



Press Summary

9 February 2023

The Attorney General (Appellant) v The Jamaican Bar Association (Respondent) (Jamaica)

The General Legal Council (Appellant) v The Jamaican Bar Association (Respondent) (Jamaica)

[2023] UKPC 6

On appeal from The Court of Appeal of Jamaica

Justices: Lord Briggs, Lord Kitchin, Lord Hamblen, Lord Burrows, Lord Richards

Background to the Appeal

This appeal relates to whether Jamaica's anti-money laundering legislation, as it applies to lawyers (also known as attorneys), is compatible with the Constitution of Jamaica.

In 2013 Jamaica extended its anti-money laundering regime to include attorneys carrying out certain activities, such as purchasing and selling businesses or real estate or creating companies or trusts. This was in order to address national security concerns and comply with international standards in respect of the prevention of money laundering and terrorist financing.

The extended regime gave the General Legal Council, as the regulator of the legal profession in Jamaica, certain powers to monitor compliance by attorneys with the anti-money laundering regime. This included carrying out inspections, examining and copying documents, and potentially sharing information with the other authorities. It also extended to attorneys the requirement to disclose suspicious transactions to the Financial Investigations Division of the Ministry of Finance and Planning.

The Jamaican Bar Association, which represents attorneys, brought a challenge to the extended regime on the basis that it is unconstitutional on a number of grounds. This challenge was resisted by the Attorney General of Jamaica and the General Legal Council.

A three-judge panel of the Supreme Court of Judicature of Jamaica held that the relevant legislation was lawful and so dismissed the challenge. However, on appeal the Court of Appeal of Jamaica declared certain aspects of the regime invalid on the basis that they contravened the constitutional rights to privacy, liberty and freedom from search of property without demonstrable justification.

The Attorney General and the General Legal Council appealed to Judicial Committee of the Privy Council with the permission of the Court of Appeal.

Judgment

The Judicial Committee concludes that the regime does not contravene constitutional rights and so will humbly advise His Majesty that the appeal should be allowed and the decision of the Constitutional Court of Jamaica upholding the relevant legislation should be restored. Lord Briggs and Lord Hamblen jointly give the advice of the Board.

Reasons for the Judgment

Right to Privacy

The Board explains that the constitutional right to privacy includes two separate long-established rights relating to information passing between a person and their attorney. The first right is attorney-client confidentiality. This is an obligation on attorneys to keep confidential information received in the course of their retainer. The second right is “legal professional privilege”. This is a right to withhold from enforced disclosure information arising from the giving of legal advice or the conduct of litigation. As these rights are now protected by the Constitution of Jamaica they can only be interfered with if the interference is demonstrably justified in a free and democratic society [6]-[8].

(i) Attorney-Client Confidentiality

It was accepted by the parties and the courts below that the anti-money laundering regime involves some interference with attorney-client confidentiality. This is because both the inspection powers of the General Legal Council and the obligation to report suspicious transactions would be likely to involve some disclosure by attorneys of their clients’ confidential information [29]-[30].

However, the Board agrees with the Jamaican Supreme Court that the interference is demonstrably justified. There can be no doubt that combatting money laundering is of first importance to Jamaica [82]-[86]. The extension of the regime to attorneys is rationally connected to that objective and is not arbitrary [87]. The inclusion of criminal sanctions, as opposed to a purely regulatory approach, is within the range of options open to Parliament [92]. Interference with attorney-client confidentiality is much less serious than any infringement of legal professional privilege would be and is justified by the importance to Jamaican society of preventing money laundering [93]-[97].

(ii) Legal Professional Privilege

The Board considers that the General Legal Council’s powers of inspection do not interfere with legal professional privilege. The powers are only to be exercised for a regulatory purpose and expressly exclude information protected by legal professional privilege [35]-[36]. The risk of inadvertent disclosure of privileged material is safeguarded by attorneys

acting as gatekeepers for the preservation of their clients' privilege, as they would in civil litigation. Furthermore, if privileged documents are accidentally disclosed, the General Legal Council would be under an obligation to return those documents [37]-[41];[45]. Any dispute about whether particular material is privileged can be resolved by the courts, with the relevant client joined as a party if necessary.

The Board also considers that the requirement on attorneys to report suspicious transactions does not interfere with legal professional privilege. The legislation expressly provides that no reporting obligation arises in respect of information that comes to the attorney in circumstances that attract legal professional privilege. In addition, the prohibition against tipping-off does not apply to disclosure to or by an attorney for the purpose of obtaining or giving legal advice. There are therefore sufficient safeguards against mistaken disclosure as attorneys can seek advice from specialist attorneys if they are unsure whether to make a report [47];[54]-[56].

Right to Liberty

The Board considers that the regime does not infringe the constitutional right to liberty. Any interference with the right to liberty caused by punishment or threat of punishment of attorneys for failing to comply with the anti-money laundering regime would be demonstrably justifiable [58];[60];[64]-[65].

Protection from Search of Property

The Board considers that the regime does not infringe the constitutional right to protection from search of property. The power of the General Legal Council to conduct inspections does not confer a coercive power of search and seizure. In the absence of a warrant or court order the General Legal Council would need an attorney's consent to enter their office or take documents [70]-[74].

References in square brackets are to paragraphs in the judgment

NOTE:

This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: [http: www.jcpc.uk/decided-cases/index.html](http://www.jcpc.uk/decided-cases/index.html)