

**THE EASTERN CARIBBEAN SUPREME COURT**

**IN THE HIGH COURT OF JUSTICE**

**SAINT VINCENT AND THE GRENADINES**

**CLAIM NO: 105 of 2014**

**IN THE MATTER OF THE EASTERN CARIBBEAN SUPREME COURT (SAINT VINCENT AND THE GRENADINES) ACT CHAPTER 24 OF THE LAWS OF SAINT VINCENT AND THE GRENADINES, REVISED EDITION 2009, SECTION 76 AND PARAGRAPHS 3 AND 4 OF BARRISTERS AND SOLICITORS RULES**

**AND**

**IN THE MATTER OF UNPROFESSIONAL CONDUCT BY VANESSA TAMARA GIBSON-MARKS A BARRISTER AND SOLICITOR**

**AND**

**IN THE MATTER OF THE APPLICATION FOR A RULE TO ISSUE TO VANESSA TAMARA GIBSON-MARKS BARRISTER AND SOLICITOR TO SHOW CAUSE WHY SHE SHOULD NOT BE SUSPENDED OR STRUCK OFF THE ROLL OF BARRISTERS AND SOLICITORS**

**AND**

**IN THE MATTER OF THE APPLICATION OF JUDITH S. JONES-MORGAN ATTORNEY GENERAL OF SAINT VINCENT AND THE GRENADINES**

**BETWEEN:**

**JUDITH S. JONES-MORGAN**

**ATTORNEY GENERAL OF SAINT VINCENT AND  
THE GRENADINES**

**APPLICANT**

**AND**

**VANESSA TAMARA GIBSON-MARKS**

**BARRISTER AND SOLICITOR**

**Before:**

The Hon. Esco L. Henry

High Court Judge

The Hon. Pearletta Lanns

High Court Judge (Ag.)

**Appearances:** Ms. Cerepha Harper Counsel for the Claimant, Mr Duane Daniel  
Counsel for the Barrister and Solicitor.

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2015: Dec. 7 & 8

2016: Feb. 18  
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### **Decision**

### **BACKGROUND**

- [1] **Henry, J. and Lanns J. (Ag.):** Mrs Vanessa Tamara Gibson-Marks<sup>1</sup> was enrolled as a barrister and solicitor of the Eastern Caribbean Supreme Court, Saint Vincent and the Grenadines circuit on October 5, 2001. She served as

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<sup>1</sup> Referred to inter-changeably as the barrister, solicitor and legal practitioner.

Registrar of the High Court in the State for 8 years, ending on May 21, 2014 when she resigned. As Registrar she was vested with power and authority to perform such duties as necessary for the discharge and conduct of the business of the Supreme Court and had custody of all related records, documents and papers to accommodate this.<sup>2</sup> The Honourable Attorney General Mrs Judith Jones-Morgan has applied for an order that the solicitor be either suspended from or struck off the roll of barristers and solicitors for professional misconduct.

- [2] The Honourable Attorney General alleges that the barrister, while serving as Registrar, misappropriated funds held by her in a trust account (#87590) and in respect of the Court Mediation Programme. Mrs Gibson-Marks admits that she was complicit in wrong-doing in relation to both allegations. She acknowledges that she is liable to be disciplined and submits that the appropriate sanction should be suspension.

## **ISSUES**

- [3] The issues are:

1. Whether Mrs Vanessa Tamara Gibson-Marks has conducted herself improperly and unprofessionally in the discharge of her professional duty by misappropriating monies held in trust account No. 87590?
2. Whether Mrs Vanessa Tamara Gibson-Marks has conducted herself improperly and unprofessionally in the discharge of her professional duty by unlawfully converting monies to her own use from the Mediation Programme?
3. If so, what sanction should be imposed?

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<sup>2</sup> Section 63 of the Eastern Caribbean Supreme Court Act Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

## **PRELIMINARY CONSIDERATIONS**

[4] The Honourable Attorney General testified and her testimony was corroborated by Mrs Lekeisha Caesar-Toney, former acting Registrar and Ms Karen Duncan, Senior Crown Counsel in the Attorney General's chambers. As the case unfolded, it became apparent to the panel that the allegations were based partly on the contents of a Compliance Audit Report<sup>3</sup> which was commissioned by the Honourable Attorney General. At the close of the Applicant's case, counsel for the solicitor explained that they were not provided with the report in its entirety, only an excerpt or summary consisting of pages 14 – 18 and 28 – 31. He submitted that consequently the solicitor may have been prejudiced "*in terms of the repayment, but perhaps not so in respect of making her defence.*" He submitted further that the solicitor's position was always to make restitution including interest and the report would have assisted them in arriving at a figure that was fair.

[5] The court directed counsel for the Honourable Attorney General to disclose the full report to the barrister and took an adjournment to facilitate disclosure. This took place on the first day during an adjournment which spanned the lunch break<sup>4</sup>. The solicitor gave her testimony a few hours later. Ideally, she and her counsel should have had the report as soon as possible after it was submitted to the Honourable Attorney General. After reviewing the report, they both indicated that Mrs Gibson-Marks was not prejudiced by the late receipt.

[6] We are satisfied that together they were able to gain a full and comprehensive appreciation of its contents and its impact on her case before she testified and completed her representations to the court. We have therefore concluded that

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<sup>3</sup> Referred to interchangeably as the "report", "audit report" and "compliance audit report".

<sup>4</sup> From 10.35 am to 1.11p.m.

the solicitor has not thereby been prejudiced. With the concurrence of counsel for the solicitor, the Compliance Audit Report was accepted as part of the materials constituting the applicant's case and considered pursuant to the provisions of the Evidence Act.<sup>5</sup> In doing so, we took into account that the report was conducted under authority of the Director of Audit and signed by her.

- [7] The court frowns on the failure to disclose the full report to the barrister prior to the hearing. Such denial unless remedied constitutes a breach of one of the fundamental rules of natural justice<sup>6</sup> which guarantees a fair hearing. This principle mandates that a person charged be given notice of the other party's case, as soon as reasonably practicable, to ensure that he or she is operating on a level playing field. This principle is also incorporated by implication in the Barristers and Solicitors Rules, ("the Rules")<sup>7</sup>.

## **ANALYSIS**

### **Issue No. 1 – Did Mrs Vanessa Tamara Gibson-Marks conduct herself improperly and unprofessionally in the discharge of her professional duty by misappropriating monies held in trust account No. 87590?**

- [8] Subject to rules of court, the applicable law and practice relating to solicitors in Saint Vincent and the Grenadines, is that which obtains in England.<sup>8</sup> Disciplinary

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<sup>5</sup> Cap. 220 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

<sup>6</sup> Known as the *audi alteram partem* rule.

<sup>7</sup> Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009. See the proviso to rule 3 (1).

<sup>8</sup> Ibid. at section 78 of the Act which states:

“ 78. Subject to rules of court, the law and practice relating to solicitors, taxation and the recovery of costs in force in England shall extend to and be in force in Saint Vincent and the Grenadines and apply to all persons lawfully practising therein as solicitors of the Court.”

proceedings against a barrister or solicitor for professional misconduct are governed by the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act (“the Act”). The Act empowers any two judges of the High Court to impose sanctions against a legal practitioner for a range of infractions including unprofessional conduct.<sup>9</sup> The relevant sections provide:<sup>10</sup>

*“ 76. Any two judges of the High Court may, for reasonable cause, suspend any barrister or solicitor from practising in Saint Vincent and the Grenadines during any specified period, or may order his name to be struck off the Court Roll.*

*3 (1) A barrister or solicitor may be suspended from practising or his name may be struck off the roll by order of the High Court for any of the following causes-*

*(f) if he is otherwise guilty of professional misconduct:*

*Provided that no such order shall be made until the barrister or solicitor has had the opportunity of showing cause against such order.”*

[9] Disciplinary proceedings are neither criminal nor civil in nature.<sup>11</sup> They involve a two stage process particularized in the Rules.<sup>12</sup> The first stage is initiated by an application to a single judge for a rule to be issued to the barrister or solicitor to show cause why he should not be suspended or struck from the roll.<sup>13</sup> The

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<sup>9</sup> Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

<sup>10</sup> Ibid. at section 76 of the Act and rule 3 (1) (f) of the Barristers and Solicitors Rules, (“the Rules”) Cap. 24.

<sup>11</sup> **Hansraj Matadial v John Bayliss Frederick, SVGHCVAP2001/0023** and **Othneil Sylvester v Faellleseje, A Danish Foundation SVGHCVAP2005/0004 per Barrow J.A. at para. 10.**

<sup>12</sup> Supra. at rule 4.

<sup>13</sup> Ibid. at rule 4 (1).

second and final step is conditional on the judge issuing a rule, and it takes place in open court before a two-judge panel.<sup>14</sup>

[10] In June 2014, the Honourable Attorney General applied<sup>15</sup> for a rule to be issued to the solicitor to show cause why she should not be suspended from practising or be struck from the roll for improper and unprofessional misconduct in the discharge of her professional duty. The alleged professional misconduct concerned:

1. misappropriating monies held in trust account #87590;
2. unlawfully converting monies for her own use from the court's Mediation programme; and
3. requesting the Manager of the St. Vincent Co-operative Bank Limited ("the Bank") to close account #800300 (established pursuant to Court Order made by the Honourable Justice Renwick on May 23, 1980) and issue a cheque in the name of the Registrar of the High Court.

[11] By Oral decision,<sup>16</sup> the court ordered inter alia that a rule be issued to the barrister to show such cause why she should not be suspended or struck from the roll for:

1. misappropriating monies from trust account #87590; and
2. using mediation programme funds for her own purposes.

That order concluded phase 1 of the disciplinary proceedings.

[12] Phase 2 was commenced one week later by fixed date claim form ("FDCF") by which the Honourable Attorney General seeks declarations that by

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<sup>14</sup> Supra. at section 76 of the Act and rule 4 (3).

<sup>15</sup> By Notice of Application filed on June 5, 2014 and supported by affidavit of the hon. Attorney General of even date.

<sup>16</sup> Dated September 22, 2014.

misappropriating monies held in trust account No. 87590 and by unlawfully converting monies to her own use from the Mediation Programme, the solicitor conducted herself improperly and unprofessionally in the discharge of her professional duty. She also seeks an order that Mrs Gibson-Marks be suspended or struck from the roll of Barristers and Solicitors. The standard of proof in disciplinary proceedings of legal practitioners is proof beyond reasonable doubt.<sup>17</sup> The court must determine if the evidence establishes either “charge” against the solicitor to that degree.

[13] Three persons testified against the barrister. Their sworn affidavits were admitted as their evidence-in-chief and with the exception of Ms Duncan they were cross-examined. Mrs Gibson-Marks also testified but she called no witnesses. The Honourable Attorney General was the main witness. Much of her testimony is repeated by Mrs Caesar-Toney and is largely unchallenged. She exhibited the solicitor’s appointment letter as Registrar of the High Court from June 7, 2006.

[14] No evidence was led regarding the solicitor’s enrollment as a legal practitioner in Saint Vincent and the Grenadines. However, the solicitor stated under cross-examination that she has been an attorney at law for approximately 15 years. This corresponds with the entry of her enrollment on the court roll of Barristers and Solicitors, of which the court takes judicial notice.<sup>18</sup>

[15] The learned Attorney General testified that as a result of information received in connection with trust account #87590 held at the bank, she invited the barrister to

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<sup>17</sup> **Bhandari v Advocates Committee [1956] 1 WLR 1442 PC, per Lord Tucker at pg. 1452 and Re A Solicitor [1993] QB 69 per Lord Lane CJ at pg. 81.** Both cases were cited with approval by the Board in **Wilston Campbell v Davida Hamlet (as executrix of Simon Alexander) [2005] UKPC 19 per Lord Brown of Eaton-under-Heywood PC, at paras. 16 and 20 respectively.**

<sup>18</sup> See Roll of Barristers and Solicitors.

her chambers on May 21, 2014. The solicitor accepted the invitation and attended a meeting later that day, which was attended by Ms Karen Duncan. Ms Duncan took contemporaneous notes of what transpired. The discussion centered around two trust accounts including account #87590. For the purposes of this case, all references to the other trust account were disregarded as the solicitor was not accused of professional misconduct in relation to it. Accordingly, all references to “trust account” are to account #87590. The learned Attorney General deposed that the barrister admitted misappropriating some of the monies from that trust account and offered to repay it in about 2 months.

[16] Mrs Gibson-Marks deposed<sup>19</sup> that she:

*“admitted to the Attorney General (her) complicity in wrong-doing and abuse of office and (she has) faced charges in another court to which (she) offered no substantive challenge.”*

When asked by the panel what complicity she was referring to, she responded: *“...to misuse of the funds in the trust account of \$350,000.00...”*. She accepted that her position of Registrar entailed maintaining control of funds pertaining to the court office and that she accordingly had a high level of accountability and responsibility for those monies. She refutes that she brought the office of the Registrar into disrepute.

[17] The Honourable Attorney General testified further that she commissioned a Special Audit from the Office of the Director of Audit which revealed that the sum of \$350,500.00 was utilized from the trust account. On receipt of the Compliance Audit report<sup>20</sup> she convened another meeting with the barrister to get information

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<sup>19</sup> See affidavit of Tamara Gibson-Marks filed on October 17, 2014, para. 3.

<sup>20</sup> On July 29<sup>th</sup>, 2014.

from her.<sup>21</sup> She attended with her counsel. It is not clear from the Hon. Attorney General's account what transpired there. Regarding trust account #87590, she reports only that the solicitor "*explained that she had caused a Bill of Sale to be issued on her vehicle...and had paid a further sum of \$52, 160.00 to the Bank of St. Vincent and the Grenadines in three payments of \$4,500.00, \$39,650.00 and \$8,000.00 respectively.*"

- [18] Under cross-examination the learned Attorney General said that the monies misappropriated from trust account #87590 were paid back but under re-examination indicated that "...*there was a small figure outstanding...*". In answer to the panel she stated:

*"I think it was about \$10,000.00. I cannot recall. I have to rely on counsel for the defendant.... All the monies with interest was paid."*

For her part, Mrs Caesar-Toney testified that she could not say if there was full restitution to the institution or if interest was paid in respect of the sums repaid. She essentially echoed the learned Attorney General's account and provided details of sums repaid to the bank on the solicitor's behalf.

- [19] The solicitor testified that she and her attorneys attended the meeting in August 2014 at which the Audit Report and other things were discussed. She explained that she raised objections regarding the total amount but a sum was presented as the outstanding sum and she consented to repaying that amount as "...*there were 2 female police officers waiting to arrest and take (her) into custody...*" outside the office. She indicated further that a request was made for the full report "*to better understand what was before*" her but she did not receive it until the hearing.

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<sup>21</sup> On August 21, 2014.

[20] Under cross-examination the barrister acknowledged:

*“...by my own confession at paragraph 3 of my affidavit, I take responsibility for my own actions”, and “I accepted the funds provided to me because I wanted to bring the matter to an end very swiftly.”*

She indicated that she was under the impression that the full amount was paid back with interest.

### Compliance Audit Report

[21] The Compliance Audit Report dealt in part with an audit of the management of trust funds held in account no. 87590 at the bank pursuant to court orders in High Court claims nos. 262 of 2012, 129 of 2007 and 303 of 2008<sup>22</sup>. The solicitor does not dispute the accuracy of its contents or any of the assertions or findings in it. The report is therefore accepted as factually correct and probative except where mathematical, typographical or other superficial errors are manifested. In order to gain a better appreciation of the sums held in trust account #87590, the court examined the report. In it, the auditors noted that they were not provided with a register denoting the trust fund and bank account held in the Registrar’s name, or the amounts paid, the identity of beneficiaries or the balance due to beneficiaries.<sup>23</sup> However, based on the Report, the funds deposited into trust account #85790 are largely, the cumulative sum realized from court ordered sales of properties in

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<sup>22</sup> Referred to collectively as “the said claims”, and individually as the “first, second and third claim” respectively.

<sup>23</sup> See page 7 of the Compliance Audit Report of the Registrar’s (High Court).

the said claims. An additional sum of \$8,488.36, unrelated to the court ordered sales, was also deposited. It is addressed subsequently.<sup>24</sup>

[22] In the first claim, the High Court ordered<sup>25</sup> that property situated at New Montrose be sold by the Registrar. The Registrar was also directed to pay all related expenses and distribute the net proceeds among the applicant, surviving devisees and the legal personal representatives of deceased devisees. In the second claim, the subject property was situated at Campden Park. It was ordered<sup>26</sup> to be sold and the proceeds deposited in a bank in the Registrar's name. The net sum was to be divided equally between the parties. The claimant was to be paid immediately, and the balance was to be held in the bank until further order.

[23] The third property located at Golden Vale was to be purchased by the Petitioner.<sup>27</sup> It was further ordered that the Registrar deposit \$82,553.50 representing the Respondent's share, in an interest bearing bank account for the Respondent's benefit and notify him accordingly. The auditors record that bank account no. 87590 was opened at the bank by the Registrar, on April 18, 2013 for the purpose of depositing monies held in trust by her, pursuant to court orders in the first and third claims. The amount of \$519,185.83 was deposited on that date. That figure represented the Respondent's share of \$82,552.52, in the Golden Vale property; plus the net proceeds of \$436,633.33 from sale of the New Montrose property.

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<sup>24</sup> See paragraph [24].

<sup>25</sup> By order of Madam Justice Gertel Thom (as she then was) dated November 30, 2012.

<sup>26</sup> Pursuant to court order dated January 19, 2009, per Madam Justice Monica Joseph.

<sup>27</sup> In accordance with court order dated October 5, 2012, per Madam Justice Gertel Thom (as she then was).

[24] A further deposit of \$78,850.00 was made to the account<sup>28</sup> the following day. That sum represented net proceeds from sale of the Campden Park property. The three deposits totaled \$598,035.83. Interest of \$3143.28 was subsequently credited to the account<sup>29</sup>, increasing the trust fund deposits to \$601,179.11. The court notes that in the normal scheme of things, those funds would have attracted interest at the going rate (while held in trust for the respective beneficiaries), until lawfully withdrawn and disbursed pursuant to court order. An additional deposit of \$8,488.36,<sup>30</sup> brought the grand total to \$609,667.47. The auditors could not determine the origin of the \$8,488.36 deposit. It appears that this sum was paid into the account by the solicitor as part repayment of the unauthorized withdrawals. For the purposes of this case, the court accepts and will treat the global sum of \$601, 179.11 deposited into account # 87590 as the funds which are the trust property.

[25] From this figure, the auditors confirmed that withdrawals totaling approximately \$600,000.00<sup>31</sup> were made from the account between April 18, 2013 and March 7, 2014. Of this amount, \$256,590.81 was paid by the Registrar to beneficiaries under the first and second claims and towards expenses related to the sale of the properties at New Montrose and Campden Park.<sup>32</sup> When the solicitor resigned,

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<sup>28</sup> On April 19, 2013.

<sup>29</sup> Between April 18, 2013 and April 30, 2014.

<sup>30</sup> On April 22, 2013.

<sup>31</sup> \$158,530.00 on April 18, 2013; \$41,935.00 on April 22, 2013; \$48,850.51 on April 23, 2013; and \$350,500.00 (including \$22,275.00 transferred to account no. 2112663) on March 7, 2013.

<sup>32</sup> 1. \$143,530.30 paid to Phillips and Williams in respect of expenses related to sale of the New Montrose property, payment to two devisees and funeral expenses for one devisee; (first claim)

2. \$41,935.00 paid to Anita Doyle, one of the parties in the second claim;

3. \$48,850.51 paid to Phillips and Williams one of the beneficiaries in the first claim; and

4. \$22,275.00 transferred to account no. 2112663 and paid to one of the beneficiaries in the first claim. (included in a payment of \$48,850.51). See pg. 20 of the Compliance Audit Report.

around \$350,500.00 was utilized for purpose other than the trust, as revealed by investigations initiated by the Honourable Attorney General.<sup>33</sup> The barrister has accepted that she used those funds for her own purposes. She was not charged with any criminal offence related to these monies. She acknowledges that she acted improperly and deserves to be disciplined for her wrongdoing.

[26] According to the Honourable Attorney General, Mrs Caesar-Toney and the solicitor, Mrs Gibson-Marks has repaid a total of \$351,576.46 to the bank,<sup>34</sup> representing the principal sum due to the beneficiaries of the respective trusts and interest paid for an undetermined period. The court had no evidence before it regarding the rate of interest applied by the bank during the relevant period, or any testimony in respect of the total amount of interest which would have accrued if the unauthorized withdrawals had not been made by the solicitor. From the totality of the evidence, and information in the audit report, we accept and find that between April 18, 2013 and March 7, 2014 the solicitor without lawful authority and contrary to the trust purposes, withdrew \$350,500.00 and applied those monies for her own use and benefit.

[27] A trustee has a duty to execute the terms of the trust with reasonable diligence and honesty and at all times in a manner consistent with that duty and the legitimate purposes of the trust.<sup>35</sup> If he acts in breach of that trust he is liable for any loss suffered by the beneficiaries. If he dishonestly misappropriates trust property he may be criminally liable for theft.<sup>36</sup> A solicitor-trustee who commits a fraudulent breach of trust may be disciplined by the court and may have his

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<sup>33</sup> See page 16 of the Compliance Audit Report.

<sup>34</sup> By making incremental payments of \$130,000.00, \$60,000.00, \$90,000.00, \$52,160.00, \$8,448.36, \$10,968.10 between June 2, 2014 and December 23, 2015.

<sup>35</sup> See Halsbury's Laws of England, 4<sup>th</sup> Ed. Vol. 48 paras. 829, 831, 836 and 846.

<sup>36</sup> Ibid. at para. 951

name struck off the roll.<sup>37</sup> He is also liable to account for any principal monies lost through such breach of trust and payment of interest<sup>38</sup> if he mixes the trust funds with his own monies or applies it in an unauthorized manner or fails to account for it when lawfully demanded.<sup>39</sup>

[28] As a trained barrister and solicitor Mrs Gibson-Marks undoubtedly appreciated that she held the monies on trust for the beneficiaries and not for her own use. By her own admission, she appreciated what duties she owed the beneficiaries and the court and what were her attendant responsibilities. The evidence has established beyond reasonable doubt that she dishonestly misappropriated the trust intending so to do and thereby committed a fraudulent breach of trust. As trustee, she intentionally, deliberately and without good reason failed to perform her duties to preserve the trust property. In fact, but for the query by the Honourable Attorney General, one does not know how much longer the deception would have lasted. The trust account was practically cleaned out in 2013 or 2014 leaving a balance of \$5.36 as at March 7, 2014.<sup>40</sup>

[29] We arrive at the inescapable conclusion and find as a fact, and beyond all reasonable doubt that the solicitor is liable for professional misconduct by dishonestly and improperly misappropriating over \$300,000.00 of the trust monies deposited in bank account #85790. She admitted as much. We therefore find and declare that Mrs Tamara Gibson-Marks conducted herself improperly and unprofessionally in the discharge of her professional duty as trustee of funds

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<sup>37</sup> Ibid. at para. 956.

<sup>38</sup> Ibid. at para. 966. The rate of interest depends on the nature of the breach. Simple interest is the usual measure where the trustee fails to invest the monies, but a higher rate of interest is payable if loss is occasioned by fraud or dishonesty.

<sup>39</sup> Ibid. at para. 964.

<sup>40</sup> See page 15 of the Audit Report.

totaling \$350,500.00 belonging to the beneficiaries of trust account #87590 held at the bank.

**Issue No. 2 - Did Mrs Vanessa Tamara Gibson-Marks conduct herself improperly and unprofessionally in the discharge of her professional duty by unlawfully converting monies to her own use from the Mediation Programme?**

[30] The Registrar of the High Court has a statutory duty to collect all fees payable to her in any capacity and under any written law, usage or custom. This includes fees payable in connection with business conducted in the High Court or otherwise on behalf of the Honourable Chief Justice.<sup>41</sup> Between 2006 and 2014, the Registrar was designated the accounting officer for the High Court<sup>42</sup> with ultimate and direct responsibility for collection and safekeeping of public monies including all money received in her official capacity as Registrar.<sup>43</sup> These sums

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<sup>41</sup> See section 8 of the Registrar's Act, Cap. 279 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

<sup>42</sup> See sections 2 and 8 (1) of the Finance Administration Act Cap. 252 of the Revised Laws of Saint Vincent and the Grenadines, 2009 which provide respectively:

"2. In this Act-

"accounting officer" means a public officer designated as such under section 8 (1);

8. (1) A public officer shall be designated as an accounting officer by the House of Assembly in the annual or supplementary estimates, ...-

See also the relevant Appendices in the Estimates of Revenue and Expenditure for the years 2006 – 2014 for Saint Vincent and the Grenadines, designating the Registrar as accounting officer for the High Court.

<sup>43</sup> Ibid. at sections 2 and 8 (2) of the Finance Administration Act which state respectively:

"2. "public money" means money belonging or payable to or received, collected or held by, for or on behalf of the Government and includes-...

(b) all money held, whether temporarily or otherwise, by a public officer in his official capacity, either alone or jointly with any other person whether or not that other person is a public officer."

8. (2) An accounting officer-

(a) is responsible in his role as a public officer ...for-

(iii) the control of, and accurate accounting for public money, other than money for public purposes, received by the ministry, department or service for which he is accounting officer; and

include monies received from litigants ordered to attend mediation sessions with court appointed mediators.

[31] The Hon. Attorney General testified that when she met with the solicitor in May 2014, Mrs Gibson-Marks confessed to her that she had unlawfully converted<sup>44</sup> a sum of monies she received from the Court Officer for the Eastern Caribbean Supreme Court Mediation Programme. She added that the barrister then told her that in or about 2012 she placed some monies she received from the Mediation Programme in her drawer for safe-keeping, which were stolen. She added that she did not report it to the Police or the Attorney General. The learned Attorney General testified further that the Compliance Audit Report revealed that between 2006 and May 2014, a total of \$115,450.00 was paid into the court Mediation Programme some of which was paid to mediators for their services. The sum of \$21,925.00 was unaccounted for by the solicitor. She indicated that Mrs Gibson-Marks agreed to repay that money and did so by cheque later that day. Mrs Caesar-Toney confirmed that the full amount was repaid.

[32] Under cross-examination the solicitor stated that she reported the missing monies to the Attorney General and the Director General of Audit several years before May 2014 by letter. She denied that she first made that report on the day she resigned from the post of Registrar. She also refuted the Hon. Attorney General's account and denied telling Mrs Jones-Morgan that she had not reported the theft before. She claimed that she had not reported the theft to the police as she was waiting for some direction on how to proceed – presumably from the Attorney General or Director of Audit. Ms Karen Duncan was called as a rebuttal witness. She testified that she was present during the meeting between

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(iv) the control of, and accurate accounting for the disbursement of public money, other than money for public purposes, received by the ministry, department or service for which he is accounting officer.

<sup>44</sup> In or about May 2014.

the Honourable Attorney General and the solicitor. She recalled that Mrs Gibson-Marks was asked by Mrs Jones-Morgan if she had reported the theft to anyone and she replied that she had not.

[33] Ms Duncan was not cross-examined. Her evidence is therefore uncontroverted and stands in stark contrast to the solicitor's. Her testimony is credible and we accept it. We infer that the solicitor was seeking to mislead the court when she claimed that she had reported the theft in writing to the Hon. Attorney General and the Director of Audit. In doing so, she was seeking to shift the blame to some person or persons unknown. This untruth paints Mrs Gibson-Marks in a very unfavourable light and demonstrates a chilling lack of remorse for this infraction. She nonetheless admitted pleading guilty in the Magistrate's Court and being convicted of theft of the mediation funds. She also told the panel that she accepted the figure of \$21,925.00. The conviction record was supplied to the court, confirming her conviction<sup>45</sup> for theft of \$21,925.00.

[34] The evidence that the solicitor stole the mediation funds is overwhelming and conclusive. Having been convicted of theft, the solicitor has accepted that she dishonestly misappropriated the mediation funds with the intention of permanently depriving the owners of those funds. In effect, she acknowledges dishonest behavior in respect of funds entrusted to her as an officer of the Judicial Department and Registrar of the High Court of Justice. It is a compelling and riveting tale. We therefore conclude and find beyond reasonable doubt that such conduct is not only improper and unprofessional but dishonest and amounts to misconduct by the solicitor in the discharge of her professional duty.

### **Issue No. 3 - what sanction should be imposed?**

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<sup>45</sup> On October 14, 2014.

[35] Having found that the solicitor's behavior in misappropriating the funds in account no. 85790 and the Mediation Programme amounts to professional misconduct in the capacity of barrister and solicitor, we turn now to consider what sanction is appropriate in all the circumstances. The panel has absolute discretion in making this determination<sup>46</sup> and it makes such determination on the particular facts of the case before it.<sup>47</sup> The Hon. Attorney General urges that the solicitor be struck from the court roll. The solicitor counters that a 3 to 5 year suspension is the appropriate sanction. She submits that the "*character and nature of the breaches of trust and the consequent criminal convictions do not*<sup>48</sup> (sic) go to her capacity as the Registrar and not (her) professional character as a member of the bar." She argues that the court "*may be persuaded to act more leniently*" when deciding what sanction to impose. She cites the case of **Re Weare**<sup>49</sup> in support.

[36] The solicitor contends further that the mere fact of a conviction for a criminal offence is not sufficient reason for striking her off the roll as the penalty imposed by the criminal court satisfies her debt to society. She relies for support on dicta of Sir Thomas Bingham in **Bolton v. Law Society**.<sup>50</sup> She submits that full restitution has been made and solicitor-client relationships were not evident in the transactions complained about.

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<sup>46</sup> See **In re a Solicitor, Ex parte Incorporated Law Society** 61 L.T. 812 per Baron Pollock and Manisty J.

<sup>47</sup> See **In Re H. A. Grey** [1892] 2 Q. B. 440 at p. 445 per Lord Esher M. R.

<sup>48</sup> The "not" is obviously a typographical error.

<sup>49</sup> See **In re Weare, A Solicitor** [1893] 2 Q.B. 439 at pg 448 Per Lopes, L.J.

<sup>50</sup> [1994] 2 All ER 486.

[37] While we agree that the solicitor committed the breaches of trust and stole the mediation monies in her capacity as the Registrar and not in pursuance of a solicitor-client relationship, we cannot agree that she did not do so as member of the bar. The Act provides that all barristers and solicitors are officers of the court. Barristers are members of the bar and accordingly are subject to the court's disciplinary jurisdiction.<sup>51</sup> For all intents and purposes the barrister was at all material times a member of the bar. The applicable provisions of the Act state:

“72 (1) Every person admitted as a barrister or solicitor of the Court shall cause his name to be enrolled in a book to be kept for the purpose by the Registrar and to be called the Court Roll...

(2) Every person, whose name is so enrolled, shall if enrolled as a barrister, be entitled to practice as a barrister, and, if enrolled as a solicitor, be entitled to practice as a solicitor in every court in Saint Vincent and the Grenadines.”

75 (1) Every person ... whose name shall be enrolled... either as a barrister or solicitor, shall be deemed to be an officer of the Court.”

[38] In any event, the fact that misconduct takes place outside of the arena of the legal profession has never served as a reason to discount such behaviour. The court has a vested interest in ensuring that the roll of barristers and solicitors comprises only “fit and proper” persons. In the words of Lopes L.J.:

*“... to hold that the jurisdiction of the Court to strike off the roll extends only to professional misconduct and neglect of duty as a solicitor, would be placing too narrow a limit on that most salutary disciplinary power that the Court exercises over its officers. To my mind the question which the Court in cases*

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<sup>51</sup> Sections 72 and 75 of the Act. See also section 76 outlined above.

*like this ought always to put to itself is, Is the Court having regard to the circumstances brought before it, any longer justified in holding out the solicitor in question as a fit and proper person to be entrusted with the important duties and grave responsibilities which belong to a solicitor? That appears to me to be the question which the Court always has to answer when a matter of this kind comes before it.”<sup>52</sup>*

[39] Lopes L.J. opined further that even where a solicitor’s conduct is not connected with the profession, he is held accountable for it and subject to the court’s discipline. In his words:

*“The jurisdiction of the court extends, not only to the case where the misconduct has been connected with the profession of the solicitor, but also to cases where the conduct, though not so connected, has been such as to make it clear to the Court that that person is no longer fit to be held out as a fit and proper person to exercise the important functions with which the Court intrusts him.”<sup>53</sup>*

We agree that those statements capture guiding principles surrounding the imposition of disciplinary sanctions. Accordingly, we adopt them and apply them to the facts of the instant case.

[39] In determining a suitable punishment, the court is required to have regard to the objectives which guide the imposition of sanctions. It is established that they serve a threefold punitive, preventative and ameliorative function. In this regard, the punitive element punishes the errant barrister and deters would-be offenders. The preventative aspect aims to deny the wayward attorney future

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<sup>52</sup> Supra. at pg. 449.

<sup>53</sup> Ibid.

opportunities to repeat the dishonourable conduct. Very importantly, the sanction component attempts to maintain the profession's reputation and public confidence in its integrity, by providing other practitioners a measure of trust in which to operate in society without undue suspicion or cynicism from potential clients regarding their *bona fides*. It helps to restore and uphold the public's confidence in solicitors as "*persons of unquestionable integrity, probity and trustworthiness*."<sup>54</sup> After all, "A profession's most valuable asset is its collective reputation and the confidence which that inspires."<sup>55</sup>

[40] The court is therefore concerned with assessing whether the solicitor is a fit and proper person to be held out as an officer of the court. Naturally, the most stringent sanctions are reserved for the most egregious offences, particularly those involving dishonesty.<sup>56</sup> In reviewing Mrs Gibson-Marks behavior and the surrounding circumstances, we are mindful that she was serving in the capacity of a judicial officer and was entrusted by the court to conduct business on its behalf related specifically to funds belonging to litigants and beneficiaries of a deceased's estate. The position is a very senior one which requires a high level of accountability. The Registrar represents the Honourable Chief Justice and judges of the High Court in the discharge of those functions.

[41] It did not go unnoticed that the first unauthorized withdrawal<sup>57</sup> took place the same day that the trust account was opened and the subsequent ones within the next 12 months in rapid succession. The speed with which the account was depleted is nothing short of shocking. This is eclipsed by the feeble attempts

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<sup>54</sup> **Bolton v Law Society [1994] 2 All ER 486 at 492 per Sir Thomas Bingham MR.**

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Of \$15,000.00.

made by the solicitor to re-deposit the sums and the circuitous and clearly premeditated route used to divert some of those monies into another account. Presumably, if the deceit was not uncovered soon enough, it conceivably might have remained undetected for an extended period. The barrister's apparent lack of remorse and recent attempt to pass the blame to others, while under oath is even more appalling. To her credit, it appears that a large part or all of the trust funds have been repaid. All of the mediation funds have been reimbursed. However, it is not certain that the full interest which would have accrued on the trust account has been determined or factored into the repayment.

[42] The solicitor's misconduct has besmirched the entire legal profession and the office of the Registrar and has brought the Registry and High Court into disrepute. We agree with the Honourable Attorney General's submissions that her conduct "*fell short of the expectations of an attorney at law in this noble profession.*" The court remains mindful of its duty to protect the public interest and must be ever vigilant and resolute in endeavouring to demonstrate that misconduct among its officers will not be tolerated and will always be met with appropriate sanctions. In the premises, we are satisfied that the solicitor by her conduct has demonstrated that she is not a fit and proper person to be retained on the court roll. This is an appropriate case in which to impose the severest penalty. We accordingly declare and order that Tamara Gibson-Marks be and is hereby struck from the Court Roll.

### **POSTSCRIPT**

[43] These proceedings were initiated by FDCF by specific direction of the undersigned judge before whom it was concluded. The court wishes to place on record its recognition that use of a FDCF is reserved for civil proceedings and is not prescribed for use in disciplinary proceedings. It is noted that in the **Othneil Sylvester** case, the Court of Appeal classified such procedural irregularity as

*“minor solecisms”* which do not *“... justify the conclusion that the proceedings are thereby rendered incapable of continuing as disciplinary proceedings”*.<sup>58</sup> The Court of Appeal reasoned that the title signified that the proceedings concerned the specific section of the Act and Rules and referenced the disciplinary nature of the proceedings removing any doubt that they were disciplinary in nature.

[44] In the instant case, the title refers specifically to section 76 of the Act and rules 3 and 4 of the Rules. It also indicates that it is an application involving *“...unprofessional conduct by Vanessa Tamara Gibson-Marks, a Barrister and Solicitor”* requiring her *“...to show cause why she should not be suspended or struck off the roll of Barristers or Solicitors”*. We are satisfied that the title accurately and sufficiently describe the proceedings as disciplinary. We therefore adopt the pronouncement of the Court of Appeal, apply them to this matter and hold that the proceedings in this case are not invalidated by the referenced irregularity in procedure or form. We accordingly make an order to set the irregularity right and declare that the proceedings are deemed properly filed and instituted for the purposes of the disciplinary hearing against the solicitor. Other jurisdictions served by the Eastern Caribbean Supreme Court conduct disciplinary proceedings in accordance with a uniform Legal Professional Act. The State of Saint Vincent and the Grenadines would benefit from a similar enactment.

[45] The facts of this case recount a cautionary tale for barristers and solicitors. We take no pleasure in making the orders in this matter. However, the profession and the public interest demand no less.

## **ORDERS**

[46] It is accordingly declared and ordered that:

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<sup>58</sup> Supra. at para. [11].

1. Tamara Gibson-Marks conducted herself improperly and unprofessionally in the discharge of her professional duty by misappropriating monies held in trust account no. 87590 amounting to \$350,500.00 with interest.
2. Tamara Gibson-Marks conducted herself improperly and unprofessionally in the discharge of her professional duty by unlawfully converting monies for her own use and stealing said monies amounting to \$21,925.00 from the mediation programme of the Eastern Caribbean Supreme Court.
3. Tamara Gibson-Marks be and is hereby struck off the Court Roll of barristers and solicitors.
4. The Registrar shall make the appropriate entry in the Court Roll and cause notification to be published in the Official Gazette.
5. The Honourable Attorney General shall on or before April 30, 2016 arrange for a full forensic audit to be conducted of the banking records and official records kept in the Registry to ascertain what if any further amounts are due to the beneficiaries by way of interest or other payment and notify Mrs Gibson-Marks accordingly on or before May 13, 2016, incorporating a copy of such audit and supporting documentation, and file a copy at the High Court office.
6. Tamara Gibson-Marks shall pay to the Registrar of the High Court any and all such additional sums determined by the audit to be outstanding and due and payable to the beneficiaries of the trust account.
7. The Registrar shall arrange for Mrs Gibson-Marks to be repaid any sums found to have been paid by her, in excess of the amount determined by the audit to be due and reimbursable by her to the trust account.

8. No order as to costs.

[47] The court is grateful to both counsel for their submissions.

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**Esco L. Henry**  
**HIGH COURT JUDGE**

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**Pearletta Lanns**  
**HIGH COURT JUDGE (Ag.)**