Hilary Term
[2019] UKPC 11
Privy Council Appeal No 2017 of 0017

JUDGMENT

Layne (Appellant) *v* Attorney General of Grenada (Respondent) (Grenada)

From the Court of Appeal of the Eastern Caribbean Supreme Court (Grenada)

before

Lord Kerr
Lord Wilson
Lord Sumption
Lady Black
Lady Arden

JUDGMENT GIVEN ON

18 March 2019

Heard on 24 October 2018

Appellant	*Respondent (not participating)*
Edward Fitzgerald QC Tim Nesbitt QC Amanda Clift-Matthews Ruggles Ferguson Cajeton Hood (Instructed by Simons Muirhead & Burton LLP)	

LADY ARDEN: (with whom Lord Wilson agrees)

Background

1. The appellant, Mr Joseph Ewart Layne, appeals from the refusal of the Supreme Court of Grenada and the West Indies Associated States High Court of Justice, upheld by the Court of Appeal of the Eastern Caribbean Supreme Court, to admit him to the Bar of Grenada under section 17(1)(a) of the Legal Profession Act 2011 ("the 2011 Act"). The respondent is the Attorney General of Grenada, who appeared below, but he has informed the Board that he does not intend to defend the matter before the Board. The Board is grateful for his courtesy. At the hearing of this appeal, Mr Layne was represented by Mr Edward Fitzgerald QC, together with Mr Tim Nesbitt QC, Ms Amanda Clift-Matthews, Mr Ruggles Ferguson and Mr Cajeton Hood. Mr Layne's representatives appeared pro bono, and the Board expresses its appreciation to them for their valuable submissions.

2. Section 17(1) of the 2011 Act provides that any person who wishes to practise at the Bar of Grenada may apply to the Supreme Court for admission. Section 17(1) provides:

> "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-
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> (a) is of good character; and either
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> (i) holds the qualifications prescribed by law; or
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> (ii) is a person in respect of [whom] an Order has been made under section 18;
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> (b) has paid the prescribed fees under the provisions of the Stamp Act in respect of such admission;
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> (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;
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> shall be eligible to be admitted by the Court to practise as an attorney-at-law in Grenada."

3. The principal ground for the orders below was that Mr Layne was not eligible for admission as an attorney-at-law because of his convictions for murder many years earlier.

Factual background

4. Since he had fulfilled the educational requirements for call to the Bar, Mr Layne, on 7 October 2013, applied to the Supreme Court for admission to practise as an attorney-at-law.

5. Mr Layne has serious previous convictions. The offences on which his convictions are based occurred nearly 40 years ago in the following circumstances. Mr Layne was one of several persons, sometimes collectively called the Grenada 17. In 1979 there was a coup in Grenada, in which the Grenada 17 were involved. Subsequently, there was a falling out of two factions. Mr Layne was the deputy defence minister and also the operational commander of the People's Revolutionary Army ("PRA"). Matters ended in violence on 19 October 1983. During the violence, ten persons, including the Prime Minister, Maurice Bishop, and other members of his cabinet were summarily executed by the PRA. Mr Layne, with 12 other persons, was convicted in 1986 of their murders. He was sentenced to death, but his sentence was declared unconstitutional. He was resentenced by Belle J, who, having considered the evidence, sentenced him to 40 years' imprisonment.

6. It has been said, not just by Mr Layne but also by independent observers, that there were serious irregularities in his original trial. Mr Layne realistically accepts that he cannot complain of those matters in these proceedings in the light of the order of Belle J. Counsel have not troubled the Board with any submissions on that aspect of the matter.

7. Mr Layne served 26 years of his sentence before he was released in 2009. While in prison, he obtained an LLB (Honours) and LLM from London University, and a Bachelor of Science degree in Applied Accounting from Oxford Brookes University in the UK with first class honours. On 6 September 2013, Mr Layne was awarded the Legal Education Certificate of Merit from the Hugh Wooding Law School. While he

was in prison, he used his leadership skills in organising sport and literacy events for prisoners, and on his release, he continued to do good works within the community.

Decisions of the Supreme Court and the Court of Appeal

8. Mr Layne's application for admission as an attorney came before Price Findlay J. There was no issue as to Mr Layne's educational qualifications. There was no opposition to the application by the Attorney General of Grenada or the Bar Association of Grenada. The argument focused on "good character" for the purposes of section 17(1) of the 2011 Act.

9. The judge set out the following definition of good character:

> "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." (para 12)

10. The judge recognised that "ultimately lawyers are the guardians of our fundamental freedoms" (para 14). Advocates had to "command the personal confidence of not only lay and professional clients but other members of the Bar and of judges" (per Benjamin J, *In re the Admission of Edward Petersen Alleyne* (1997) ECSCR 340) (para 16).

11. The judge made it clear that there was no rule automatically barring someone who had been convicted of an offence from practising the law. However, in the assessment of the judge, an applicant with the background of the appellant had to "make an extraordinary showing of rehabilitation and present good moral character" (para 17). There was no question of punishing the appellant. The test was whether there was "a potential risk to the public, or, more importantly, whether there will be damage to the reputation of the profession" (para 18). The court was "concerned with the maintenance of public confidence in the members of the profession" (para 19).

12. Mr John Carrington QC made submissions to the judge as *amicus curiae.* She set out a lengthy passage from his submissions in which he analysed the meaning of good character. He submitted that "good character" had both a subjective and an objective element. The former covered the applicant's honesty, past convictions and so on. The latter covered reputation and public confidence in the profession if the applicant was admitted to practise. Mr Carrington submitted that:

> "The fortunes of an applicant must always give way to the need to maintain the collective reputation of the profession."

13. The judge held that, while rehabilitation was important, it may not be possible to make a "show of rehabilitation in the face of past serious misconduct" (para 27). The judge had regard to Mr Layne's youth at the time of the murders (he was only 25 years of age) but held that his leadership responsibilities demonstrated his maturity at that age (para 30). The crimes were particularly serious as he was one of those who (while away from the scene) was found to have given the orders to "liquidate" the Prime Minster and others. The judge referred to *In re Wright* 102 Wash 2d 855, 690 P 2d 1134 (1984), where the Supreme Court of Washington declined to admit a person convicted of second degree murder to the Bar some 30 years previously, despite his successful efforts at rehabilitation. The judge cited other US cases going the other way, for example, *In the matter of James Joseph Hamm* 123 P 3rd 652, 655 (Ariz 2005). She cited the dictum of Simons, Acting Chief Judge of the Court of Appeals of New York, in *In re Rowe* 640 NE 2d 728 and 730 that:

> "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."

14. The judge commended Mr Layne for his academic achievements and rehabilitation since the commission of his offences (para 26).

15. The judge's application of the law to the facts was set out in the final nine paragraphs of her judgment:

> "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.
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> 40. The public must have confidence in the Bar, as admitting an applicant to practice sends the message that the applicant is worthy of public trust.

41. ‘Lawyers play a critical role in sustaining the rule of law and thus it is necessary that the legal professions maintain its unique ability to do so by earning the respect and confidence of society.’ In re Rowe 80 NY 2d 30, 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.’ Bingham MR *Bolton v Law Society*.

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.”

16. Mr Layne appealed to the Court of Appeal principally on the grounds that the judge had erred in the exercise of her discretion. He submitted that “good character” meant present good character (“the present good character issue”), and that he had demonstrated that requirement. The Attorney General, Solicitor General and the Grenada Bar Association were all represented before the Court of Appeal and made submissions.

17. The Court of Appeal (Blenman, Michel and Webster JJA) held that there was overwhelming evidence of rehabilitation and that the appellant was effectively reformed. However, applying the principle that an appellate court should be reluctant to interfere with the judge’s exercise of discretion, the Court of Appeal limited its review to the question whether the exercise by the judge of her discretion was

susceptible to review in an appellate court. The Court of Appeal concluded that there was no basis on which it could properly set aside the judge's exercise of discretion in this case, and dismissed the appeal.

18. In her judgment, Blenman JA, with whom Michel and Webster JJA agreed, was highly critical of a judgment of the High Court of Justice in England and Wales. In *Selwyn Strachan v The Law Society* [2014] EWHC 1181 (Admin), another member of the Grenada 17, convicted in the same trial as Mr Layne, had sought admission to the training course for the Bar of England and Wales. The judge, Charles J, held that it was clear from the evidence that the convictions of the Grenada 17 might be unsound or unsafe. He cited factors such as irregularities relating to the convictions which Amnesty International reported had occurred.

19. The Board takes the view that its judicial duty is to proceed on the basis of the convictions unless and until they are set aside, and that it should do so despite criticisms made by a respected independent organisation such as Amnesty International. Moreover, in the present case, that course in its view is particularly clear because of the order made by Belle J (*R v Bernard* ECSCJ no 250 of 2007, unreported). The contrary approach of Charles J must accordingly be treated as turning on the special facts of that case. The appellant did not propose to practise in England and Wales, and Charles J made it clear that, if he did apply to be admitted as an attorney-at-law in Grenada, that would be a matter for the courts of Grenada to decide.

Appellant's submissions

20. The principal ground of appeal is the present good character issue, and the Board considers that most of the grounds of appeal can best be dealt with as part of that ground, leaving the subsidiary submissions to be summarised separately.

(A) The present good character issue

(i) Good character following rehabilitation is sufficient

21. Mr Fitzgerald recognises that the leading authority in English law is the judgment of Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512. Sir Thomas Bingham emphasised the strong public interest in maintaining confidence in the integrity of the legal profession.

22. Mr Fitzgerald submits that the "objective/subjective" test accepted by the judge was not of assistance. The distinction between the public interest considerations as an

objective test of good character, and the factors affecting the individual as a subjective test, may have originated in the judgment of the Board given by Lord Steyn in *Patel v General Medical Council* (Privy Council, [2003] UKPC 16), but both parts of the test would require an objective approach.

23. Mr Fitzgerald accepts that good character entails a high test and that there is a need to maintain the high reputation of the Bar. But he contends that those considerations fall within the concept of good character so that once good character is shown, the public interest must logically be satisfied.

24. Moreover, on Mr Fitzgerald's submission, good character must be determined as at the date of the hearing so that it is good character following rehabilitation that matters and the court must therefore find that the requirement for good character is satisfied if an applicant with a criminal record can show that he has put the past behind him and become reformed.

25. Accordingly, the issue is quite simply whether the court can say the applicant has shown that he is so rehabilitated that he can now be said to be of good character. Once that point is reached, it is no longer open to reject his application on the grounds of risk of damage to public confidence.

26. Mr Fitzgerald submits that this is the approach in the case law in several states of the United States of America. The Board has already referred to several of the cases which he cited in its summary of the judge's judgment. They show that, once good moral character is established, readmission or admission to the Bar has been permitted. In the case of *Hamm*, the Supreme Court of Arizona had in effect held that the greater the crime the more difficult it is to show good moral character. In that case, the applicant had failed to show he was rehabilitated.

27. Mr Fitzgerald points out that in some cases the offence of the applicant for admission has been categorised as political, and that there are cases where the courts have been prepared to conclude that the crime did not in all the circumstances reflect adversely on the applicant's good character so as to prevent admission to the legal profession. In those cases the application succeeded: see, for example, two decisions from South Africa: *Ex p Krause* 1905 TS & CS 221 (where the applicant, already an advocate of the Cape Bar and applying for admission to the Johannesburg Bar, had been a Boer commando during the South African War who had been taken prisoner and written letters attempting to incite the murder of an anti-Boer protagonist, for which offence he was convicted at the Old Bailey and disbarred by the Middle Temple in London, but it has been said, subsequently to the case, pardoned by King Edward VII), and *Ex p Moseneke* 1979 4 SA 884 (T) (prior conviction for sabotage in South Africa when the applicant was a young boy did not prevent admission as an attorney in

Pretoria). Mr Fitzgerald provided the Board with *Reformation from criminal to lawyer: is such redemption possible?* M Slabbert and DJ Boome, PELJ 2014 (17)4, where a number of other cases are analysed.

28. As to authorities in England and Wales, Mr Fitzgerald pointed to the following passage in the judgment of Charles J in *Strachan v Law Society* in which Charles J in turn cited, as an example of "the flexibility needed to ensure that a fair process is applied", a passage from an earlier judgment of Sir John Donaldson MR, approving the admission of a person to practise as a solicitor even though he had been convicted of murder:

> "34. However, counsel for the appellant drew my attention to an incidental reference in a judgment of Lord Donaldson of Lymington MR in an appeal concerned with the restoration to the roll of a struck off solicitor: *In re a Solicitor No 11 of 1990* (unreported) at 9C that:
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> > 'There was some publicity given to a case which did not come to me but was decided by the Law Society, in which a gentleman applied to become a solicitor - not a striking off case - in which he had been found guilty of murder. That was a difficult decision. I happen to agree with the Law Society's decision to admit him, but that is the sort of thing which the profession has to agonise over. There was absolutely no doubt that on his own merits he was entitled to become a solicitor, but it was a question of the reputation of the profession that caused the Law Society such anguish.'"

29. Charles J noted that the full facts of the case mentioned by Lord Donaldson were not known. Mr Fitzgerald helpfully obtained a full copy of the judgment in *In re a Solicitor No 11 of 1990*, but it contains no further details of this case.

(ii) Court of Appeal erred in refusing to admit fresh evidence of present character

30. The appellant challenges the refusal by the Court of Appeal to admit fresh evidence under *Ladd v Marshall* [1954] 1 WLR 1489 about the high esteem in which the appellant is held by distinguished members of the Grenadian community. These include a former Deputy Commissioner of Police.

31. Mr Fitzgerald also relies on the fact that there was no opposition to his application for admission from the Grenadian Bar. He submits that there is therefore no risk to the public in terms of damage to the reputation to the profession. He urges the Board to adopt the formulation of the test as set out by Mitting J in *Shuttari v Law Society* [2007] EWHC 1484, para 18 as being whether failure to strike off the name of the solicitor would damage the reputation of the profession.

(B) Other criticisms of the decisions of the Supreme Court and Court of Appeal

32. Mr Layne makes a number of criticisms of the decisions of the Courts of Grenada. In particular he submits that matters became confused before the Court of Appeal.

(i) Disbarring is different from refusal to admit

33. The judge drew an analogy between a situation where a person commits an offence while a member of the Bar and is disbarred, and the situation where he is denied entry to the profession on the basis of a conviction (see para 43 of her judgment, set out at para 15 above). Mr Layne submits that the most reasonable interpretation is that, if someone would be disbarred, he should be refused admission. The analogy was inapt because the offences were committed at a time when Mr Layne was not subject to the professional duties of an attorney-at-law.

(ii) Judge wrong in law not to make finding as to good character

34. As the appellant points out, the judge did not make any finding that he was not of good character. On the appellant's case, the judge should have made a clear finding on this, especially if the finding was that he was not of good character.

(iii) Judge wrongly thought that there were some offences for which rehabilitation was not possible

35. Mr Fitzgerald submits that the judge's view underlying large parts of her judgment was that there were offences for which rehabilitation was not possible. This approach was inconsistent with the authorities.

Discussion

Entry conditions about good character in general and for the Grenadian Bar

36. For understandable reasons, a wide range of professions, and not just the legal profession, have good character and competence conditions for entry into the profession. Those professions include those in which members of the public may place great trust, such as the medical and legal professions. Members of these professions, once admitted, have to observe high standards of behaviour in both their private and professional lives. They may face disciplinary charges if they fail to do so.

37. The content of a good character condition may vary according to the profession. The person or body which has to be satisfied about conditions of entry may be given powers to investigate or obtain evidence. Or limits may be placed on the type of conduct to be examined and so on. In the context of admission to the Bar of Grenada, satisfaction of the entry conditions is a matter not for the Bar Council but for the Supreme Court. It is for the Supreme Court to determine the procedure. There are no limits placed on the way the Supreme Court fulfils its role and no specific powers are given to it for this purpose. By implication it is authorised to determine whether the entry conditions are met in accordance with its practice and the limits of the judicial function.

38. The good character condition must clearly refer to good character appropriate for being an attorney-at-law in Grenada. It must clearly be satisfied at the date of the Supreme Court's decision, rather than on a historical basis.

Discretion or evaluation?

39. In this case, some confusion may have crept into the judgments below as to whether the determination of good character involves judicial discretion or judicial evaluation. There is no provision in section 17(1) of the 2011 Act that a finding of eligibility for admission leads to a discretion as to admission. In those circumstances, the Board considers that, as regards good character, the function of the Supreme Court is limited to an assessment as to whether good character exists or not. In other words, the Supreme Court is not called upon to exercise any other power of choice once it has made that assessment.

Good character: two facets

40. The Board considers that the good character condition has two facets: the candidate's attributes and the risk of damage to public confidence in the profession.

(A) The candidate's attributes

41. The actions of the candidate at any stage in his career may be relevant to this facet of good character. Evidence as to convictions is necessarily relevant. In Mr Layne's case, the convictions and the circumstances of his offending were particularly serious. The Supreme Court went on, correctly in the Board's view, to consider evidence about his conduct following conviction. As the judge explained, that evidence is impressive.

(B) Risk of damage to public confidence in the profession

42. In the opinion of the Board, the Supreme Court is also required by the good character condition to consider the question whether the public can reasonably be expected to have confidence in the admission of the candidate ("the public confidence requirement"). This follows from the leading case of *Bolton v The Law Society*, which concerned an application for the readmission of a solicitor, Sir Thomas Bingham MR emphasised the need to maintain among members of the public "a well-founded confidence that [their] solicitor … [was] a person of unquestionable integrity, probity and trustworthiness" (p 519). In *Jideofo v Law Society* (No 06 of 2006, No 01 of 2007, No 11 of 2007), Sir Anthony Clarke MR applied the same principles to a case in which the appellant had applied to be admitted for the first time. The Inner House of the Court of Session (Lord Justice Clerk (Gill), Lord Maclean and Lord Caplan) has also recognised the importance of the public interest in this context, together in that case with the need to protect the public (*McMahon v Council of the Law Society of Scotland* (2002) SC 475, para 19). (Protection of the public is not a matter requiring consideration in this case).

43. Whether there is an appropriate level of public confidence is also a matter for the assessment of the Supreme Court. As Sir Thomas Bingham said (see para 42 above), confidence must be well-founded. Thus, any lack of confidence by the public must be justifiable on an objective basis. It is not enough that the public would misguidedly not have confidence in a particular candidate. It is not part of its function to assuage public opinion. So, the public confidence requirement is not inevitably satisfied by adducing evidence of the opinion of witnesses, even witnesses having the highest standing in the community. Therefore, the Board does not accept that the Court of Appeal was bound to admit further evidence on appeal from distinguished witnesses attesting to their high regard for Mr Layne. This was not determinative of whether the public confidence requirement was met.

44. The existence and scope of the public confidence requirement may vary according to the profession under consideration. In the case of admission to the Bar, it is relevant because, as the judge put it, attorneys are the guardians of fundamental

freedoms. Attorneys play an important role in the modern democratic state in upholding the rule of law. All persons are equal under the law, and, so long as the rule of law is observed, every person will have his rights protected by the law, including his important rights to security of the person, and the established order cannot be overthrown by force. The rule of law and the constitution are mutually reinforcing. In any society, the rule of law represents a fundamental value. And there must be no gap between the theory and the reality of the rule of law. This is achieved in no small part by the work of an independent Bar, who will fight fearlessly before the courts for the rights of even the most unpopular persons.

45. It follows that the work of an attorney is not a purely private matter between him and his client, because an attorney must help maintain the law and owes duties to the court before which he may following admission appear. Nor is the attorney's admission to the Bar a purely domestic matter between the responsible Bar Association and the applicant.

Effect of Mr Layne's convictions

46. As the judge held at para 13 of her judgment, there is a high hurdle to be met where a person has convictions such as those of Mr Layne. In the case of convictions for offences as serious as murder, it must be rare for the good character condition to be met even where there is evidence of exemplary conduct since the offences occurred. This is because of the risk of damage to the profession generally, which may be the consequence of lack of public confidence.

47. The Board considers on the basis of this holding that the judge did not treat Mr Layne's convictions as a complete bar. Later in her judgment, the judge observed that it may be impossible to show rehabilitation in the face of serious misconduct (judgment, para 27). Mr Layne relies on this passage to say that the judge did not have regard to the evidence about rehabilitation. The Board disagrees. Paragraph 27 has to be read in context. The judge expressly held that the activities of the appellant did him great credit and had "outsoared" his wrongdoing.

Terminology

48. These two facets - Mr Layne's attributes and the risk of damage to the public confidence in Bar - largely mirror the "subjective" and "objective" elements identified by Mr John Carrington QC in his submissions. But the Board does not consider that Mr Carrington's terminology is helpful. Both facets necessitate an objective approach by the Supreme Court. Lord Steyn in *Patel* drew a distinction between subjective and objective factors but he did not suggest that they should be considered on any other

basis. In the circumstances, the Board considers that that Mr Carrington's terminology is best avoided.

Did the judge make any material error?

49. In the present case, the judge directed herself that the question she had to decide was whether the good character condition was met. Mr Fitzgerald relies on the fact that she referred to discretion at paras 7 and 20 (first indent) of her judgment, but this was either metonymy for evaluation or confusion about whether there was a discretion under section 17(1)(a) of the 2011 Act. The Board does not need to decide which because it is clear from paras 38 to 46 of her judgment, set out in para 15 above, that the judge did not go beyond the two facets of good character identified by the Board. Any error was thus immaterial.

50. In one of those paragraphs (para 43), the judge sought to treat disbarment and denial of entry into the profession as similar. The purport of her point is not clear, and, in any event, the two situations are materially different: in the case of disbarment the action will generally have occurred when the attorney was already subject to professional conduct rules and at a point in time which was more recent than in this case. However, the judge's error does not undermine her decision. This analogy was not a necessary part of her reasoning.

51. As to the applicant's contention that the absence of any express finding by the judge on good character also constitutes reviewable error, the Board considers that, on its approach to "good character," she must by implication have found that the good character condition was not established.

52. The Board is grateful to counsel for their industry. This provided the Board to have a very rich selection of examples of how courts in different jurisdictions have approached good character in different situations.

Conclusion

53. For the reasons given above, the Board humbly advises Her Majesty that this appeal should be dismissed. The fact that Mr Layne is now a man of good standing in the community is certainly a necessary requirement for the good character condition for admission to the Bar of Grenada to be satisfied, but it is not in itself enough. Public confidence in the profession had also to be considered. The judge's assessment was that there was sufficient risk that it would be damaged by acceding to Mr Layne's application and so that facet of the good character condition was not met. The Board concludes that there was no reviewable error in her decision on this matter.

LORD SUMPTION:

54. I agree with the advice that the Board proposes to tender to Her Majesty.

55. The common law has a number of expressions which are used as if they were terms of art, but which have never been clearly defined. One of them is "of good character". This protean phrase has been employed in two particular contexts. One is the admissibility of evidence of the "good character" of a party or witness in civil and criminal litigation. The other is the condition of "good character" required by statute of those aspiring to some office or occupation calling for high levels of public trust or integrity.

56. In the former context, the usage is very ancient. Its history is traced in *J.H. Langbein, The Origins of the Adversary Criminal Trial* (2003), 191-196, and Jill Hunter, "Character evidence in the criminal trial", [2016] *International Journal of Evidence and Proof*, 162, 163-165. At common law, the general rule was that evidence of the defendant's bad character was inadmissible, but he was entitled to call evidence of his good character. By the end of the 17th century it had become normal for defendants to call witnesses to speak of their good character. So much so, that judges sometimes commented adversely on their failure to do so. If, however, such evidence was called, it was open to the prosecution to rebut it by calling evidence of the defendant's bad character. Where evidence of character was admissible, it could not include specific allegations but was limited to evidence of the defendant's general reputation as tending to show that he had a disposition to commit offences of the kind charged or was unlikely to have done so, as the case might be: *R v Rowton* (1865) 10 Cox CC 25. The generality of this test made it practically impossible to arrive at a comprehensive definition of "good character". However, although good character was certainly not limited to the mere absence of criminal convictions, it was always clear that a serious criminal conviction was generally conclusive of bad character. Thus the Previous Conviction Act 1836, which marked the first intervention of statute in this area, provided that in those cases where (exceptionally) a defendant was competent to give evidence in his own defence, if he gave evidence of his good character the prosecutor might rebut it by calling evidence of any previous conviction for felony. This provision was substantially re-enacted in section 1(3)(ii) of the Criminal Evidence Act 1898. Today, the common law in England has been largely displaced by detailed statutory regulation, notably in the Criminal Justice Act 2003.

57. In England, the practice of imposing a condition of "good character" on aspirants to certain occupations appears to begin in the 1830s, with statutes introducing such a condition for constables, holders of licensed premises and licensed cab-drivers. Today, there is a very large number of statutes imposing a condition of good character on eligibility for a wide variety of public appointments and regulated occupations. These include not only ministers of justice (judges, solicitors and barristers), but medical

practitioners, opticians, dentists, chiropractors, social workers, foster parents, childminders and others. There is very little authority on the use of the concept of good character in cases like these. But I agree with the observation of Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512, 518 that the fundamental purpose of excluding those with criminal convictions from the solicitors' roll is to

> "maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission."

It can normally be presumed that the same purpose underlies the exclusion of those with criminal convictions from other occupations in which there is a public interest in maintaining confidence in the integrity of its practitioners. It can certainly be presumed in the case of aspiring barristers. The exclusion is not punitive. Nor is it designed to simply prevent the admission of persons with a propensity to offend again or who for some other reason are likely to act in a manner inconsistent with the standards of their chosen profession. It is directed to the maintenance of the collective public reputation of practitioners in the relevant field. Prima facie, conviction of a criminal offence is not consistent with good character. It is a finding that a person has fallen below the standards of integrity which society requires of its members, and is therefore unlikely to be consistent with an occupation calling for a special degree of integrity. The same will be true of some other examples of discreditable conduct which have not given rise to a criminal conviction, but it is unnecessary to say more about that in the present case.

58. I say that a criminal conviction is "prima facie" inconsistent with good character, because there are two potential limitations on that principle. One is that the question posed by section 17(1)(a) of the Grenada Legal Profession Act 2011 is whether the applicant is of good character at the time when the decision is made whether or not to admit him. This will usually be true of conditions of eligibility for public appointments or professional occupations. The other is that the conviction must be for an offence which is relevant to the occupation in question, in this case practice at the bar. In the context of the admissibility of evidence of past convictions, it has been held in England that such convictions may be consistent with present good character if they are "old, minor and have no relevance to the charge": *R v Hunter (Nigel)* [2015] 1 WLR 5367, para 79. I would reduce this to a single requirement of relevance, the age or minor character of a conviction being merely particular reasons, in addition to the nature of the offence, why a conviction may be irrelevant to the particular occupation involved. This is not a consideration peculiar to the law of criminal evidence. An implicit requirement of objective relevance is inherent in any statutory test where the context permits it.

59. Murder is among the most serious offences in the criminal calendar. The elements of the offence presuppose the absence of any of the mitigating factors which might have justified a conviction for manslaughter. Some lesser offences may become less relevant with the lapse of time, especially if they were committed at a time when the offender was young and immature. But without ruling out the possibility of an exceptional case justifying a different outcome, I find it difficult to imagine that a criminal conviction for murder could ever be consistent with the status of a barrister.

LADY BLACK:

60. I too agree that the Board should humbly advise Her Majesty that the appeal should be dismissed. As the ground has been thoroughly traversed in other judgments, with little, if any, dispute as to the principles, I will only set down the essence of my reasoning.

61. In my view, there is no element of discretion involved in the Supreme Court's consideration of an application under section 17(1) of the 2011 Act by a person who seeks admission to practise as an attorney-at-law. To my mind, taken in context, the reference in the section to someone being "eligible" to be admitted, if they satisfy the court as required, is not sufficient to import such a significant discretion. When considering whether the person has satisfied it that he is of good character, the court is therefore engaged in a process of evaluation. Its task is to ascertain the relevant facts and to decide whether, in the light of them, it is satisfied that, at the time when it determines the application, the person is of good character.

62. Each case must, in my view, be evaluated on its own individual facts. It will be relevant to consider not only evidence as to any criminal convictions that the applicant may have, but also evidence as to his other conduct up to the time at which the court's determination is made. The court is not looking for good character in the abstract, but for good character for the purposes of admission to practise as an attorney. This sort of good character is coloured by the need to "maintain the reputation of the solicitors' profession" and to "sustain public confidence in the integrity of the profession", see Sir Thomas Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512, 518. It is the judge's assessment of whether or not the applicant's character would undermine these objectives that is material to the determination of whether the applicant is of good character, not the actual opinion of members of the public about him.

63. Although Price Findlay J erroneously spoke in terms of discretion in her judgment, I do not consider that this fatally undermined her decision. She identified, at para 10 of her judgment, that the sole issue for the court was whether the applicant was of good character and, in my view, although she did not say in so many words that she was not satisfied that he was, that is what her determination in fact amounted to. In

arriving at her conclusion, she concentrated on the matters that were pertinent to a finding of good character, and did not introduce any considerations that would only have been material to an exercise of discretion. Furthermore, she did not assume that Mr Layne's convictions ruled him out automatically, but considered all the relevant facts, "balanc[ing] the previous misconduct as opposed to the evidence of rehabilitation", as she put it at para 24. Like others, I have paused to consider her reference in para 43 to what the position would have been had Mr Layne committed the acts whilst a practising attorney. That situation is not directly comparable to Mr Layne's actual situation, but I do not see the analogy as a necessary part of her reasoning and I do not think that her decision is invalidated by her reference to it. In my view, it is not necessary on account of that, or for any other reason, to remit the matter for a fresh hearing.

LORD KERR: (dissenting)

64. I regret that I cannot share the opinion of the majority of the Board as to the disposal of this appeal.

The proper approach to section 17(1)(a)

65. Section 17(1)(a) of the Legal Profession Act 2011 requires (insofar as is relevant to this appeal) that an applicant for admission to practice at the Bar of Grenada be of good character in order to be eligible. A decision as to whether someone is of good character partakes of factual inquiry and the application of judgment. It does not involve the exercise of discretion. If I am asked whether someone is of good character, I must examine what I know of the individual concerned and then decide whether, in my estimation, his character is good. That does not involve a consideration of various possible answers to the question and the selection of one of those possibilities, having weighed up the competing arguments in favour of or against each. Such consideration is of the essence when a discretion is being exercised. But it is not what requires to be undertaken here. In the mind of the decider, a person is of good character or he is not. That is a matter of judgment.

66. The second thing to be said about section 17(1)(a) is that it requires the judgment as to whether an applicant is of good character to be made at the time of the application for admission to the Bar. Of course, the behaviour of an applicant in the past may be relevant to the contemporaneous assessment but only insofar as it relates to his or her current standing. Reprehensible conduct in the past by a candidate for admission may provide an indicator as to her or his present character but it must not be allowed to operate as an automatic bar. In other words, simply because an individual has behaved badly in the past does not constitute an inevitable block on their admission to practice. Previous past conduct is material only to the extent that it bears on the evaluation of

character made at the time of consideration of the application. And, however bad or shameful the past behaviour, the decision-maker must not approach his or her assessment on the basis that its effect can never be outweighed by the subsequent redemptive conduct of the applicant. Egregious behaviour in the past may present an applicant with a formidable hurdle; it should never be regarded as an automatically insuperable one.

67. In this case, Price Findlay J, in para 27 of her judgment said, "While rehabilitation is important, a show of rehabilitation in the face of past serious misconduct may be impossible to make." It is not entirely clear what is meant by that statement, but, insofar as it was intended to convey that there were some cases where the offences were so grave that no measure of rehabilitation and reform could ever outweigh their effect, I would not agree with it.

68. The third and final observation to be made about section 17(1)(a) is that it is the Supreme Court which must make the judgment as to whether it is satisfied that the applicant is of good character. This is not a judgment that can be subordinated to notions of how admission to the Bar of a particular individual might be viewed by sections of society or even by the community at large. It is the court which is charged with the solemn duty of deciding whether the candidate is of good character. That task is personal to the court. A belief that the admission of an applicant might be regarded askance by others is irrelevant, unless it affects the court's own judgment as to whether the applicant is of good character.

69. I accept, of course, that what constitutes good character can vary according to the context in which the assessment is made. Someone aspiring to be a lawyer must be able to command the respect and confidence of the community which he or she serves. In other professions or occupations, this may not rank especially highly, particularly if the position applied for does not involve extensive contact with the public. But the judgment as to whether an individual has the capacity to inspire the confidence and respect which a lawyer must have, is one which the decision-maker (in this instance the Supreme Court) must make for itself. If the court decides that, in its estimation, the applicant is possessed of those qualities, it may not deem the applicant ineligible because it considers that members of the public *might* think otherwise.

70. This is particularly important because the court should be possessed of all the material relevant to, for instance, the applicant's rehabilitation, and the efforts which he has made to overcome and compensate for the circumstances in his past which have led to apprehension as to his moral competence and probity. The court should also have full access to pertinent information about the applicant's current standing. This material may not be available to members of the public; may not have been scrutinised with the critical eye with which the court examines it; and may not, in any event, be assessed with the cool, dispassionate authority that the court must bring to bear upon it.

71. While, therefore, the court must assess whether an applicant has the necessary qualities of uprightness, honesty, integrity and probity, it is *the court's own judgment* on these matters which counts, not some speculation as to how those qualities might be judged by others. It is important, therefore, that the court recognises (i) that this is a matter for its judgment, rather than the exercise of its discretion; and (ii) that the judgment should be made as an objective exercise, involving its own assessment of whether the qualities of moral character, integrity and probity are present, rather than speculating on how the public might approach the issue. The possible impact on the confidence and respect that the public would have for someone such as the appellant is relevant, but the court is required to make its own judgment as to what that should be, rather than engage in conjecture or assumption as to what it might be.

72. It seems to me that this approach is entirely in accord with what Sir Thomas Bingham MR said in *Bolton v Law Society* [1994] 1 WLR 512, 518G-H:

> "The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission."

As I read that extract, the Master of the Rolls clearly had in contemplation that the judgment as to what was required to maintain the reputation of the profession was to be made by the judge alone, drawing on what she or he considered was necessary to maintain the public's confidence, not basing that judgment on what the judge hazarded the public might think.

73. A similar approach was taken by Sir Anthony Clarke MR in *Jideofo v Law Society (No 6 of 2006; No 1 of 2007; No 11 of 2007)* where, in response to the question posed in the first para of his judgment, "what is the appropriate test for determining an individual's character and suitability for admission as a student member of the Law Society and then as a solicitor", the Master of the Rolls supplied the following answer at paras 14 and 16:

> "the question remains the same, namely whether the relevant evidence demonstrates that the person concerned is a fit person to be a solicitor … the character and suitability test is not concerned with 'punishment', 'reward' or 'redemption', but with whether there is a risk to the public or a risk that there may be damage to the reputation of the profession."

Again, it appears to me that the Master of the Rolls clearly had in mind that this was a test to be applied by the judge, drawing on his own resources and experience.

74. In summary, therefore, a judge confronted by an application under section 17 must decide whether, *at the time of making the application,* the applicant is of good character. That assessment must be made by the judge alone. He or she may take into account the impact which past misbehaviour or criminal conduct on the part of the applicant might have on the reputation of the legal profession, but this is a matter for the judgment of the judge, without speculation as to how members of the public might react to the applicant's admission. The judge must not approach the question on the basis that there are some species of past behaviour which are so egregious as to eliminate the possibility of the applicant ever establishing that he is of good character.

75. On this account, I cannot agree with the judge's view that the appellant's position can be compared to a practising lawyer convicted of similar crimes of which the appellant was found guilty. The suggestion that the judge must be satisfied that the public *would* as opposed to *should* have confidence in the candidate's suitability is misconceived. A lawyer in practice convicted of serious crime rightly forfeits the confidence of the public. But a man convicted of serious crime while young and who has demonstrated beyond peradventure his repentance and rehabilitation stands in an entirely different place.

76. The point that the test for the judge should be whether the public *should* (as opposed to *would*) have confidence in the candidate's suitability can be illustrated by a simple example. Suppose one of identical twins applies to be admitted to practice. There is a widespread belief among members of the public that he has been guilty of serious offences. In the course of the application process, it becomes unmistakably clear that it was his brother and not he who had committed the offences. It could surely not be suggested that the innocent twin be refused admission on account of the public's quite erroneous belief. Thus, the court must examine for itself, and on an objective basis, whether the applicant for admission is of good character. That examination should comprehend whether the candidate is possessed of the qualities necessary to command public respect but the decision on that question is one for the judge based on his or her assessment and not on any assumption as to what the public's reaction might be.

If an applicant shows that he is of good character, is there a residual discretion as to whether he should be admitted?

77. It was argued that, even if an applicant shows that he is of good character, there is a discretion exercisable by the court as to whether he should be admitted to practice - see paras 38-42 of the majority's opinion. I do not accept that.

78. Much of the argument rests on the significance placed on the statement in para 17(1) that a person who is of good character and has met the educational requirements and completed all the formal steps under section 17(1)(b) to (d) is "eligible" to be admitted by the court to the practice of law. It is suggested that, if it had been intended that a person who had fulfilled all the requirements of section 17(1) would be entitled to be admitted, it could have been simply stated that he shall be admitted, rather than that he was eligible to be admitted - para 39.

79. This appears to me to place unwarranted weight on the term "eligible". In its conventional connotation, it means fit or deserving to be chosen. It does *not* mean fit or deserving to be considered to be chosen. In any event, I think that the use of the term would be an unusual means of investing the court with an open-ended discretion to refuse admission to someone who had met all the stipulated statutory requirements. If it had been intended that the Supreme Court should have such a wide power, that would surely have been made explicitly clear.

80. The provision succeeding section 17(1) reinforces the view that it was not intended that the court should have an overarching and undefined power to exclude applicants who had satisfied all the statutory criteria. Section 17(2) provides:

> "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 practise 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, practising 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 practise 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 practise as an attorney-at-law in Grenada."

81. A person applying for admission under section 17(2) is required to fulfil the conditions in section 17(1) and to meet the other technical requirements of subsection (2). If he does so, however, he is *entitled* to be admitted to the practice of law in Grenada. It would be, to say the least, anomalous that an applicant for admission who

was not entitled to practise law outside Grenada was subject to a discretionary power of exclusion while one who had a qualification to practise law in a country having a system of laws analogous to Grenada was not. I consider, therefore, that provided an applicant satisfies the statutory requirements stipulated in section 17(1), he is entitled to be admitted to the practice of law in Grenada.

The judgment of the Supreme Court

82. At para 6 of her judgment, Price Findlay J held that section 17(1) "confers eligibility but not an entitlement to practice (*sic*) 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." For the reasons given at paras 77-81 above, I consider that this conclusion was wrong in law.

83. It is not clear from the judgment whether, in light of this conclusion, the judge considered that it was unnecessary for her to reach a view as to whether the appellant was of good character at the time that he made his application. It may be that she felt that, since she was bound to exercise her discretion against him, it was not required of her to make a finding as to whether he was of good character. In any event, she made no such finding. In my opinion, she should have done. Firstly, because she was wrong in law to consider that she had a discretion to refuse the appellant admission even where he satisfied all the requirements of section 17(1). Secondly, even if she had such a discretion, it was essential that the basis on which it was exercised should be made clear, so that the validity of its exercise could be examined.

84. The primary imperative in section 17(1) is for the Supreme Court to find whether an applicant has fulfilled the statutory requirements. The discretion, if it existed, would come into play only if those requirements were met. Even if one assumes that a general discretion to exclude exists, it is necessary to understand whether, and on what basis, resort has been had to it. The judge's judgment is opaque on this. This is all the more surprising because the judge says, at para 10, that the "sole issue" was whether the appellant was of good character.

85. The judge observed that, if the appellant had been a practising lawyer at the time of the commission of the offences, this would have led to his disbarment. I consider this to be, at most, of marginal relevance. The fact is that the appellant was not a practising lawyer. And it is on his current status that the question of his good character falls to be judged. Of course, if the appellant had been a practising lawyer at the time the offences were committed, by any reasonable standard, their commission would be judged to destroy the confidence and respect of the public in him, but it does not follow that the same reaction would now obtain, given that he has demonstrated, in the words of the Court of Appeal, evidence of rehabilitation which was "overwhelming" and that he has

"lived a reformed life for the past thirty years and excelled academically." A practising lawyer disbarred for criminal conduct is in obvious contrast with someone seeking admission to practice for the first time after years of rehabilitation and reform following historic convictions. A lawyer subject to disbarment as a result of recent criminal conduct is assessed on the basis of that recent conduct. That situation is self-evidently entirely different from someone who has committed offences while young and has led a blameless and wholly worthy life since, displaying conspicuous evidence of rehabilitation and reform. There is a danger that, in making the observation that if he had been a practising lawyer the appellant would have been disbarred, the judge has been led to make the very assumption which, for the reasons I have given, she had to eschew. That assumption is, that because the appellant would have been disbarred if he had committed these offences as a practising lawyer, he is, ipso facto, ineligible for admission to practice.

86. I consider, therefore, that the Supreme Court's judgment was wrong in at least two material respects. In the first place, it wrongly concluded that a general discretion was available to refuse the application of someone for admission to practice who had satisfied all the requirements of section 17(1). Secondly, it failed to make a finding as to whether the appellant was of good character. It is also probable that the court fell into error in considering that the appellant was in the same position and fell to be dealt with in the same way as an attorney disbarred for involvement in recent offences akin to those committed some thirty years previously. Finally, the court was wrong to suggest that some offences were so serious that there could never be any question of an applicant achieving the necessary level of rehabilitation and reform so as to overcome their effect. It is not clear, however, whether this was a factor which operated in the dismissal of the appellant's application.

The Court of Appeal's decision

87. At para 59 of its judgment, the Court of Appeal stated that although the appellant did not pose a risk to the public, "the judge was entitled to conclude that he had not demonstrated that he was of the required character to be admitted and that in any event to permit someone who had ten convictions of murder would have a negative impact on the reputation of the profession." This statement proceeds on the obvious premise that the judge had made a finding that the appellant had not demonstrated that he was of good character. For the reasons given earlier, this was, in my opinion, wrong. The judge had not made any such finding and the Court of Appeal's assumption that she had compounds the error.

88. The Court of Appeal also considered that its role was as a reviewer of the exercise of discretion by the judge. The precise terms of the discretion which the Court of Appeal considered was available to the judge were not elucidated in its judgment. In any event, for the reasons that I have already given, the task which the judge had to

perform was to apply her judgment to the various issues which arose, not to exercise a discretion. The Court of Appeal erred also on that account, in my opinion.

Disposal

89. I would have recommended that the appeal be allowed and that the matter be remitted to the Supreme Court of Grenada so that the appellant's application be determined according to what I consider to be the correct legal principles.