

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV 2013/0496

**IN THE MATTER OF THE WEST INDIES ASSOCIATED STATES SUPREME COURT
(GRENADA) ACT CAP. 336 OF THE 2010 EDITION OF THE REVISED LAWS OF
GRENADA**

AND

**IN THE MATTER OF THE COUNCIL OF LEGAL EDUCATION ACT CAP. 71 OF THE
2010 EDITION OF THE REVISED LAWS OF GRENADA**

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT NO. 25 OF 2011

AND

**IN THE MATTER OF AN APPLICATION BY JOSEPH EWART LAYNE TO BE
ADMITTED TO PRACTICE AS AN ATTORNEY-AT-LAW OF THE SUPREME COURT
OF GRENADA AND THE WEST INDIES ASSOCIATED STATES**

Appearances:

Mr. Ruggles Ferguson with Mr. Denis Lambert, Ms. Claudette Joseph, Ms. Cathisha Williams, Mr. Ian Sandy, Ms. Deborah St. Bernard, Mrs. Deborah Mitchell, Ms. Anyika Johnson, Mr. Francis Paul, Mr. Derrick Sylvester, Ms. Ayanna Nelson & Dr. Lawrence Joseph, Mr. M. Maduro, Ms. Lou-Ann Harford, Ms. J. McKenzie, Mr. Peter David, & Mr. Ashley Bernadine for Applicant
Mr. Anselm Clouden and Mr. Tillman Thomas for Applicant absent

Mr. John Carrington, Q.C. Amicus for the Court

2013: December 20

JUDGMENT

- [1] **PRICE FINDLAY, J.:** This is an application brought by way of Fixed Date Claim Form seeking the admission of Joseph Ewart Layne to practice as an Attorney-at-Law in the State of Grenada.
- [2] The Applicant holds an LLB degree with Second Class Honours, an LLM with Merit from the University of London, and a degree in Accounting. While at the Hugh Wooding Law School he obtained a Certificate of Merit and was the most outstanding student at the Law School for the two-year period that he attended that institution. He was also the most outstanding Grenadian student for the corresponding period.
- [3] That the Applicant has the educational qualifications for admission to the Bar is not in question.
- [4] But it does not stop there. The Legal Profession Act S. 17 states:
“17(1) Subject to the provisions of this Act, a person who makes an application to the Supreme Court and satisfies the Supreme Court that he:
(a) is of good character; and either
(i) holds the qualifications prescribed by law; or
(ii) is a person in respect of whom an Order has been made under section 18.
(b) has paid the prescribed fees under the provisions of the Stamp Act in respect of such admission;
(c) has filed in the office of the Registrar an affidavit of his identity, and stating that he has paid the prescribed fee; and
(d) has deposited with the Registrar, for inspection by the Court, his certificate with respect to his qualifications prescribed by law;
Shall be eligible to be admitted by the Court to practice as an attorney-at-law in Grenada.

- (2) Notwithstanding the provisions of this Act or any other written law to the contrary, a national of Grenada who makes an application to the Court and satisfies the Court that:
- (a) he has the qualifications which would allow him to practice law in any country having a sufficiently analogous system of laws as Grenada: and
 - (b) he has obtained a certificate from the head of chambers of an attorney-at-law of not less than ten years standing, practicing in Grenada to the effect that the national has undergone an attachment to those chambers for a continuous period of not less than six months relating to the practice of law:
- Is deemed to hold the qualifications prescribed by law and is entitled, subject to fulfilling the conditions under subsection (1), to be admitted by the Court to practice as an attorney-at-law in Grenada.
- (3) Before any person is admitted as an Attorney-at-law, the Registrar shall enquire whether the person has fulfilled all the conditions for admission laid down by law, and if the Registrar is satisfied that the person has done so, he shall report accordingly to the Supreme Court.
- (4) The Supreme Court may issue directions and conditions as to the manner in which the qualifications for admission to practice law may be proved, and may order any person to furnish such evidence as may be requested, for the purpose of this section or section 18.
- (5) Notwithstanding any law to the contrary, the Minister, where he considers it necessary or expedient, after consultation with the Chief Justice, may, by Order, provide that a Commonwealth citizen who has been admitted to practice in a Commonwealth country, is eligible to be admitted to practice law in Grenada on such terms and conditions, including but not limited to the duration of the admission, as the Minister may specify in the Order.”

[5] The section clearly envisages that there are two limbs to the admission process:-

1. The academic and professional education requirement, and

2. The requirement that the Applicant be of good character.
- [6] The legislation confers eligibility but not an entitlement to practice and the Court retains discretion as to whether a person ought to be admitted to practice, notwithstanding that he/she has met the statutory requirements.
- [7] I agree with the opinion set out by Amicus Attorney, John Carrington, Q.C. when he stated:
- “Like all judicial discretion, the discretion under the Act must be exercised in a manner that is consistent with the interest of justice, that is, by considering and giving proper weight to the relevant matters.”
- [8] It is to be noted that acceptance to the Law School does not grant any right or expectation to be admitted to the Bar.
- [9] The present Applicant has satisfied the other requirements set out in the section.
- [10] Therefore, the sole issue by this Court is, is the Applicant of good character. In other words, is he a fit and proper person to be admitted to the Bar.
- [11] Good moral character as defined by Black’s Law Dictionary is “a pre-requisite to admission to the practice of law, an absence of proven conduct or acts which have been historically considered as manifestation of moral turpitude.
- [12] Character has been defined in the same publication as:
- “The aggregate of moral qualities which belong to and distinguish an individual person, the general result of one’s distinguishing attributes. That moral pre-disposition or habit, or aggregate of ethical qualities which is believed to attach to a person on the strength of common opinion and report concerning him.”

- [13] The Courts will deny an applicant admission to the Bar if the Court believes that said Applicant does not possess the requisite character to be so admitted.
- [14] The Court recognizes the importance of good character in future lawyers because ultimately lawyers are the guardians of our fundamental freedoms.
- [15] The US Supreme Court in **Schwabe v Board of Examiners**¹, stated:
“All interests of man that are comprised under the constitutional guarantees given to life, liberty and property are in the professional keeping of lawyers. From a profession charged with such responsibility, there must be exacted those qualities of truth speaking, of a high sense of honour, of granite discretion, of the strictest observance of fiduciary responsibility, that have throughout the cultures been compendiously described as moral character.”
- [16] Benjamin, J in **Edward Alleyne**² stated:
“... the Bar is no ordinary profession or occupation. The duties and privileges of advocacy are such that for their proper exercise and effective performance, Counsel must command the personal confidence of not only lay and professional clients but other members of the Bar and of judges.”
- [17] The Court has no rule automatically barring someone who has been convicted of an offence from the practice of law in this jurisdiction, but an applicant with the background of this Applicant must make an extraordinary showing of rehabilitation and present good moral character.
- [18] The test of character is a very high test, and has nothing whatsoever to do with punishment, reward or redemption. The test is whether there is a potential risk to the public or, more importantly, whether there will be damage to the reputation of the profession.

¹ 353 US 232 (1957)

² 1997 DCLR 340

[19] The Court is concerned with the maintenance of public confidence in the members of the profession.

[20] Having reviewed the relevant authorities, I agree that the principles as set out by Amicus as to guide the Court in the proper exercise of its discretion in relation to the question whether the Applicant is of good character. They are as follows:

- "There is no right to be admitted to practice law under the Legal Profession Act. The Act lays down only the threshold requirements for the exercise of the Court's discretion.
- The onus is on the Applicant to prove that he is of good character, which is one of the threshold requirements.
- The test of what is good character is a "high test" but the standard of proof is probably no more than on a balance of probabilities, i.e. the civil standard. This means that there is no presumption that a person is of good character.
- Good character has a subjective element, i.e. that the Applicant is a person of integrity, honesty and reliability. Evidence of past convictions for serious criminal offences are relevant to the proof of this element.
- Good character also has an objective element, namely reputation, but the predominant concern is not the reputation of the applicant but of the profession, i.e. what would be the effect on the collective reputation of and public confidence in the legal profession if the Applicant were admitted to practice.
- The nature of the crimes for which an Applicant has been convicted, although they took place almost 30 years ago, are relevant to the determination of both the subjective and objective elements of good character. The Court is entitled to take into account the gravity of the offences and the part played by the Applicant in the events.
- While offences involving dishonesty are generally regarded as most relevant to the test of character, any conviction is relevant. In this regard, it becomes a qualitative issue whether the offence of murder, i.e.

deprivation of a person of the rest of his natural life, should be regarded as more, less or equally serious than the deprivation of a person of his material property.

- As a refusal to admit is not punitive in nature, it does not amount to double punishment for a crime for which a sentence has been served.
- The fact that a conviction took place several decades ago does not mean that it should be disregarded. However, the lapse of time and likelihood of recurrence may be relevant to the determination whether public confidence and the reputation of the profession will be affected by the admission.
- The authorities show that the fact that the Applicant was acting under great stress at the time of commission of the crime in question does not excuse him.
- The authorities further show that the relative youth of an Applicant at the time that the offences were committed does not excuse him. It is probably relevant in this case that despite his relative youth, the Applicant held a position of authority at the relevant time. It would be relevant to his character if the Court were to hold a view that this position was abused.
- The Applicant's undoubted achievements since his conviction can alternatively be regarded as evidence of rehabilitation or cast doubt on his character in that as a highly intelligent person, he should have been in a better position to evaluate the wrongfulness of his conduct at the relevant time.
- Recommendations, glowing tributes (including academic accolades) and attempts to re-establish himself in society are all relevant considerations but will carry little weight in the Court's considerations if the Court is of the view that the reputation of the profession as a whole would be adversely affected by the admission of the Applicant. The fortunes of an Applicant must always give way to the need to maintain the collective reputation of the profession.

- If the Court believes that it is probable that public confidence in and the reputation of the profession as a whole are likely to be affected by the admission, the Court has to determine the extent to which these are likely to be affected and weigh the personal factors in relation to the Applicant in this context. The more probable that public confidence and reputation of the profession are likely to be gravely affected, the less weight should be given to the Applicant's evidence of rehabilitation and other personal factors."

This list is not exhaustive and all these factors must be looked at and taken into account.

[21] I take note of the observations of the Applicant as stated in the skeleton arguments of Counsel. They are as follows:

- "16(i) There is no issue of honesty and trustworthiness and integrity. The offences in question do not touch on these.
- (ii) The Applicant made full disclosure of the offences when he applied to the CLE for admission to its two (2) year programme.
- (iii) The Applicant has disclosed his record to the court as part of his application.
- (iv) The offences were thirty (30) years ago.
- (v) The offences occurred in exceptional political circumstances.
- (vi) The offences were committed when the Applicant was a relative youth, carried disproportionate burden of responsibility in very difficult circumstances.
- (vii) Their likelihood of reoccurrence is extremely remote.
- (viii) The Applicant did not personally kill anyone.
- (ix) The evidence of rehabilitation since the offences is overwhelming.
- (x) The conclusion that the defect which resulted in the commission of the offences of 30 years ago does not play any role in the life of the Applicant is justified when the totality of the circumstances, including the evidence of rehabilitation and the passage of 30 years are considered.

(xi) The application is uncontroverted, and in particular, by the Attorney General and the Grenada Bar Association.

[22] There is no right to Admission to the Bar; it is for the Applicant to satisfy and discharge the burden of the test of character.

[23] While I commend this Applicant for the efforts that he has made to rehabilitate himself in the some thirty years since the convictions for murder, I have to consider the preservation of the integrity of this profession.

[24] The Court has to balance the previous misconduct as opposed to the evidence of rehabilitation.

[25] Deborah Rhode wrote in the Yale Law Journal 1985³ that:

“In the United States the traditional view is that certain illegal activity, regardless of the likelihood that it would be repeated in a lawyer/client situation, shows an attitude towards the law that cannot be accepted by its practitioners. It goes further -- to hold otherwise would demean the profession's reputation and reduce the character requirements to a meaningless pretence.”

[26] In this matter the Court commends the efforts of the Applicant, his positive contributions while in prison to educate and inform his fellow inmates as well as his other contribution to prison life. The Court also commends his personal academic achievements.

[27] While rehabilitation is important, a show of rehabilitation in the face of past serious misconduct may be impossible to make.

³ Deborah C Rhode, Moral Character as a Professional Credential 94 Yale LJ – 491 at 537

- [28] In **Re Gossage**⁴ it is stated:
- “... where serious or criminal conduct is involved, positive references about the applicant's moral character are more difficult to draw, and negative character inferences are stronger and more reasonable.”
- [29] The Applicant's crimes here have been described as acts committed in political turmoil and in exceptional/political circumstances, and in the context of the Cold War.
- [30] But the Applicant was 25 years old at the time and a Lieutenant Colonel in the Army. In fact, he was in charge of the day-to-day operations of the Army. This shows that he had a level of maturity and had even at that age displayed leadership qualities that lent themselves to him being given that heavy mantle of leadership, Commander of Armed Forces of Grenada.
- [31] To give the orders which he and others gave to “liquidate them”, and in circumstances in which they were given, a position away from the actual scene itself, portrays a lack of moral judgment on the part of the Applicant.
- [32] The onerous burden placed on this Applicant to show his suitability for the Bar is commensurate with the gravity of the crime for which he was convicted.
- [33] The crime of murder is the most serious known to the criminal law. It may attract the harshest penalty known to law – death. The Applicant here was convicted of ten counts of murder.
- [34] In the United States in **Re Wright**⁵, the Court declined admission for an Applicant convicted of second degree murder “despite his perseverance and despite apparently successful efforts at rehabilitation.”

⁴ 99 Ca. Rptr. 2d

⁵ Re Wright 102 Wash. 2d 855, 690 P. 2d 1134

- [35] The United States Courts in **Re Wright & Gossage** were not swayed even though the profession had no objection to the admission of these applicants.
- [36] In **Re Hamm**⁶, a United States case out of Arizona, the Applicant claimed to have lived an exemplary life and viewed his admission to the Bar as part of his “path to redemption” and a way to pay “a debt of honour”.
- [37] The Court in that case found that the point of admission to the Bar is not to reward a person for behaving and living like the vast majority of the population in civil society.
- [38] The point of admission is to select the persons who will handle the law with honesty and with competence, but also not to diminish the role and reputation of the legal profession.
- [39] The test which the Court has to apply is whether there is a potential risk to the public or, more importantly, whether there will be damage to the profession’s reputation.
- [40] The public must have confidence in the Bar, as admitting an Applicant to practice sends the message that the Applicant is worthy of the public trust.
- [41] “Lawyers play a critical role in sustaining the rule of law and thus it is necessary that the legal profession maintain its unique ability to do so by earning the respect and confidence of society.” **In re Rowe**⁷.

⁶ In re Hamm, 123 P. 3d 652, 655 (Ariz. 2005)

⁷ 80 Ny 2d at 340, 640 Ne 2d at 730

- [42] In the **Hamm** case, like here, some 30 years had elapsed between the offence in 1974 and the application for admission to the Arizona Bar in 2004, and that application was refused even though he had tried to lead an exemplary life since the time of the offence.
- [43] Had this Applicant committed these acts while a practicing attorney, this Court has no doubt that he would have been disbarred. Disbarment has occurred for less egregious conduct.
- [44] To allow this Applicant to be admitted would send an inconsistent message to members of the public and to the profession as a whole.
- [45] “The reputation of this profession is more important than the fortunes of any individual member.” Burgham MR. **Bolton v Law Society**⁸.
- [46] The Applicant here is a man who has accomplished much. But having reviewed the evidence and taking into account all the relevant considerations, and the authorities in England, the United States, the OECS and other jurisdictions, I am constrained to refuse this application for admission.

Margaret A. Price Findlay
High Court Judge

⁸ 1993 EWCA Civ. 32