

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2024/0290

BETWEEN:

**VANROY ROBERTS REPRESENTATIVE OF THE ESTATE OF CLARENCE ROBERTS
CLAIMANT**

And

**THE DISCIPLINARY COMMITTEE
MARY WHITE
THE ATTORNEY GENERAL**

DEFENDANTS

APPEARANCES:

Mr. Rushaine Cunningham and Chelsea Walker of counsel for the Claimant

Ms. E. Ann Henry K.C. and C. Debra Burnette of counsel for the First Defendant

Mrs. Mary White, the Second Defendant acting in person

Ms. Alicia Aska and Zachary Phillips of counsel for the Third Defendant

2025: September 30th

2026: March 19th

DECISION

[1] **DRYSDALE, J.:** This matter is an administrative claim seeking judicial review to challenge the decision of the First Defendant to impose a sanction of reprimand on the Second Defendant and a concurrent constitutional claim focusing on the alleged unconstitutionality of section 40 of the Legal Profession Act.

THE BACKGROUND

[2] The Claimant filed a Fixed Date Claim Form with an affidavit in support seeking a plethora of reliefs which ranged from challenging the legality of the decision of the First Defendant and the constitutionality of section 40 of the Legal Profession Act to the striking off the roll of the Second Defendant. The Court subsequently bifurcated the claims, holding that the administrative claims and the professional disciplinary aspects must be treated independently due to their differing legal foundations. This case is therefore proceeding only on the judicial review and constitutional claims, with the disciplinary aspect deferred until the determination of this matter. The reliefs now sought by the Claimant in the current claim are as follows:

“a. A Declaration that the First Defendant in its decision of the 23rd of April 2024 in Complaint No. 2 of 2023 acted irrationality and improperly in imposing a sanction of a reprimand on the Attorney-at-Law, Mary B.E. White.

b. An order of certiorari to quash the decision of the Disciplinary Committee dated the 23rd of April 2024 in Complaint No. 2 of 2023, in so far as the said decision imposed the sanction of a reprimand on the Attorney-at-Law, Mary B.E. White.

c. A Declaration that section 40(1) of the Legal Profession Act 2008 is unconstitutional in so far as it fails to provide a right of appeal to an applicant/complainant against a decision or penalty imposed by the Disciplinary Committee and consequently infringes the substantive fundamental right to protection of the law.”

[3] The First and Third Defendants each filed affidavits in response denying any alleged breaches or claims of unconstitutionality. However in contrast the Second Defendant filed no documents and chose instead to rely on the legal submissions of the other Defendants.

The Affidavit of the Claimant

[4] The Claimant is a beneficiary of the estate of his mother Karen Roberts and brother Franklin Roberts. Both deceased owned a parcel of land which was subsequently subdivided in five parcels bearing registration numbers Block: 14 2288A 421 to 425. Parcels 421 and 423 were sold to Steve Jacobs and Noel Jackson respectively. The Second Defendant in her representation of the estates of the above deceased collected funds for the sale of these parcels. However neither parcel has to date been transferred.

[5] New counsel was engaged in 2021, and the case files were formally transferred from the Second Defendant on February 11, 2022. The Second Defendant simultaneously confirmed, in writing, the receipt of \$71,156.22 from Steve Jacobs and \$68,522.68 from Noel Jackson, along with the authorized trust fund deductions. The correspondence explicitly made the release of proceeds from the sale of parcels 421 and 423 contingent upon the purchasers receiving good title.

[6] Subsequently a complaint to the First Defendant was made concerning the retention of the funds which at that point in time amounted to \$108,588.97. Thereafter the Second Defendant issued a cheque in the amount of \$71,158.22 representing the monies paid by Steve Jacobs in 2019. The funds paid by Noel Jackson to the Second Defendant to date remains outstanding.

[7] On 23rd April 2024 the First Defendant found that the Second Defendant was guilty of professional misconduct contrary to the Code of Ethics. The First Defendant ordered the Second Defendant to pay the outstanding proceeds of sale in the amount of \$68,552.68 within 7 days of the receipt of the decision, a fine in the sum of \$1,500.00 payable to the Bar Association within 14 days of receipt of the decision and a reprimand was issued to the Second Defendant for withholding client funds after the termination of her services without justification.

[8] The Claimant avers that given the seriousness of the Second Defendant in misappropriating client funds the imposition of reprimand by the First Defendant is unreasonable as such a sanction is disproportionate to the offence.

[9] Finally the Claimant asserts that the Legal Profession Act is unconstitutional because it fails to provide an express right of appeal against the decision of the First Defendant. This he asserts constitutes a direct contravention of the fundamental right to protection of the law. This argument is predicated on the principle that the protection of the law includes the inherent right of access to the courts and the appellate process.

The Affidavit of the First Defendant

[10] In support of the First Defendant's case, an affidavit was submitted by Kathleen Bennett. She deposed that she is a member of the First Defendant and was authorised to depose to the matters that were within her knowledge.

[11] Ms. Bennett set out the legal authority of the First Defendant and stated that it was established to deal with complaints against Attorneys-at-Law. Ms. Bennett then explained that the evidence of the Claimant in the proceedings was unchallenged as the Second Defendant did not attend or participate in the hearing of the complaint. At the conclusion of the hearing the First Defendant found that the Second Defendant was guilty of professional misconduct. Given this finding of fact the First Defendant then considered the sanctions which should be imposed on the Second Defendant with regard to section 39 of the Legal Profession Act.

[12] The First Defendant imposed the sanctions of a fine, a reprimand and an order that the Second Defendant reimburse the complainant the sum of \$68,552.68. Ms. Bennett concludes by expressing that the sanction of a reprimand was considered appropriate given the evidence before the First Defendant and asks the Court to dismiss this claim made by the Claimant against it.

The Third Defendant

[13] The Third Defendant filed an affidavit concerning the challenge to the constitutionality of Section 40 of the Legal Profession Act. The Third Defendant conceded that section 40 does not afford the Claimant a right of appeal. Nonetheless the Third Defendant maintained that the lack of a statutory appeal provision does not violate the Claimant's constitutional entitlement to the protection of the law.

[14] The Third Defendant contended that the Legal Profession Act's primary purpose is the specific governance of disciplinary matters within the legal profession, and that its provisions offer sufficient constitutional safeguards to its members.

[15] The Third Defendant further advanced that the Claimant's claim of being denied judicial review is unfounded as the Claimant retains adequate access to justice through the courts to challenge any adverse decision made under the Act. The Third Defendant therefore denied that the Legal Profession Act is unconstitutional as the alleged breach of the protection of the law is not a breach in reality.

The Issues

[16] To successfully determine the outcome of this case, the Court must first address and resolve the following enumerated issues:

1. Whether the First Defendant acted irrationally and improperly by imposing a sanction of reprimand on the Second Defendant.
2. Whether the absence of an equal provision for a statutory right of appeal in section 40 of the Legal Profession Act to an aggrieved complainant against the decision given or penalty imposed by the First Defendant amounts to a breach of the Claimant's constitutional right to protection of the law pursuant to sections 3 and 15(8) of the Constitution.

Discussion and Disposition

Issue 1 - Whether the First Defendant acted irrationally and improperly by imposing a sanction of reprimand on the Second Defendant

[17] In essence, judicial review is the High Court's oversight function, used to ensure that a public authority properly discharges the duties and exercises the powers delegated to it by law. Judicial review therefore is

concerned with whether decisions are made lawfully and fairly. It explicitly excludes any consideration of the decision's merits.

[18] The Claimant has submitted that the decision of the First Defendant was Wednesbury irrational. As set out by Lord Diplock in the case of **CCSU and others v Minister for the Civil Service**¹ irrationality applies when a decision is so “outrageous in its defiance of logic or of accepted moral standards that no reasonable person who has applied his mind to the question to be decided could have arrived at it.”

[19] The decision in question was the imposition of the sanction of a reprimand against the Second Defendant whom the First Defendant found was guilty of professional misconduct. This was premised on multiple breaches of the Code of Ethics and included retaining estate funds longer than necessary when there was no justifiable reason to do so, and failing to hold funds in trust as requested by the client's new counsel. The First Defendant's findings also indicated that the Second Defendant was in potential breach of Section 31 of Part B of the Code of Ethics because the evidence suggested she was unable to immediately refund the collected client monies.

[20] The Claimant argues that, based on the First Defendant's own findings of professional misconduct, the sanction of a reprimand was insufficiently severe. The Claimant posits that the First Defendant should have escalated the matter by invoking Section 39(3), which requires reporting the findings to the Attorney General. The First Defendant counters by accepting the **CCSU** test for irrationality but maintains that the Court must not reassess the merits of the case. The First Defendant further submits that the reprimand was only one part of the total sanction, the entirety of the sanctions including an order for reimbursement of the client funds and

¹ [1985] AC 374

a \$1,500.00 fine. Therefore, the First Defendant argues that the penalty of a reprimand in these circumstances was neither perverse nor wholly disproportionate, and the evidence fails to meet the very high Wednesbury threshold required to quash the decision.

[21] The Code of Ethics Part B imposes strict, mandatory prohibitions on how Attorneys-at-Law must handle client finances. Specifically, Section 14 requires that “an Attorney-at-Law shall not retain money he receives for his client for longer than is absolutely necessary”. Section 31 demands utmost diligence, punctuality, and the absolute prohibition of mingling client funds with personal funds.² Section 35(1) stipulates that any breach of these rules automatically constitutes professional misconduct, making the Attorney-at-Law liable to disciplinary penalties imposed by the Disciplinary Committee or the Court.

[22] While the statute does not make a referral under Section 39(3) automatic whenever professional misconduct is established, the longer an attorney withholds client funds, the stronger the obligation becomes for the First Defendant to consider referral. In this case the funds were retained for a period exceeding two years. When an attorney withholds client funds for a protracted period of time, the misconduct ceases to be a mere administrative error and is elevated to an aggravated breach of professional standards. This protracted retention of client assets directly aligns the case of *General Counsel v. Lorne*³. That case concerned the failure of the attorney to account to his client her share of the profits of a sale of property. It was found that withholding entrusted funds for an extended duration “was a case of very serious professional misconduct which, depending upon the evaluation of the facts by a disciplinary

² Section 31 “. In pecuniary matters an attorney-at-law shall be most punctual and diligent and shall never mingle funds of others with his own and shall at all times be able to refund money he holds for others.”

³ [2024] UKPC 12

committee, could have justified either a striking off or a significant suspension from practice.” Consequently, the effect of this case is that such breaches amount to significant fiduciary violations, which is directly relevant, as an attorney's role is inherently fiduciary.

[23] This means that an attorney must act with scrupulous honesty, fidelity, and good faith in handling assets entrusted by the client. The failure to return money for this duration demonstrates a fundamental compromise of that duty and further undermines the standards of practice necessary to maintain public confidence in the legal profession. Lord Bingham MR, in his seminal judgment for **Bolton v Law Society**⁴, underscored the fundamental ethical values of the legal profession, declaring that attorneys "must discharge their professional duties with complete integrity, probity, and trustworthiness." A lapse of this nature and duration, even if deemed technically not dishonest, demonstrates a failure to uphold this essential standard. As enunciated by Bingham MR in Bolton "if a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust."

[24] The Legal Profession Act is designed to protect the public and ensure professional accountability. Therefore the Act relies on the absolute integrity of its members to function effectively. When this essential integrity is compromised by an attorney who commits a serious and prolonged breach of fiduciary duties this undermines the very principles upon which the Act is based. The First Defendant, is thus compelled to take action that unequivocally demonstrates its commitment to restoring and upholding the Act's high standards, thereby reassuring the public and re-establishing the foundational trust required for the legal profession to

⁴ [1994] 1 WLR 512

operate. The principle established in **Bolton v Law Society**⁵ makes it clear that “[a]ny solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal.” Consequently, a violation of this magnitude necessitates a commensurate disciplinary response. Sanctions limited to a simple reprimand or a fine even in circumstances where reimbursement is ordered is inadequate and disproportionate to the offence particularly as the First Defendant found that the evidence revealed that the Second Defendant “may not have been in a position to refund the monies she collected from Mr. Steve Jacobs and Mr Noel Jackson at the time it was requested from the complainant’s lawyer” and further the court notes that to date the balance of the funds still has not been paid . Therefore the sanction imposed must be substantial enough to reflect the seriousness of the fiduciary breach, deter future misconduct, restore the public’s damaged trust and maintain the integrity of the profession. A reprimand for a serious offence suggests that such behaviour is treated lightly and condoned by the First Defendant thereby undermining the entirety of the disciplinary process and the confidence of the public that the First Defendant will hold its members up to the desired ethical standards.

[25]

This position is further reinforced by the decision of the General Legal Counsel of Grenada in **Wellington Joseph v George W. Prime**⁶, where the Council considered circumstances in which an attorney failed to remit proceeds of sale to a client for a prolonged period. In that case, the Council found that although the attorney had received funds on behalf of the client following a property sale, a substantial balance remained unpaid for over three and a half years despite repeated requests. The

⁵ [1994] 1 WLR 512

⁶ Complaint No 5 of 2019

explanations advanced, including reliance on another agent, administrative difficulties and alleged burglaries, were rejected as inadequate. The Council concluded that such delay was inordinate and inexcusable and amounted to professional misconduct, particularly in light of the attorney's duty to account for and promptly pay over client funds under the Legal Profession Act and the Code of Ethics. The Council ultimately directed that its findings be referred to the High Court for consideration of the appropriate sanction, thereby underscoring the seriousness with which such breaches are to be treated.

Disposition

[26] Having regard to the gravity of the breach, its fiduciary character, and the extended duration of the misconduct, the sanction of a reprimand was plainly disproportionate and falls within the ambit of Wednesbury unreasonableness. No reasonable disciplinary tribunal, properly directing itself, could have regarded such a penalty as sufficient.

Issue 2 - Whether the absence of an equal provision for a statutory right of appeal in section 40 of the Legal Profession Act to an aggrieved complainant against the decision given or penalty imposed by the First Defendant amounts to a breach of the Claimant's constitutional right to protection of the law pursuant to sections 3 and 15(8) of the Constitution.

[27] The Claimant has challenged the constitutionality of section 40 of the Legal Profession Act⁷. Whilst section 40 confers a right of appeal to the Court of Appeal upon an attorney-at-law aggrieved by a decision of the

⁷ Cap 242 of the Laws of Antigua and Barbuda

First Defendant, no similar provision has been made for a complainant.⁸ Therefore the Claimant contends that this unequal treatment violates the constitutionally protected right to protection of the law guaranteed by sections 3 and 15 of the Constitution of Antigua and Barbuda.

[28] The Third Defendant offers two arguments and counters that section 40 of the Act is constitutional. Firstly the Third Defendant argues that the Claimant is a mere complainant and thus has no constitutional right to appeal because the proceedings did not affect his personal legal interests. Accordingly the Third Defendant argues that this failed to trigger the protection of the law guarantee. Secondly the Third Defendant argues that in the alternative, even if the right were engaged, the restriction is a justifiable and proportionate limitation because it regulates the legal profession. Further that the Claimant's access to judicial review ensures that the Claimant has alternative remedies and is not denied access to justice.

[29] It is undisputed that section 40 of the Act provides access to the appeal court to only the disciplined attorney. It is this singular access which the Claimant contends has infringed his constitutional right to protection of the law pursuant to sections 3 and 15 of the Antigua and Barbuda Constitution order. The pertinent sections of sections 3 and 15 of the Antigua and Barbuda constitution Order reads as follows:

"Whereas every person in Antigua and Barbuda is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, regardless of race, place of origin, political opinions or affiliations, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of

⁸ Section 40 reads "An attorney-at-law aggrieved by a decision given or penalty imposed by the Committee may appeal against that decision or penalty to the Court of Appeal."

the following, namely- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law.

the provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

If any person is charged with a criminal offence then, unless the charge is withdrawn, he shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. ...

Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any persons before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

Except with the agreement of all parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

Nothing in subsection of this section shall prevent the court or other authority from excluding from the proceedings persons other than the parties thereto and the legal practitioners representing them to such an extent as the court or other authority-

may by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

May by law be empowered or required to do in the interests of defence, public safety, public order or public morality.”

[30] While a general right to the protection of the law is established in Section 3 of the Constitution, the parameters of that protection are detailed in Section 15. It is evident from Section 15 that this safeguard is typically invoked in proceedings where a person faces a criminal charge. Further subsections 8 to 10 quoted above which though not referable to criminal charges deals with amongst other things the impartiality of the court, powers of the court to conduct its process and likewise are not applicable to these proceedings.

[31] Nonetheless, the inherent right to the protection of the law is fundamentally understood as a “multi-dimensional, broad and pervasive constitutional concept grounded in foundational notions of justice and the rule of law.” Anderson JCCJ in the case of **The Maya Leaders Alliance et al v The Attorney General of Belize**⁹ further expressed that:

“The right to protection of the law prohibits acts by the Government which arbitrarily or unfairly deprive individuals of their basic constitutional rights to life, liberty or property. It encompasses the right of every citizen of access to the courts and other judicial bodies established by law to prosecute and demand effective relief to remedy any breaches of their constitutional

⁹ CCJ Appeal No. BZCV 2014/002;

rights. However, the concept goes beyond such questions of access and includes the right of the citizen to be afforded 'adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power'.

[32] Therefore the multi-dimensional rights covers more than just a trial as it includes the right to a fair hearing, the rule of law, and protection from arbitrary state action. However this is not to be interpreted as a magic wand for the imposition for any rights. While the court recognizes the wide reach of these protections, they must be exercised within the limits of the law ensuring that a procedure that is fair rather than a procedure that is identical. The Constitution grants the legislature the flexibility to design different procedural paths, provided fundamental fairness is preserved. This approach was recognised in the case of **The Attorney General of Trinidad and Tobago v McLeod**¹⁰, wherein the Board observed that:

"For Parliament to purport to make a law that is void under section 2 of the Constitution, because of its inconsistency with the Constitution, deprives no one of the "protection of the law," so long as the judicial system of Trinidad and Tobago affords a procedure by which any person interested in establishing the invalidity of that purported law can obtain from the courts of justice, in which the plenitude of the judicial power of the state is vested, a declaration of its invalidity that will be binding upon the Parliament itself and upon all persons attempting to act under or enforce the purported law. Access to a court of justice for that purpose is itself "the protection of the law" to which all individuals are entitled under section 4(b)."

¹⁰ [1984] 1 WLR 522

- [33] Likewise in the case of **Chief Personnel Officer v Amalgamated Workers' Union**¹¹, the Privy Council considered the statutory appeal structure governing decisions of the Industrial Court of Trinidad and Tobago and acknowledged that legislatures may create specialised statutory frameworks regulating tribunals and appeals. Such legislative schemes are permissible provided that they do not infringe constitutional guarantees, including the fundamental right to the protection of the law.
- [34] It is a well-established principle that a right of appeal does not arise inherently but exists only where conferred by statute or by the Constitution. As recognised in by Lord Westbury L.C. in the case of **Attorney General v Sillem**¹², “the right of appeal is any but a reasonable right... but it is not a natural right; it is a creature of statute”. This doctrine was further solidified by Justice Hadjianastassiou in **Attorney-General v Pouris**¹³, where he emphasized that such jurisdiction cannot be implied. By stating that “[i]t is well settled that a right of appeal is a creature of statute and it does not exist unless it is expressly conferred by the Constitution or the written law” the Court reaffirmed that appellate access is a matter of deliberate legislative choice rather than judicial inference.
- [35] Accordingly in order to succeed in a claim for breach of the fundamental right to protection of the law, the Claimant must identify a vested right that has been abridged. However, because a right of appeal is strictly a creature of statute, it does not exist in the abstract and only becomes a vested right once it is explicitly granted by the legislature. Where, as here, the statutory framework is silent, no entitlement has been created. Without an existing, recognized legal right, the Claimant cannot assert a constitutional deprivation, as the Constitution is designed to protect rights

¹¹ [2016] UKPC 17

¹² (1864) 10 HL Cas 704

¹³ [1979] 1 C.L.R. 408

that are already held and enjoyed, rather than create new appellate jurisdictions where none were intended.

[36] Furthermore, disciplinary proceedings are fundamentally regulatory, serving the public interest rather than private grievances. In **Bhandari v Advocates Committee**¹⁴, the Privy Council emphasised that the jurisdiction of disciplinary tribunals is exercised to uphold the honour and integrity of the profession. Similarly, Sir Thomas Bingham MR explained in **Bolton v Law Society**¹⁵ that the purpose of disciplinary proceedings is not to punish the practitioner for the benefit of an individual complainant but to maintain the reputation of the profession and protect the public. In that context, the complainant therefore performs an important role in bringing alleged misconduct to the attention of the disciplinary authority, but the proceedings themselves are ultimately concerned with the regulation of the attorney's professional conduct.

[37] Moreover, the absence of a statutory right of appeal does not leave the Claimant without legal recourse. The Claimant retains, and has, in fact, already exercised the right to approach the High Court via judicial review. The availability of judicial review ensures that decisions of public authorities remain subject to independent judicial scrutiny and thereby satisfies the constitutional guarantee of the protection of the law. As the court explained in the case of **The Maya Leaders Alliance v. The Attorney General of Belize**¹⁶ “[p]rotection of the law is preserved where a person has the ability to invoke the jurisdiction of the courts to challenge administrative action and obtain appropriate remedies.” The availability of judicial review therefore operates as an essential constitutional safeguard and ensures that the statutory framework does not operate arbitrarily or unfairly.

¹⁴ [1956] 3 All ER 742.

¹⁵ [1994] 1 WLR 512

¹⁶ [2015] CCJ 15

Disposition

[38] The Court concludes that section 40 of the Legal Profession Act does not violate the constitutional right to the protection of the law. The Constitution guarantees fairness and protection from arbitrary exercises of power, but it does not require that every participant in a statutory process be afforded identical procedural rights, including a right of appeal. The Claimant's (as complainant) role, while important, is that of an informant initiating the regulatory process rather than a party whose civil rights are determined by the sanction imposed. Professional disciplinary proceedings are regulatory in nature and are primarily concerned with the conduct and professional status of the attorney involved. Accordingly, it is permissible for the legislature to grant a right of appeal to the attorney whose professional standing is directly affected, while not extending that right to the complainant. The absence of such an appeal right for the complainant does not render the statutory framework unfair or unconstitutional. The constitutional challenge to section 40 therefore fails.

Order

[39] In light of the above it is hereby declared that:

- i. That an Order of Certiorari is granted quashing the decision of the First Defendant dated 23rd April 2024 in Complaint No. 2 of 2023 in so far as it imposed the sanction of a reprimand upon the Second Defendant.
- ii. The matter is remitted to the First Defendant, for reconsideration of the appropriate sanction to be imposed upon the Second Defendant.
- iii. The Claimant's constitutional challenge to section 40 of the Legal Profession Act, Cap. 242 is dismissed, and the Court declares that the said provision does not violate the constitutional right to the protection of

the law under sections 3 and 15 of the Constitution of Antigua and Barbuda.

- iv. By agreement of the parties, there shall be no order as to costs.

Justice Jan Drysdale

High Court Judge

By the Court

Registrar