

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008-03614

IN THE MATTER OF THE LEGAL PROFESSION ACT CHAP 90:03

AND

**IN THE MATTER OF THE ORDERS MADE BY THE DISCIPLINARY
COMMITTEE OF THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO
CONSTITUTED BY S. 36 OF THE LEGAL PROFESSION ACT CHAP 90:03,
AGAINST MR. KENNETH MUNROE BROWN, AN ATTORNEY AT LAW**

AND

**IN THE MATTER OF THE FAILURE OF THE SAID MR. KENNETH MUNROE
BROWN TO COMPLY WITH THE SAID ORDERS IN WHOLE AND/OR IN
PART**

AND

**IN THE MATTER OF THE INHERENT JURISDICTION OF THE COURT TO
DISCIPLINE ATTORNEY AT LAW**

AND

**IN THE MATTER OF AN APPLICATION BY THE LAW ASSOCIATION OF
TRINIDAD AND TOBAGO, IN THE DISCHARGE OF ITS PURPOSES
PRESCRIBED FOR BY S.5 OF THE LEGAL PROFESSION ACT CHAP 90:03**

BETWEEN

LAW ASSOCIATION OF TRINIDAD AND TOBAGO

CLAIMANT

AND

KENNETH MUNROE-BROWN

DEFENDANT

Before the Honourable Mr. Justice G. Smith

Appearances:

Ms. Lucky Samaroo for The Law Association

Mr. Wilson and the Defendant in person

REASONS

1. The Law Association of Trinidad and Tobago brought a claim for a declaration that the Defendant was suspended from practicing law. The Law Association also sought consequential orders for (i) the Registrar of the Supreme Court to make the appropriate entry in the roll of attorneys-at-law (ii) the publication of a notice of the Defendant's suspension in the Gazette and (iii) the costs of the application.

The claim was by way of Fixed Date Claim Form filed on the 16th September 2008.

2. The Defendant filed an application in this action on the 21st November 2008. The main thrust of the Defendant's application was to strike out, dismiss or stay the claim of the Law Association.

3. The action came on for hearing on the 16th January 2009. The Defendant proceeded with his application to strike out the Law Association's claim as a preliminary objection. After about two hours of argument the Defendant and his attorney-at-law conceded on this application. They indicated that they were willing to abide by the orders that the Law Association sought and requested time for the Defendant to pay off the fines, compensation, reimbursements and costs as ordered by the Disciplinary Committee of the Law Association. At that stage Counsel for the Law Association referred to the provision of section 31 of the Legal Profession Act Ch. 90:03. These provisions allowed an Attorney-at-Law who had been suspended to apply to the High Court to be restored to practice. The effect of this was to allow the Defendant time to pay

off his “dues” and then reapply to lift the suspension. The Defendant himself agreed to follow this procedure.

4. Upon the Defendant’s concession of his application and his agreement to abide by the Law Association’s claim, I made the following orders:

- (i) A declaration that the Defendant was suspended from practice
- (ii) An order for the Registrar of the Supreme Court is to make the appropriate entry in the Roll and to publish the appropriate notice of suspension in the Gazette
- (iii) An order for the Defendant to pay the Claimant’s prescribed costs in the sum of \$14,000.00 (based upon a claim which is not for a monetary sum).

5. The Defendant has now appealed my orders in spite of his concession and agreement to be bound by them. Before I give reasons for my decision, I need to state that the Law Association were not called upon to argue the merits of their case; nor were they able to put forward arguments in opposition to the Defendant’s application. The Defendant’s concession on his application and his agreement to abide by the Law Association’s claim averted the need for them to put forward any arguments.

Further, since there was no opposition to the Law Association’s claims there was no reason why I should not grant the reliefs sought by the Law Association. These reliefs are mentioned at paragraph 4 above. Nevertheless, I will state my reasons for granting these reliefs later in this judgment.

Before doing this I will deal with two preliminary issues raised at the hearing.

Preliminary Issues

6. The Defendant argued firstly, that I should recuse myself from the matter; secondly that the matter should be adjourned. Both applications lacked merit.

No valid reason to recuse

7. The Defendant failed to advance a valid reason why I should recuse myself.

The Defendant submitted that I had previously dealt with three other matters where the Law Association had made applications to declare three attorneys as being suspended from practice. The Defendant argued that I would be affected by these earlier cases and it would be difficult to convince me to rule in his favour.

This submission was misconceived for the following four reasons.

Firstly, about one month earlier, I had dealt with four other applications where the Law Association sought to declare that other attorneys at law were suspended from practice. At these hearings two of the attorneys compromised the actions and the other two did not oppose them. There were no arguments to consider and rule upon. These matters had no influence on the “new” arguments to be advanced.

Secondly, the Defendant was at pains to indicate that he did not allege that there was any actual or apparent bias in having me hear his case. He agreed that he would get a fair hearing. There was no reason for me to recuse myself.

Thirdly, I did not consolidate the other four cases. I dealt with each one individually. I was going to give his case individual attention. There was no reason to suppose that any one decision would bind or affect another case.

Fourthly, the legal system would not be able to operate in a small society as ours if every judge recused himself from hearing a case that was similar to one he had heard before.

The submission for me to recuse was unsound.

No reason for an adjournment

8. The Defendant failed to advance a plausible reason for an adjournment.

This Fixed Date Claim was filed by the Law Association on the 18th September 2008. On the 21st November, 2008 the Defendant filed his application to dismiss, strike out or stay the Law Association's claim. The matter first came on for hearing on the 11th December 2008. At that hearing the parties indicated that they wanted to make an application for budgeted costs. I therefore granted them leave to make the application for budgeted costs on or before 5th January 2009. I then adjourned the matter to the 16th January 2009 to proceed.

On the 16th January 2009 the Defendant appeared with Counsel. Counsel indicated that he did not have his reading glasses with him and would have a difficulty to proceed. I did not accept this as a plausible reason for an adjournment for the following four reasons.

Firstly, given the history of the proceedings as stated above, the Defendant and his counsel had ample opportunity to prepare for the hearing. They filed no written submission; they were therefore going to present oral submissions, for which reading glasses were not absolutely essential.

Secondly, I offered Counsel a short adjournment to go get his reading glasses. He did not wish to avail himself of this opportunity. In any event, the matter did not start till about half of an hour after it was first called as I had other matters to deal with. I am not aware if Counsel took advantage of this delay to get his reading glasses.

Thirdly, the Defendant himself was instructing his Counsel and could make up for any “deficiency” experienced by Counsel’s lack of reading glasses.

Fourthly, given the current pressures of litigation and heavy case schedules, the request was unreasonable. An adjournment of the hearing would have caused a lengthy delay, and this is simply because of Counsel’s forgetfulness.

Reasons For Granting Relief

The Basic Facts

9. The Disciplinary Committee of the Law Association heard two complaints against the Defendant. After hearing each complaint the Committee was satisfied that the Defendant had committed acts of professional misconduct and made orders against him. In the first complaint, the Defendant was ordered to refund fees paid to him, to pay a fine and to pay the costs of the complainant. This order was made on the 2nd February 2004. In the second complaint the Defendant was ordered to pay a fine and compensation. This order was made on the 5th March 2007. The Defendant appealed the first order of the Disciplinary Committee. This appeal was dismissed by the Court of Appeal on the 24th January 2006. The Defendant never appealed the second order of the Disciplinary Committee. The Defendant has failed to comply with either of the two orders of the Disciplinary Committee to date.

The Law and the Orders:

10. Section 23 of the Legal Profession Act Ch 90:03 (The LPA) provides for Attorneys-at-Law to have a practicing certificate. This practicing certificate must be renewed annually (see sections 23, (2)-(5) of the LPA).

Section 24 of the LPA provides for the High Court to issue or refuse a practicing certificate or to issue a practicing certificate on conditions. The various subsections of section 24 provide for different situations where the Court could refuse to issue a practicing certificate or to issue a certificate on conditions. The relevant one to this action is section 24 (2) (f) namely, the failure to pay any penalty, compensation, reimbursement or costs ordered by the Disciplinary Committee against an Attorney-at-Law.

Section 25 of the LPA provides to the effect that so long as an Attorney-at-law fails to comply with section 24(2) (f) (inter alia) he shall be suspended from practicing law.

Since the Defendant had failed to pay the fines, compensation, reimbursements and costs ordered by the Disciplinary Committee of the Law Association (see paragraph 6 above), the provisions of section 25 of the LPA apply to him. He is suspended from practicing Law. The Law association has brought this claim for a declaration to that effect (see generally the 1997 White Book at 15/16 et seq re the power of the court to grant declaratory relief). Since the Defendant is in breach of section 24(2) (f) of the LPA, I grant the declaration that he is suspended from practicing law.

11. Further, section 29(1)(b) of the LPA allows the Registrar of the Supreme Court to make an appropriate entry in the Roll and to publish notice of the suspension of an Attorney-at-law in the Gazette.

Consequent upon the declaration of suspension of the Defendant I make the orders for the Registrar to make the appropriate entry in the Roll and to publish notice of the Defendant's suspension in the Gazette.

12. This being an application for no monetary sum, I treat it as a claim for \$50,000.00. I award the Law Association prescribed costs on a claim for \$50,000.00, namely \$14,000.00.

Dated this 9th day of April 2009

Justice G. Smith
JUDGE