

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 52/99

MOTION

BEFORE: THE HON. MR. JUSTICE BINGHAM, J.A.
THE HON. MR. JUSTICE PANTON, J.A. (Ag.)
THE HON. MR. JUSTICE WALKER, J.A. (Ag.)

BETWEEN	BARRINGTON EARL FRANKSON	APPLICANT
AND	THE GENERAL LEGAL COUNCIL exparte Basil Whitter (at the instance of Monica Whitter)	RESPONDENT

Ian Ramsay, Q.C., Carolyn Reid and Sean Kinghorne,
instructed by Rowe, McDonald & Co., for the applicant

Dennis Morrison, Q.C. and Charles Piper, instructed by
Piper & Samuda, for the respondent

May 19, 20 and 21, 1999

BINGHAM, J.A.:

The applicant, an attorney-at-law, following a lengthy hearing before the Disciplinary Committee set up under the Legal Profession Act and consisting of three of his professional colleagues, was found guilty of misconduct in a professional respect and ordered, inter alia,

to be struck from the Roll of Attorneys-at-law entitled to practise in the several courts of this country. This order has since that date been lodged with the Registrar of the Supreme Court and having been perfected disbars the applicant from engaging in the practice of an attorney-at-law as from that date.

The applicant has subsequently appealed to this court to set aside the orders made below, and he now comes before us requesting that the orders made by the Disciplinary Committee be stayed pending the hearing of this appeal. He also seeks a declaration that, on a proper interpretation of section 17(2) of the Legal Profession Act, the decision of the Disciplinary Committee does not take effect until the date of the decision of this court, in the event that the orders made below are so confirmed. In short, it is contended that the subsection, when examined, grants to the applicant an automatic stay so as to permit him to continue to practise his profession until his appeal is heard and determined.

In so far as the jurisdiction of this court to grant or refuse a declaration is concerned, we are of the view that this court has no original jurisdiction to grant such relief, that power being one for the Supreme Court to exercise. Further, as we adverted to before, the filing of the decision of the Disciplinary Committee with the Registrar in

accordance with sections 15(2) and (3) of the said Act means that from that date the applicant shall not continue to practise as an attorney-at-law pending the hearing of his appeal. Having examined section 17(2), we are firmly of the view that the subsection does not have the effect of automatically staying the orders made by the Disciplinary Committee. If that was the intention of Parliament, then we would expect that the import of such a matter would require express words to have this effect.

The question which naturally follows, therefore, is whether this court has the jurisdiction to grant or refuse a stay.

Mr. Ramsay, Q.C., for reasons which he stated, has strongly argued that we do have such a power. Mr. Morrison, Q.C., for reasons which he advanced, is of an opposite view.

Having carefully examined the submissions of counsel we are inclined to the view that as this court is given the power to review the Committee's decisions and has wide powers by virtue of section 17 of the Legal Profession Act in exercising such powers, this court, as part of its inherent jurisdiction, could have no lesser power in this regard than is given to the Committee by virtue of Rule 19 of the Fourth Schedule to the said Act.

We, therefore, in the interest of justice, invoke our Inherent jurisdiction in exercising our discretion to consider whether to grant or refuse a stay of the Committee's order.

We fully appreciate that this application comes before us arising out of a situation in which the effect of the Committee's order is one which for the applicant has grave consequences. It arises out of a matter in which following a very lengthy hearing occupying a period of several months the Committee found serious impropriety by the applicant in his financial dealings with a client. Following the hearing, an application for a stay was made to the Committee and was refused. It is clearly in the public interest that he be not allowed to practice until his appeal is heard. In that regard we would urge that the appeal be pursued with much haste so as to minimise any damage that may be done in the event that the appeal is successful.

The application for a stay in the interim is accordingly refused.