to have been issued in the absence of such a decision, whether by poll of members or by vote at a duly constituted Council meeting.

11. Based on my understanding of section 16 of the **Legal Profession Act**, I am aware that in determining whether the Applicant herein has met the requirements of section 16(1) of that Act, the Court may and is entitled to rely heavily upon the results of the enquiries required to be made pursuant to section 16(4) thereof.

12. As the Vice-President of the Bar and as an officer of the Court, I believe I have a duty to the Court and to the administration of justice to provide the Court with full disclosure as to the genesis of the Certificate of Inquiry submitted to the Registrar herein and appearing to express an opinion of Council. Accordingly, I swear this affidavit as amicus curiae herein.

13. Council is constituted of ten (10) members including the President and Vice-President thereof. I am advised by the majority of Council members and verily believe that they consider the foregoing facts to accurately represent their own respective recollections of such facts and that they consider the filing of this affidavit to be necessary to fulfil their respective obligations to the Court, as officers thereof. I exhibit hereto the consent of such majority members of Council marked Exhibit "SAB2" as per the decision of the members named therein taken at a meeting of the Council held on the 16th April 2019."

Attached to Ms. Bradshaw's affidavit was a document titled "Confirmation and Consent" signed by 8 of the 10 Bar Council members.

[12] On 23rd April 2019, Mr. Lenworth Johnson, President of the Bar Association filed an affidavit. Therein he deposed:

"1. I am President of the Antigua and Barbuda Bar Association. I have read the affidavit of Sherrie-Ann S. Bradshaw, Vice President of the Association, sworn and filed in this matter on the 16th April 2019.

2. On the 1st April 2019, I provided to the Registrar a Certificate of Inquiry pursuant to section 16(4) of the **Legal Profession Act, No. 22 of 2008 ("the Act")** certifying that the Applicant Kenroy St. Claire Hyman had fulfilled all conditions laid down by law for his admission to the Bar. On 16th April 2019, the Council of the Association voted to reverse my aforesaid certificate and provided to the Registrar a Withdrawal of Certificate of Inquiry. My objective in swearing this affidavit is not to challenge the decision of the Council but to provide facts additional to those provided by Ms. Bradshaw in her affidavit. My reason for providing these facts is to divest the Court of any impression it may have that I acted in an autocratic manner or did not seek the Council's decision by way of poll.

3. Firstly, on applications for Call to the Bar, it is not the usual practice to seek a formal decision of the Council, either by way of poll or decision in Council meeting. Such applications are usually routine and once everything appears to be in order, the President signs the Certificate of Inquiry (provides Consent as it is called). However, if there are issues such as in the instant case the President is expected to discuss the matter and seek a consensus or formal decision of Council before consenting, or not, on behalf of Council to the admission of the applicant.

4. Accordingly, as indicated by Ms. Bradshaw, I raised the matter with Council (January 24th 2019, see email exhibited hereto as "LJ1") at which Council members expressed the view that further inquiry needed to be made as to whether the Applicant has fulfilled the requirements for section 16(1) of the Act to be admitted to the Bar in Antigua and Barbuda. Prior to this date I had discussed the application with Mr. Hyman's solicitors and pointed out that the initial Certificate of Good Character from Norman Manley Law School was unsatisfactory because it was dated over eleven years ago (24th September 2007). It was after that Mr. Hyman's solicitors provided the Certificate of Good Standing dated 8th January 2019, from the Montserrat Registrar, which certificate revealed Mr. Hyman's conviction for assault on 26th April 2011. I then requested and obtained from Mr. Hyman's solicitors a copy of the Court of Appeal judgment **Kenroy Hyman v. The Commissioner of Police**. Subsequently, over the next two months, on my own initiative, and at the suggestion of Council members, I obtained the following additional documentation in respect of Mr. Hyman's application:

- (i) Certificate of Good Standing from the Montserrat Bar Association
- (ii) Receipt from the Montserrat Magistrate's Court evidencing payment in respect of Case No. MNIMCV 2018/0061.

5. On Thursday March 28th 2019, I emailed to the Council the last document (the receipt) mentioned in paragraph 4 above and stated that "the question is now whether the Council feels that Mr. Hyman has fulfilled all the conditions for admission as laid down by law, including that of good character". I further stated that if the Council feels that Mr. Hyman has not fulfilled all the relevant conditions, the President is required to file an affidavit of objection. I advised that, having considered Mr. Hyman's application and attendant documents, and the law laid down in the recent Privy Council case of **Layne v. Attorney General of Grenada** (applicant's attributes including conviction, etc. and risk of damage to public confidence in the profession) I was of the view that Mr. Hyman should be admitted. This was primarily because the conviction was 8 years ago, he continued to practice in Montserrat as Crown Counsel subsequent to the conviction and until recently, and the Montserrat Bar Association had given him a certificate of good standing. I then requested in clear words the position of other Council Members (a poll). Exhibited hereto and marked "LJ2" is a copy of my email of March 28th 2019.

6. Four days later I had heard nothing from any Council member and considering that the Council had silently acquiesced in my view that Mr. Hyman should be admitted I advised by email on Monday April 1st 2019, that having received no comments, I would sign the Certificate of Inquiry, and did so. Prior to my signing the certificate, there was never any

specific request for inquiry as to whether the Applicant had fulfilled all the conditions of sentencing mandated by the Magistrate as set out in the Court of Appeal judgment in **MCRAP2011/002 Kenroy Hyman v. The Commissioner of Police**. Exhibited hereto and marked "LJ3" is a copy of my email of April 1st 2019.

7. Immediately following my signing the Certificate of Inquiry as aforesaid, a number of Council members objected stating that they had not had sufficient time since March 28th 2019, to consider a final decision in the matter and that still further inquiry needed to be made. It was suggested that I retract the certificate. The certificate was, however, already in the possession of Mr. Hyman's solicitors and I felt that, in good conscience, I could not retract same for he was entitled to rely on the certificate as regularly and properly procured and that he should not suffer because of the Council's tardiness or administrative issues."

8. These are the additional facts I bring to the attention of the Court, in order that the Court may have the full picture of events. As indicated above, I have not filed this affidavit with the intent to challenge the decision of the Council to withdraw the Certificate of Inquiry filed by myself in this matter."

[13] On 26th April 2019, Mr. Hyman filed his third affidavit. Therein he deposed:

"1. I have made two previous affidavits in this matter dated 20th December 2018, and 11th January 2019, respectively. I now make this further affidavit in support of my application to be admitted to practice as an Attorney-at-Law of the Eastern Caribbean Supreme Court in Antigua and Barbuda.

2. I have read the affidavit of Sherrie-Ann S. Bradshaw filed on the 16th day of April 2019, and the affidavit of Lenworth Johnson filed on the 23rd day of April 2019, respectively.

3. As it regards the conviction of assault, I have fully satisfied the sentence of the court in that:

- During the recognizance period of one year and up until present day I have not re-offended and as such have fulfilled or satisfied that condition of my sentence;
- Immediately after the decision of the Court of Appeal, I commenced counselling sessions at the St. John's Health Centre and attended once per month over a period of one year;
- In relation to my supervision by the probation officer assigned to me, he visited my home in St. John's Montserrat once per week over a period of one year and to the best of my recollection, he submitted a number of reports to the learned Magistrate during that period;
- Immediately following the decision of the Court of Appeal, the sum of \$500.00 was paid into the Magistrate's Court as ordered by the Court.

4. Given the fact that at no time, that I was asked to appear for sentencing in breach of conditions 1-3 of the sentence, coupled with the fact that there was no term of

imprisonment in default of non-payment for the \$500.00, this is evidence that I fulfilled all the conditions of my sentence.

5. Having read Sherrie-Ann's affidavit and reading her concerns about whether the terms of sentence were satisfied, I immediately made contact with the Magistrate's Court in Montserrat in an attempt to obtain all the necessary documentation including the receipt for the payment of the \$500.00 compensation and any other document which would provide evidence that the sentence of the court had been satisfied. I am informed by clerks within the Magistrate's Court and verily believe that they may not be able to obtain a copy at this time because of the time that has elapsed. I am further informed by said clerks that records have been since stored away in one of several containers at Government Headquarters and that it is virtually impossible to locate the said receipt at this time.

6. I am fully rehabilitated and have not since the incident ran afoul of the law."

[14] On 26th April 2019, Mr. Fitzroy Buffonge, a Barrister-at-Law at Montserrat filed an affidavit of good character on Mr. Hyman's behalf. Therein he deposed:

"1. – (name, address and occupation)

2. The Applicant KENROY ST. CLAIRE HYMAN, is a graduate of the De Montfort University of London, England. He was awarded a Bachelor of Laws Degree on the 11th day of September 2003.

3. The Applicant also successfully completed the Council of Legal Education's two year course of study and training at Norman Manley's Law School in Jamaica and was awarded the Council of Legal Education Certificate of Enrollment for the Montserrat Bar on the 7th day of December 2007.

4. I would have known the Applicant personally for upwards of 35 years having both played cricket for Montserrat for over 10 years during which period the Applicant was a Police Officer within the Royal Montserrat Police Force.

5. The Applicant is a dedicated and highly competitive character who seeks excellence in all his endeavors whether at sport or at law.

6. Additionally as a Barrister-at-Law, I had the distinct pleasure of working alongside the Applicant at the Honourable Attorney-General's Chambers in Montserrat prior to him moving to the Office of the Director of Public Prosecutions and during that time I would have benefitted immensely from his case preparation skills and general deportment.

7. There was an unfortunate incident concerning the Applicant in or about the year 2011 resulting in him being convicted with assault.

8. From my personal knowledge of the Applicant KENROY ST. CLAIRE HYMAN, he has learnt from the incident and has shown and made significant strides in his personal

development to the extent that he is a widely respected upstanding member of the Montserrat Community.

9. I consider the Applicant KENROY ST. CLAIRE HYMAN, a fit and proper person to be admitted to practice Law in Antigua and Barbuda.”

[15] On said 26th April 2019, Ms. Bradshaw filed a second affidavit with title “AFFIDAVIT IN OBJECTION TO APPLICATION FOR CALL TO THE BAR”. Therein she deposed:

“1. I am the Vice President of the Council of the Antigua and Barbuda Bar Association (“the Council”) and depose to this affidavit in capacity as said Vice President.

2. I have read the application, affidavit in support of same and supplemental affidavit of Mr. Hyman as it relates to the above matter.

3. On the 16th day of April 2019, an affidavit Amicus Curiae was filed in the matter. I wish to incorporate the contents of the said Affidavit of 16th April 2019, in this affidavit deposed by me.

4. On the 18th day of April 2019, Counsel formally wrote to Mr. Lawrence Daniels, Attorney-at-Law representing Mr. Hyman in the matter and requested from him information which would assist the Bar Council in determining whether Mr. Hyman has met the requirement of section 16(1)(a) and 16 (1)(e). A copy of the letter is now marked and exhibited as “SB3”. The said letter was received by Mr. Lawrence Daniels on even date and Council has not received a response to said letter as of the date of filing this affidavit.

5. Council is of the view that unless the issues highlighted in the letter of April 18th 2019, have been addressed, we are unable to fulfil our obligation to the Court under section 16 of the Act.”

[16] The Bar Council’s letter of 18th April 2019, reads:

“April 18, 2019

Mr. Lawrence Daniels
Daniels, Phillips and Associates Chambers
#47 St. Mary’s Street
St. John’s, Antigua

Dear Sir,

**Re: High Court Claim No.: ANUHCV2018/0596
In the Matter of the Application of Kenroy St. Claire Hyman to be admitted to practice as an Attorney-at-Law of the Eastern Caribbean Supreme Court in Antigua and Barbuda.**

Pursuant to enquiry made of the Bar Council in accordance with section 16(4) of the **Legal Profession Act No. 22 of 2008**, you would have received service of the Council's Withdrawal of the Certificate of Inquiry previously filed in the above-captioned suit. Upon careful review of the evidence filed in support of the Applicant's application, Council is currently of the view that he has not yet satisfied all the legal requirements. Council must now therefore consider how to advise the Registrar of the Court on this matter.

Please be reminded that it is the Applicant's duty to demonstrate to the Court that he has satisfied all the requirements of the law to be admitted to practice as an Attorney-at-Law in Antigua and Barbuda. In this regard we refer you to section 16(1) of the **Legal Profession Act**, with particular reference to sub-sections 16(1)(a) and 16(1)(e). Though the Council may elect to make certain enquiries of its own initiative to assist the Court, it is not the Council's responsibility to research concerns or questions which may arise regarding the Applicant's character or past conduct. Rather it is the Applicant's duty to be fully informative to the Court on all matters relevant to his application, with particular reference to the requirements of section 16(1). It is then for the Council to advise the Court (through the Registrar) whether it is satisfied that all the requirements of the law have been met.

Council, through its President has already informally highlighted to you, various concerns and questions raised in respect of the said Application and we note that the Applicant subsequently either delivered additional documents to the Council or filed further affidavits in support of his Application. However, it is Council's considered opinion that information from the Applicant on matters relevant to his Application continues to be supplied to the Court in a piecemeal manner, with each new piece of information raising additional questions which only the Applicant can anticipate and answer.

The Council therefore urges the Applicant with your guidance as legal counsel, to carefully review the requirements of section 16(1)(a) and 16(1)(e) and to provide fulsome and forthright disclosure in respect of all relevant matters.

In an effort to be of some assistance in this regard, please now find attached a list of matters which the Council considers important in determining whether the Applicant has met the requirement of s.16(1)(a) and s.16 (1)(e) of the **Legal Profession Act**. Please note that while we have tried to address all relevant concerns, the attached is provided as a courtesy only. It is not intended to be an exhaustive list of all matters on which the Applicant should make disclosure, nor should it be assumed that simply providing a check-list of documents or information would be sufficient to satisfy the requirements of the law. In particular, matters of character, or of conduct which may speak to the issue of character, require careful consideration in accordance with the tests laid down by the Judicial Committee of the Privy Council in its recent decision in **Layne v. Attorney General of Grenada [2019] UKPC11**.

As such, the Council reserves the right to consider all relevant information and circumstances in determining how it shall advise the Registrar of the Court pursuant to section 16(4) of **the Act**.

Please be guided accordingly.

Sincerely yours,

(signed)
Sherrie-Ann Bradshaw
Vice President”

[17] On 30th April 2019, the President of the Bar, Mr. Johnson filed his second affidavit. He deposed:

“1. I am the President of the Antigua and Barbuda Bar Association. I make this Affidavit subsequent to matters outlined in my affidavit of April 23rd 2019.

2. On 26th April 2019, the Applicant swore and filed a further affidavit in this matter in response to an inquiry from Council filed within the affidavit of Sherrie-Ann Bradshaw on 26th April 2019. The Applicant deposed, without any tangible evidence, that he had fully satisfied the sentence of the court. On the same day an affidavit of Good Character sworn by Fitzroy Buffonge, Barrister of Law of Olveston, Montserrat was filed on behalf of the Applicant.

3. In light of the additional evidence filed by the Applicant, Council of the Association, is of the view that in order to adequately assess whether the Applicant has met the requirement of section 16(1) of the Legal Profession Act, 2008, it would be important for the Council to have independent confirmation that the Applicant had fully satisfied the Magisterial sentence in the Applicant’s assault conviction and that he has been discharged as per requirement of the sentence. (See paragraph 6 of the affidavit of Sherrie-Ann Bradshaw filed April 16, 2019 for conditions of sentencing.)

4. The Council is therefore unable at this time to provide to the Registrar a Certificate of Inquiry that the Applicant has fulfilled all the conditions laid down by the law for admission to the Bar. Council recommends that confirmation of discharge from the Montserrat Magistrate Court be provided by the Applicant to further his application.”

[18] On the morning of the hearing of Mr. Hyman’s application, 1st May 2019, as the Court started the hearing there was passed to it an affidavit filed at 9.00 a.m. that morning by a former Senior Magistrate at Montserrat, Mrs. Veronica Dorsett-Hector. Her affidavit was stated to be a “FURTHER AFFIDAVIT” but the Court has no record of an earlier affidavit by Mrs. Dorsett-Hector. Mrs. Dorsett-Hector deposed:

“1. I served as Senior Magistrate in the island of Montserrat between 2008 and 2014. I make this affidavit with the knowledge that Mr. Kenroy Hyman has made an application to be admitted to practice law in Antigua & Barbuda.

2. It is my understanding that the Antigua & Barbuda Bar Council is seeking to verify whether Mr. Hyman has complied with the sentence imposed by the Magistrate’s court after his conviction of assault.

3. During my tenure as Magistrate, I adjudicated over several cases including the matter Police Commissioner vs. Kenroy Hyman which was a charge of assault brought against Mr. Hyman in December 2010.

4. Mr. Hyman was found guilty in April 2011 and was sentenced as follows:

(1) Conditional discharge on entering into recognizance in the sum of \$1000.00 on surety, to be of good behaviour and to appear for sentencing when called any time during the period of one year.

(2) The appellant was required to undergo counselling for self-control provided by the Health Department of Montserrat, with attendance of such session on a monthly basis.

a (3) Supervision of the appellant was to be conducted by the Probation Officer and monthly report on attendance was to be provided to the court.

(4) The appellant was also ordered to pay compensation in the sum of EC\$500.00 to the complainant for pain, suffering and the injury of the loss of hair and resulting sore, to be paid within two weeks or 1 week imprisonment in default.

5. Mr. Hyman complied with the sentences imposed by me. Having sentenced Mr. Hyman, at no time has he ever been asked to return to court for sentencing due to any failure on his part to comply with the sentences which were imposed on him.”

Submissions of Counsel

Counsel for Mr. Hyman

[19] Counsel for Mr. Hyman cited section 16 of the **LPA**. He said that there were no issues as regards sections 16 (1) (b) to (e) but there seemed to be some issue with section 16 (1) (a) – that of good character.

[20] He submitted that the issue with 16(1)(a) stems from a conviction in 2011. This he submitted was of no moment because it was spent. He referred the Court to **The Criminal Records (Rehabilitation of Offenders) Act, 2013 (the CR(RO)A)** of the laws of Antigua and Barbuda.

[21] The Court inquired of Counsel as to why was he citing an Antigua and Barbuda law in connection with an offence at Montserrat? He responded that there was no statute at Montserrat and the application was being made in Antigua.

[22] The Court drew his attention to section 2 of the **CR(RO)A** which interpreted “conviction” as:

“conviction” includes any finding in any criminal proceeding, that an offence was committed by a person in Antigua and Barbuda,” (My emphasis)

[23] Counsel submitted that the word “includes” in section 2 of the **CR(RO)A** was wide enough to cover convictions in other territories.

[24] Counsel referred the Court to sections 3(1)(b), 3(5), 5 and to the Schedule Part 1. Section 3 of the **CR(RO)** reads:

“3. Spent convictions

(1) Subject to the provisions of this Act, where a person –
(a) has been convicted of a criminal offence either before or after the date of the commencement of this Act; and
(b) has not, since the conviction referred to in paragraph (a), been convicted of any other offence during the relevant rehabilitation period,

....

(5) Notwithstanding subsection (2), where a person has been convicted of one or more offences –

(a) ...;

(b) for which no custodial sentence was imposed, and has not since the last conviction been convicted of any other offence during the relevant rehabilitation period referred to in section 4, that person shall be treated as a rehabilitated person in respect of those offences and the conviction shall be treated as spent.

....

5. Effects of rehabilitation

(1) Subject to the provisions of this Act, a person who is a rehabilitated person within the meaning of this Act shall be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or been sentenced for an offence which was the subject of a conviction.”

[25] **Schedule Part 1** which deals with **Rehabilitation Periods** provides that where there was a non-custodial sentence then the rehabilitation period was deemed to be 3 years

[26] Counsel submitted that the spirit of the **CR(RO)A** was seen in the name of the **Act**. The conviction being spent, it was deemed in law to be as if it had never happened and so any reference to the conviction in the affidavit of Ms. Bradshaw was neither “here nor there”.

[27] Counsel referred the Court to the affidavit of the former Chief Magistrate of Montserrat, Mrs. Dorsett-Hector. He said that there seemed to have been some concern that there was no independent evidence showing that Mr. Hyman had complied with the Magistrate’s order.

- [28] Counsel submitted that Mr. Hyman had set out in his first affidavit of 20th December 2018, that he had obtained all the necessary certificates and qualifications to be admitted to the Bar.
- [29] Counsel referred the Court to Mr. Buffonge's affidavit and cited in particular paragraphs 4, 7 and 8.
- [30] Counsel then said that in effect it would appear as if there were "certain persons" – Ms. Sherrie-Ann Bradshaw, who were trying to bar Mr. Hyman from admittance to the Bar.
- [31] On this comment, the Court drew Counsel's attention to a certificate signed by 7 of the members of the Bar Council in addition to Ms. Bradshaw in support of the affidavit of Ms. Bradshaw and so she did not depose to her affidavit in her personal capacity.
- [32] Counsel referred to the 2 affidavits of the President of the Bar, Mr. Johnson and cited in particular paragraph 4 of his affidavit filed 30th April 2019.
- [33] Counsel submitted that the affidavit of the former Chief Magistrate, Mrs. Dorsette-Hector seems to have satisfied the concerns of the Bar Council.
- [34] Counsel submitted that Mr. Hyman had demonstrated that the conviction was already spent, that there was now no bar to Mr. Hyman being admitted to the Bar of Antigua and Barbuda. He asked that Mr. Hyman be admitted as he satisfied all the conditions set out in section 16 of the **LPA**. Mr. Hyman's infraction he said was not in relation to his professional capacity but was in his personal capacity.

Counsel for the President of the Bar and the Bar Council

- [35] Counsel for the President of the Bar and Bar Council opened his submissions by stating that first of all, there was no attempt or intention of either Ms. Bradshaw or any other member of the Bar Council to bar Mr. Hyman from being called to the Bar. What the Bar Council sought to do with the affidavits sworn to and filed by Ms. Bradshaw and Mr. Johnson, was to fulfil its duty which was statutorily expressed at section 16(4) of the **LPA**. Counsel referred to and cited section 16(4).
- [36] Counsel submitted that what the affidavits of Ms. Bradshaw and Mr. Johnson demonstrated was that the issue of "good character" which is a condition that must be fulfilled by Mr. Hyman was being called into question by virtue of the affidavits that Mr. Hyman had sworn and filed.
- [37] Counsel submitted that there had been unfortunately a lack of full disclosure on the part of Mr. Hyman when he initially filed his application as far back as 20th December 2018, and it was only following various queries made by the Bar Council based on information received from other sources and including the Court of Appeal judgment delivered on 17th September 2012, in respect of an appeal by Mr. Hyman of his summary conviction in the Magistrate Court.
- [38] Counsel submitted that Counsel for Mr. Hyman had referred the Court to the **CR(RO)A** and posited the view that the **CR(RO)A** had extra territorial effect. He begged to humbly disagree.

- [39] Counsel said that if we take Counsel for Mr. Hyman's position to its logical end, it means that someone in England or the United States of America who has committed an offence in that other country, the moment the person arrives at Antigua and Barbuda, the provision in the **CR(RO)A** would apply to that person to the extent that such person could be considered rehabilitated.
- [40] Counsel submitted that legislation passed at Antigua and Barbuda, its application was confined to the jurisdiction of Antigua and Barbuda unless the legislation says otherwise. So the Bar Council's position was that the **CR(RO)A** had no application whatsoever to Mr. Hyman whose offence and conviction occurred in another territory – Montserrat, an island that was not part of the jurisdiction of Antigua and Barbuda.
- [41] Counsel submitted that while the Bar Council did not deny the fact that Mr. Hyman had fulfilled the sentence which was imposed upon him, in light of the affidavit by the former Senior Magistrate, Mrs. Dorsett-Hector, before whom he appeared and while the Senior Magistrate speaks of compliance with the sentence imposed, it was respectfully submitted that the issue of Mr. Hyman's rehabilitation ought not to be looked at within the context of the Antigua and Barbuda legislation.
- [42] Counsel said that Counsel for Mr. Hyman referred to the incident of criminal behaviour as "some issue" and as "an infraction not in Mr. Hyman's professional capacity but in his personal one". He said that he had to ask the rhetorically question of are attorneys-at-law to conduct themselves in a particular manner when before the Court and in another manner when they no longer have on their robes?
- [43] Counsel submitted that section 16(a) of the **LPA** speaks to a person being of "good character" and he reads this to mean conduct and behaviour must meet the ethical standard of the Bar so that wherever attorneys-at-law are and whatever they do, they uphold the traditions of the noble profession. He said that of course it is not to say that attorneys-at-law cannot run afoul of the law and every so often it happens.
- [44] Counsel said that what he wished to highlight were certain matters of Mr. Hyman's application. His application which was supported by his affidavit filed 20th December 2018, makes no mention of his "brush" with the Court. In fact, referring to paragraph 8, he is very absolute in his paragraph. Then he provides a certificate of good character from the Norman Manley Law School dated 24th September 2007, i.e. 11 years ago. So the question must be asked, why didn't Mr. Hyman who was a Senior Crown Counsel in the Attorney-General's Chambers in Montserrat until 2018, not supply a certificate of good character of more recent vintage? When this was pointed out to his Counsel by the Bar Council, he then filed an affidavit on 11th January 2019, to indicate that it was through inadvertence that he failed to attach a more recent certificate of good standing and then he provided the certificate from the Registrar of the High Court at Montserrat dated 8th January 2019, and which indicated a conviction by a magistrate for assault. Then Mr. Hyman was served with the affidavit of Ms. Bradshaw filed on 16th April 2019, and which expressed the consent of the majority of members of the Bar Council raising their concerns, and exhibited to the affidavit was a receipt from the Magistrate Court at Montserrat dated 19th March 2019, in respect of a judgment sum in case **MNIMCV 2018/0061**. This makes it abundantly clear that at date of his application – 20th December 2018, Mr. Hyman had not satisfied his judgment debt. This was now in respect of a civil matter. Again a matter which Mr. Hyman also failed to disclose.

- [45] Counsel said that he could not see, how the failure to satisfy an outstanding civil debt signifies “good character” when we are the ones who push litigants to satisfy their judgment debts.
- [46] Counsel said that Mr. Hyman’s affidavit filed 26th April 2019, to the Bar Council’s mind was self-serving though to a certain extent it had been confirmed by the affidavit of the former Senior Magistrate, Mrs. Dorsett-Hector.
- [47] Counsel drew to the Court’s attention paragraph 3 of the former Senior Magistrate’s affidavit and said that he noted that there was no independent confirmation of his attendance at the Health Center and no independent confirmation in relation to supervision by the Probation Officer.
- [48] As to the affidavit of Mr. Buffonge, Counsel said that he noted at paragraph 7 that Mr. Buffonge speaks of an “unfortunate incident” and as to paragraph 8 of the said affidavit, he was not sure that Mr. Buffonge could speak on behalf of the whole of the Montserrat Society and he was also unclear as to what Mr. Buffonge meant when he said “made significant strides”.
- [49] Counsel said that before the Court was evidence of Mr. Hyman’s failure to disclose fully to the Court matters which go to the assessment of his character.
- [50] Counsel referred the Court to the affidavit of Ms. Bradshaw filed on 26th April 2019, and to which was attached the very comprehensive letter from the Bar Council to Mr. Hyman’s attorney-at-law, Mr. Lawrence Daniels. He said that the Bar Council’s position was that there was yet to be filed a comprehensive affidavit by Mr. Hyman which addressed the legitimate issues raised by the Bar Council.

Counsel for the Attorney General

- [51] Counsel for the Attorney General said that she had nothing to add.

Counsel for Mr. Hyman’s Response

- [52] Counsel for Mr. Hyman in response said that for the Bar Council to suggest that the **CR(RO)A**, was irrelevant and therefore could not be relied on, then he dared to say that Mr. Hyman was of good character at Antigua. He said that they were not contending that the **CR(RO)A** applied to Montserrat. The spirit of the **LPA** is that a conviction follows you whether a conviction at St. Lucia, Montserrat or St. Kitts. And if he was to take Counsel’s position to its logical end, Mr. Hyman would have no conviction at Antigua and is of good character.
- [53] Counsel said that it was contended that full and frank disclosure had not been made by Mr. Hyman. He said that based on Mr. Hyman’s reliance on the **CR(RO)A**, his belief was that the conviction was spent and pursuant to section 5 (1) and (2)(a), there was no need to disclose the criminal conviction. Therefore he was under no obligation to disclose.

- [54] Counsel said that he noted the affidavit of the President, Mr. Johnson filed 23rd April 2019, and it was Mr. Johnson's opinion at paragraph 3, that it was not the usual practice to receive a formal decision by poll or meeting and he was of the view that Mr. Hyman should be admitted. There was no requirement for a poll or meeting in the **LPA**.
- [55] Counsel said that according to the **LPA** section 18, if there was objection, only 2 persons were to file objection, the Attorney-General and the President of the Bar. The manner of objection was that of affidavit. He said that there was no requirement for either the Attorney General or the President of the Bar to consent. The application was filed in December 2018, and served in December 2018. Shortly thereafter it was circulated by email to all members of the Bar, no objections were filed. Several months after, the issue seemed not to be the conviction itself but whether or not Mr. Hyman had satisfied the sentences imposed.
- [56] Counsel for Mr. Hyman submitted in closing that there was nothing in law barring Mr. Hyman from being admitted to practice and the concerns of the Bar Council were "surgically intrusive" – going into every single issue.

Both Counsel on Layne v. Attorney General of Grenada

- [57] The Court indicated to both Counsel that it would be referring to the recent case of **Layne v. Attorney General of Grenada [2019] UKPC 11** in considering the application and inquired if they had anything to say.
- [58] Counsel for Mr. Hyman indicated that he would need to read and familiarize himself with the judgment as he had not read it as yet.
- [59] Counsel for the President of the Bar and Bar Council said that he had read it and fully endorsed the judgment and what was important in the judgment was that while it addressed the issue of the criminal conviction of the appellant, it makes it very clear that the overall concern is that of the public perception of the conduct of members of the Bar and how that perception would affect the general administration of justice. The issue was how do members of the public see the individual practicing – it is their practice and their role that influence the Court and the independence of the Court. This was of vital importance.

The Law

- [60] The **LPA** at its long title states that it is to provide for the regulation of the legal profession, for the qualification, enrolment and discipline of its members and for incidental and connected purposes. Section 5 provides for the purposes of the Bar Association and which include (a) maintain and improve the standards of professional conduct of attorneys-at-law in Antigua and Barbuda, (b) represent and protect the interest of the legal profession in Antigua and Barbuda, (c) protect and assist the public in Antigua and Barbuda in all matters relating to law, and (d) promote, maintain and support the administration of justice and the rule of law. Section 16 provides:

“16. Application for admission

(1) A person who makes an application to the Court to be admitted to practise law, and who satisfies the Court that he –

(a) is of good character;

(b) has attained the age of twenty-one years;

(c) is a citizen of Antigua and Barbuda or of a country listed in Schedule 2;

(d) holds the qualifications prescribed for admission to practice as an Attorney-at-Law in Antigua and Barbuda under Article 3 of the Agreement; and

(e) has not been disbarred or struck off the Roll of attorneys-at-law of any court of a country listed in Schedule 2, England, Scotland or Northern Ireland or has not done any act or thing which would render him liable to be disbarred or struck off the Roll of attorneys-at-law of any country;

Shall on payment to the Registrar of the prescribed fee, be admitted by order of the Court to practise law.

(2) A person applying to be admitted to practise law shall –

(a) serve copies of the application on the chambers of both the Attorney General and the President of the Bar Association;

(b) effect service under paragraph (a) on the same day; and

(c) file an affidavit of service.

(3) The Registrar shall set the date for the court to hear the application to be admitted to practise law not earlier than two weeks from the date of service stated in the affidavit of service.

(4) Before any person is admitted as an attorney-at-law, the Registrar shall enquire from the Council and the Attorney General whether the person has fulfilled all the conditions for admission laid down by the law, and if the Registrar is satisfied that the person has done so, he shall report accordingly to the Court.

(5) The Registrar shall cause to be registered on the Roll the name of every person admitted to practise law according to the date on which the person was admitted to practise law.

(6)”

[61] The LPA at Schedule 4 provides for a **Code of Ethics**. The **Code of Ethics** provides:

“ In Relation to the Profession and Himself

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

[62] The recent case of **Layne v. Attorney General of Grenada [2019] UKPC 11** is instructive on the requirement of “good character” in assessing Mr. Hyman. There Lady Arden said:

“40. The Board considers that the good character condition has two facets: the candidates attributes and the risk of damage to public confidence in the profession.

41. The actions of the candidate at any stage in his career may be relevant to this facet of good character. Evidence as to convictions is necessarily relevant.

(B) Risk of damage to the public confidence in the profession

42. In the opinion of the Board, the Supreme Court is also required by the good character condition to consider the question whether the public can reasonably be expected to have confidence in the admission of the candidate (“the public confidence requirement”). This follows from the leading case of **Bolton v. The Law Society**, which concerned an application for the readmission of a solicitor, Sir Thomas Bingham MR emphasized the need to maintain among members of the public “a well-founded confidence that [their] solicitor... [was] a person of unquestionable integrity, probity and trustworthiness” (p519). In **Jidefo v. Law Society (No.06 of 2006, No. 01 of 2007, No 11 of 2007)** Sir Anthony Clarke MR applied the same principles to a case in which the appellant had applied to be admitted for the first time. The Inner House of the Court of Session (Lord Justice Clerk (Gill), Lord Maclean and Lord Caplan) has also recognized the importance of the public interest in this context...

43. Whether there is an appropriate level of public confidence is also a matter for the assessment of the Supreme Court. As Sir Thomas Bingham said (see para.42 above) confidence must be well founded. Thus, any lack of confidence by the public must be justifiable on an objective basis. It is not enough that the public would misguidedly not have confidence in a particular candidate. It is not part of its function to assuage public opinion. So, the public confidence requirement is not inevitably satisfied by adducing evidence of opinion of witnesses, even witnesses having the highest standing in the community....

44. The existence and scope of the public confidence requirement may vary according to the profession under consideration. In the case of admission to the Bar, it is relevant because, as the judge put it, attorneys are the guardians of fundamental freedoms. Attorneys play an important role in the modern democratic state in upholding the rule of law. All persons are equal under the law, and, so long as the rule of law is observed, every

person will have his rights protected by the law, including his important right to security of the person, and the established order cannot be overthrown by force. The rule of law and the constitution are mutually reinforcing. In any society, the rule of law represents a fundamental value. And there must be no gap between the theory and the reality of the rule of law. This is achieved in no small part by the work of an independent Bar, who will fight fearlessly before the courts for the rights of even the most unpopular persons.

45. It follows that the work of an attorney is not a purely private matter between him and his client, because an attorney must help maintain the law and owes duties to the court before which he may following admission appear. Nor is the attorney's admission to the Bar a purely domestic matter between the responsible Bar and the applicant.

46. As the judge held at para. 13 of her judgment, there is a high hurdle to be met where a person has convictions such as those of Mr. Layne. In the case of convictions for offences as serious as murder, it must be rare for the good character condition to be met even where there is evidence of exemplary conduct since the offences occurred. This is because of the risk of damage to the profession generally, which may be the consequences of lack of public confidence.”

Lord Sumption said:

”58. I say that a criminal conviction is “prima facie” inconsistent with good character, because there are two potential limitations on that principle. One is that the question posed by section 17 (1)(a) of the Grenada Legal Profession Act 2011 is whether the applicant is of good character at the time when the decision is made whether or not to admit him. This will usually be true of conditions of eligibility for public appointments or professional occupations. The other is that the conviction must be for an offence which is relevant to the occupation in question, in this case practice at the bar. In the context of admissibility of evidence of past convictions, it has been held in England that such convictions may be consistent with present good character if they were “old, minor and have no relevance to the charge”: R v. Hunter (Nigel) [2015] WLR 5367, para. 79. I would reduce this to a single requirement of relevance, the age or minor character of the conviction being merely particular reasons, in addition to the nature of the offence, why a conviction may be irrelevant to the particular occupation involved. This is not a consideration peculiar to the law of criminal evidence. An implicit requirement of objective relevance is inherent in any statutory test where the context permits it.

59. ...Some lesser offences may be less relevant with the lapse of time, especially if they were committed at a time when the offender was young and immature....”

Lady Black said:

“60. I too agree that the Board should humbly advise Her Majesty that the appeal should be dismissed. As the ground has been thoroughly traversed in other judgments, with little, if any, dispute as to the principles, I will only set down the essence of my reasoning.

61. In my view, there is no element of discretion involved in the Supreme Court's consideration of an application under section 17(1) of the 2011 Act by a person who seeks admission to practise as an attorney-at-law. To my mind, taken in context, the reference in the section to someone being "eligible" to be admitted, if they satisfy the court as required, is not sufficient to import such a significant discretion. When considering whether the person has satisfied it that he is of good character, the court is therefore engaged in a process of evaluation. Its task is to ascertain the relevant facts and to decide whether, in the light of them, it is satisfied that, at the time when it determines the application, the person is of good character." (My emphasis)

[63] According to **Cambridge Advanced Learner's Dictionary and Thesaurus** "attribute" means: 'a quality or characteristic that someone or something has'.

[64] Looking at all the evidence before the Court, the issue of lack of full and frank disclosure raised by the President of the Bar and the Bar Council to the Court's mind touches on the issue of honest and dishonest actions. In **Ivey v. Genting Casinos (UK) Ltd. T/A Crockfords [2017] UKSC 67** there was a discussion on the issue of dishonesty and when could an action be deemed to be dishonest based on the Defendant's own belief of whether or not he was being dishonest. Lord Hughes said:

"74. ... The test of dishonesty is as set out by Lord Nicholls in **Royal Brunei Airlines Sdn Bhd v. Tan** and by Lord Hoffman in **Barlow Clowes**: see para.62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he had done is, by those standards dishonest.

75. Therefore in the present case, if, contrary to the conclusions arrived at above, there were in cheating at gambling an additional legal element of dishonesty, it would be satisfied by the application of the test as set out above. The judge did not get to the question of dishonesty and did not need to do so. But it is a fallacy to suggest that his finding that Mr Ivey was truthful when he said that he did not regard what he did as cheating amounted to a finding that his behaviour was honest. It was not. It was a finding that he was, in that respect, truthful. Truthfulness is indeed one characteristic of honesty, and untruthfulness is often a powerful indicator of dishonesty, but a dishonest person may sometimes be truthful about his dishonest opinions, as indeed was the defendant in **Gilks**. For the same reasons which show that Mr Ivey's conduct was, contrary to his own opinion, cheating, the better view would be, if the question arose, that his conduct was, contrary to his own opinion, also dishonest." (My emphasis)

[65] A recent case at England bears consideration. According to **The Law Society Gazette** dated 6th August 2019, MP Fiona Onasanya was struck off the Roll of Solicitors over her conviction for

perverting the course of justice. The matter started with the ticketable offence of speeding and which speeding occurred at July 2017. Ms. Onasanya was jailed for 3 months for perverting the course of justice – she denied that she was the driver of her motor vehicle at the time when it was caught speeding at 41 MPH in a 30 MPH zone.

Findings and Analysis

- [66] To start, on an application to be called to the Bar, it was Mr. Hyman’s duty to provide full and frank disclosure of all matters which the Court could reasonably be required to take into consideration in contemplation of his application and the requirement that he meet the threshold of “good conduct”. According to **Layne v. Attorney General of Grenada**, the requirement of “good conduct” has 2 facets and they are: (i) Mr. Hyman’s attributes, and (ii) the risk of damage to public confidence in the profession.
- [67] The application of Mr. Hyman, is that of a person called to the Bar at Montserrat on 7th December 2007, i.e. some 12 years ago. At Montserrat, according to the Law Officers’ Certificate dated 16th January 2019, Mr. Hyman was posted in the Attorney General’s Chambers where he attained the post of Senior Crown Counsel and according to his affidavit filed 20th December 2018, he is presently in the Office of Director of Public Prosecutions. The Court lays out this background to show that the application before the Court is not that of a novice and that considering the nature of Mr. Hyman’s positions of Senior Crown Counsel and that within the Office of the Director of Public Prosecution, he would be a person who well understands the value of full and frank disclosure.
- [68] The clear purpose of the participation of the Attorney General and the Bar Council in an application for Call to the Bar at Antigua and Barbuda is to assist the Court. They are to be unbiased on an application and are to conduct checks into an applicant which the Court is not able to do for obvious reasons. They provide the Court with information which the Court would not normally have within its purview. There appeared to be some suggestion that the President of the Bar and the Bar Council could not speak to the application at the hearing and their role was relegated to consent or affidavit of no consent. The Court believes that such issue was laid to rest when Mr. John Carrington Q.C. appeared amicus curiae before the high court in **Layne v. Attorney General of Grenada** and same was acceptable to the Privy Council notwithstanding that the Privy Council did not agree with his approach to assessing “good character”.
- [69] Counsel for Mr. Hyman appeared to want to split Mr. Hyman’s overall conduct into 2 parts, his professional conduct and that of his personal conduct. The Court is afraid that it must disagree with this approach. The Court’s position is that all conduct of Mr. Hyman is for consideration. The Court is supported in this approach by the **LPA, Code of Ethics** paragraph 1 cited above and by Lady Arden at paragraph 45 of **Layne v. Attorney General of Grenada**. There can be no separation of Mr. Hyman’s professional life from his personal life.
- [70] The Court now starts its evaluation on whether Mr. Hyman has satisfied the “good conduct” requirement, the first consideration being an evaluation of Mr. Hyman’s attributes.

- [71] It is not to be doubted that disclosure of (i) an updated and recent certificate of good standing, (ii) the criminal conviction, and (iii) the liability in a civil case and for which Mr. Hyman was to pay compensation, only came about every time the President of the Bar or the Bar Council raised the issue of the respective items with Mr. Hyman. And this necessitated him filing not one but two additional affidavits to support his application.
- [72] The Court starts with the matter of the Certificate of Good Character issued on 24th September 2007, by the Norman Manley Law School. This was a certificate issued (i) in excess of 11 years by the time Mr. Hyman filed his application at 20th December 2018, (ii) before he was called to the Bar at Montserrat on 7th December 2007, (iii) certainly long before his criminal conviction at April 2011, and his loss of appeal at the Court of Appeal at 17 September 2012, and (iv) before he was found liable to pay compensation in a civil matter in the Magistrate's Court (a 2018 suit).
- [73] One of the obvious issues arising for the Court with the Norman Manley Law School certificate is its vintage. By its vintage, it can have no contemplation or bear no relevance to Mr. Hyman practicing as an Attorney-at-Law after his graduation from the Norman Manley Law School and call to the Bar at Montserrat. Mr. Hyman was not a novice out of the Norman Manley Law School applying to be called to the Bar at Antigua and Barbuda. Rather he was a seasoned Attorney-at-Law and so how could the Norman Manley Law School certificate possibly support a Call to the Bar at Antigua and Barbuda?
- [74] Secondly, the Court believes that it was extremely disingenuous of Mr. Hyman to seek to suggest that the Norman Manley Law School would uphold its 2007 certificate today without knowledge of his activities in the intervening 11 years, and against the background of first, his criminal conviction and second, his 2018 civil liability claim without more inquiry.
- [75] Thirdly, had Mr. Hyman been applying for a job and not an order for Call to the Bar, he certainly could not put such a stale dated certificate of good standing to support his job application and so why would it even be considered by the Court.
- [76] This all begs the question of whether Mr. Hyman was trying to hide from the Court his criminal conviction which perhaps he well knew would be recorded on the Registrar's certificate of good standing.
- [77] This brings the Court to the matter of the criminal conviction. A conviction which only came to light on the Registrar of Montserrat certificate of good standing dated 8th January 2019. The former Senior Magistrate Mrs. Dorsett-Hector made an affidavit deposing that Mr. Hyman had fulfilled all the conditions of his sentence in the matter.
- [78] The Court first of all observes, that the former Senior Magistrate has not quoted the sentence from her own notes or record, but has recited them as set down at paragraph 2 in the Court of Appeal Judgment of Justice Belle JA(Ag) and hence her use of the word "appellant" to describe Mr. Hyman in her affidavit. Mr. Hyman would not have been an "appellant" when he appeared before her at April 2011.

- [79] The Court also finds it very troublesome that former Senior Magistrate Mrs. Dorsett-Hector, being a person not in service anymore and who clearly cannot be deemed to be writing an official statement from the record would put in an affidavit in these proceedings. As the Court sees it, what the former Senior Magistrate has done by way of her affidavit is akin to any convicted person asking a high court judge to write on the status of his sentence. It is simply not done. It is untenable.
- [80] The status of the conviction and sentence was a matter for the present sitting Senior Magistrate to address or senior clerk within the Magistrate Court who could write from the official record of the Magistrate Court. In the High Court, it would be a matter for the Registrar of the High Court or the Superintendent of Prisons to provide the details from what is on the record. Not a sitting or retired judge.
- [81] The Court notes Mr. Hyman's statement that he was told by the clerks within the Magistrate Court that the records were stored away at Government Headquarters. This is still not a good enough reason for former Senior Magistrate Mrs. Dorsett Hector to get "into the fray" by filing her affidavit in this matter. Any delay on the production of records was a matter for the present Senior Magistrate to address upon his request.
- [82] No excuse was tendered as to why the present sitting Senior Magistrate could not provide a statement on the state of the sentence following the criminal conviction.
- [83] Looking at the affidavit of the former Senior Magistrate Mrs. Dorsett- Hector, aside from the affidavit failing to record her direct sentence (instead of adoption of Justice Belle's citing of her sentence), there was not a single statement to show how any of the conditions of sentence were met - from what date did counselling start and end? Who carried out the counselling sessions with Mr. Hyman? Who was the Probation Officer who carried out supervision of Mr. Hyman? And perhaps some details of what was recorded in the monthly report and payment of the \$500.00. Just a blanket statement that the conditions of sentence were met.
- [84] The nature of the sentence was substantive and clearly recognized at the time certain characteristics about Mr. Hyman, particularly the second and third conditions of the sentence.
- [85] The Court's first position on the affidavit of the former Senior Magistrate Mrs. Dorsett-Hector was that it ought to be struck out as being untenable in the circumstances. However, the Court will relent and simply treat it for what it is worth as not an independent document but simply an affidavit, no different from that of Mr. Buffonge to support the application of Mr. Hyman.
- [86] The conviction – the former Senior Magistrate Mrs. Dorsett-Hector's conviction was upheld by the Court of Appeal. The conviction was certainly not about a parking ticket but rather about violence – assault with damage to the virtual complainant, a member of the public at Montserrat. So not a trivial matter at all.

- [87] The issue arose as to the status of the conviction and whether it was still on Mr. Hyman's record at Montserrat notwithstanding former Senior Magistrate Mrs. Dorsett-Hector's affidavit that Mr. Hyman had fulfilled all the conditions of the sentence, and the lapse of 7 years between conviction, sentence and his application.
- [88] Counsel for Mr. Hyman first submitted, that as far as Mr. Hyman was concerned, he believed that the conviction was spent and in this regard he said that Mr. Hyman relied on the **CR(RO)A**, a law passed at Antigua and Barbuda. And then Counsel appeared to veer away from that submission, not a reversal, to say that since Mr. Hyman had no conviction at Antigua and Barbuda, then he need not reveal the conviction at Montserrat. With due respect the Court rejects all of Counsel's submissions that this law could be applicable is anyway in clearing off Mr. Hyman's conviction at Montserrat and so bring him with a clean slate to the State of Antigua and Barbuda. The **CR(RO)A** itself provides that it solely applies to convictions in the State of Antigua and Barbuda. This being the situation, as the Court sees it, Mr. Hyman holds a criminal record at Montserrat and that is what is for consideration before the Court at Antigua and Barbuda. The Court believes that this would be the situation with anyone coming from another jurisdiction with a criminal record. It is an area that from time to time arises in extradition proceedings.
- [89] The Court believes that it also finds support in its position by the mere fact that the Registrar recorded the conviction on the certificate of good standing. This suggest that it was not spent¹ at Montserrat.
- [90] The Court at this juncture notes from **Layne v. Attorney General of Grenada** that a conviction may not necessarily be a bar to an application to be called to the Bar. An instance where it may not be a bar is where an offence was committed in youth.
- [91] This brings the Court to the civil matter in the Magistrate Court and which is identified only as **MNIMCV2018/0061** on the receipt issued out of the Magistrate Court at Montserrat on 19th March 2019, this being approximately 3 months after Mr. Hyman had filed his application. The Court observes that up to time of hearing, Mr. Hyman had not disclosed a single iota to the Court about the nature of the civil claim for which it appears he was found liable hence his payment according to the receipt of "Compensation". The Court further notes that the receipt disclosing liability on a civil claim was not disclosed by Mr. Hyman but rather disclosed by the Bar Council under an affidavit deposed to by Ms. Bradshaw, the Bar Council having obtained a copy of the receipt from a third party.
- [92] As noted by the Court prior, Mr. Hyman was not a novice Attorney-at-Law but rather a former Senior Crown Council and then one working in the Office of the Director of Public Prosecutions and so he would therefore be a person well familiar with, and have an appreciation of the nature of disclosure at law and what it entails.
- [93] The Court believes that Mr. Hyman's failure to disclose his matters in the Magistrate's Court cannot bode well for him. Further, the attempt to put before the Court a certificate of good character issued

¹ This is usually provided for by legislation – the CR(RO)A is such an example.

some 11 years ago and before he was even called to the Bar at Montserrat again cannot bode well for him.

[94] The Court recalls the test for dishonesty outlined in **Ivey v. Genting Casinos (UK) Ltd t/a Crockfords** as first that the Court ascertain the state of Mr. Hyman's actual knowledge or his belief in the facts. At all material times Mr. Hyman had all of the information which the President of the Bar and the Bar Council had to "flush out" of him after making their own observations and inquiries at Montserrat and gaining information from third parties. Mr. Hyman only resolved to address the issues of his stale dated certificate of good standing and criminal conviction which ought to have been disclosed in a piecemeal fashion as they were raised by the President of the Bar and Bar Council. And of course, he has not addressed at all, the nature of the civil claim. The Court based on Mr. Hyman's failure to disclose on applying the "standards of ordinary decent people" believes that Mr. Hyman must be viewed as dishonest. The Court finds that Mr. Hyman was dishonest in his application by failing to disclose the relevant matters identified.

[95] The Court having found that Mr. Hyman was dishonest in the manner he presented his application, then on evaluation under the first facet of good character – his attributes, he must fail. Dishonesty before the Court is never acceptable.

[96] The Court having found that Mr. Hyman is not able to cross the first limb of the 2 facets test, it is of the view that it need not proceed to evaluate Mr. Hyman's application against the second facet of good character, 'the risk of damage to the public confidence in Bar' and which to per paragraph 42 of **Layne. v Attorney General of Grenada** also concerns integrity, probity and trustworthiness.

[97] Mr. Hyman's application will be denied.

[98] Court's order:

1. Mr. Hyman's application for an order to be admitted to practice at the Bar at Antigua and Barbuda is denied.
2. No order for costs.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar

