Hilary Term
[2026] UKPC 10
Privy Council Appeal No 0004 of 2025

JUDGMENT

Fay Chang Rhule (Appellant) *v* Angella Smith and another (Respondents)

From the Court of Appeal of Jamaica

before

Lord Sales
Lord Lloyd-Jones
Lord Briggs
Lord Hamblen
Lady Rose

JUDGMENT GIVEN ON
17 March 2025

Heard on 2 March 2026

Appellant
Caroline P Hay KC
Kimberley McDowell
Neco Pagon
(Instructed by HayMcDowell Attorneys-at-Law)

Respondent
M Georgia Gibson Henlin KC
Shanique Scott
Lemar Neale
(Instructed by NEA|LEX)

LORD BRIGGS:

1. This appeal from the Court of Appeal of Jamaica raises questions as to the professional obligations of an Attorney-at-Law practising in Jamaica when instructed in a conveyancing transaction by the donee of an apparently valid power of attorney. In bare outline, the question is whether the presence of factors about the circumstances known to the attorney which would put a reasonable attorney on suspicion of a risk that the power of attorney might be a forgery, being deployed as an instrument of fraud, ("red flags"), would expose the attorney to a finding of professional misconduct in disciplinary proceedings on the complaint of someone, other than the person instructing her, to whom she owed no duty of care, if the attorney continued with the transaction without first making reasonable enquiries sufficient to lay that suspicion to rest. Reversing the Disciplinary Committee the Court of Appeal answered that question in the affirmative. The appellant Fay Chang Rhule, who is the attorney against whom the disciplinary proceedings had been brought, contends that they were wrong to do so.

2. This question comes to the Board as a pure question of law, by permission of the Court of Appeal. The appellant would have wished to advance further grounds of appeal, in particular about the Court of Appeal's departure from conclusions about fact and evaluation by the Disciplinary Committee, but permission to do so was refused by the Court of Appeal and, on the appellant's further application, by a panel of the Board. The result is that the facts can be shortly stated.

3. The dispute arises in connection with the sale in 2011 of real property in Jamaica known as Lot 393, Orange Way, Linstead, St Catherine ("Lot 393"), which was then co-owned by Denton McKenzie and Angella Smith, who were or had formerly been husband and wife, and subject to a mortgage in favour of the Victoria Mutual Building Society. Ms Smith became the complainant in the later disciplinary proceedings, and is the first respondent to this appeal.

4. The appellant Ms Rhule was originally approached to act in the sale of Lot 393 by a realtor, but the transaction fell through because the buyer could not afford the purchase price, before the appellant embarked upon the conveyancing. Thereafter she was re-instructed by a Ms Alexander, on the basis that she (Ms Alexander) was authorised to conduct the sale by Mr McKenzie, from whom she produced a power of attorney in her favour dated 6 March 2011 ("the March PoA").

5. Title checks carried out thereafter by the appellant revealed to her for the first time that Ms Smith was a co-owner of Lot 393 with Mr McKenzie. On asking Ms Alexander about the whereabouts of Ms Smith she was told that she was incarcerated in Canada. This was not in fact true. Ms Smith was not and never has been in prison in Canada or elsewhere. She asked for evidence that Ms Alexander was authorised to sell Lot 393 on

Ms Smith's behalf and Ms Alexander produced a second power of attorney apparently signed by Ms Smith and dated 21 November 2011 ("the November PoA"). Apart from omitting to provide express authority to the donee in relation to disposal of the net proceeds of sale (which the Court of Appeal held was to be implied) the November PoA was otherwise regular on its face and appeared to satisfy all relevant statutory requirements under the Conveyancing Act, the Registration of Titles Act and the Probate of Deeds Act. One of the witnesses appeared to have been the same person who had witnessed Mr McKenzie sign the March PoA. It appeared to be duly notarised by a public notary in Canada. The November PoA gave the same residential address (in Canada) for Ms Smith as had the March PoA for Mr McKenzie.

6. Having satisfied herself that both PoAs were regular on their face and complied with relevant statutory requirements, the appellant proceeded with the sale, paid off the mortgagee and accounted to Ms Alexander for the net proceeds of sale. Unfortunately the November PoA was a forgery and had been used by Ms Alexander and probably also Mr McKenzie as the instrument of a fraud upon Ms Smith, who had not signed it nor otherwise done anything to authorise Ms Alexander to undertake the sale. She was thereby deprived of her share in Lot 393 and in its net proceeds of sale.

7. Ms Smith brought disciplinary proceedings as a person aggrieved against the appellant, relying upon Canon I(b) of the Legal Profession (Canons of Professional Ethics) Rules, which provides that:

> "An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member".

She later added a complaint of professional negligence, Under Canon IV(s) of the Rules, which provides that:

> "in the performance of his duty an attorney shall not act with inexcusable or deplorable negligence or neglect".

Her case was that she had not signed the November PoA and that the appellant had failed to enquire as to its validity before acting for Ms Alexander upon its supposed authority.

8. The Disciplinary Committee acquitted the appellant of both charges. After a review of the facts and the law they concluded that the appellant had done what was required to satisfy herself as to the formal and substantial compliance of the November PoA with the laws of Jamaica, and that "there was not on the face of the document or the

circumstances that arose, sufficient risk factors to cause her to have a duty to enquire further into the authenticity of the power".

9. Ms Smith appealed to the Court of Appeal. They (Edwards and Simmons JJA, Laing JA (ag)) also acquitted the appellant of the charge of negligence, because she owed no duty of care to Ms Smith who was not her client, but found her guilty of a breach of Canon I(b). Giving the lead judgment (with which his colleagues agreed) Laing JA (ag) said that there had been sufficient risk factors or red flags to require the appellant to conduct further enquiry as to the authenticity of the November PoA. He found that while the duty of an Attorney-at-Law in relation to the validity of a foreign power of attorney is normally limited to checking that it appears on its face to be valid in form and substance and in conformity with the law, nonetheless:

> "in the event that there are risk factors, suspicious circumstances or red flags, then the attorney does have a duty to be on guard against fraud or dishonesty, and to make additional checks in order to satisfy himself or herself that all is in order, and that he is not unwittingly facilitating dishonesty, fraud or illegal conduct. The extent of the checks which may be necessary will, of course, vary from case to case." (para 78).

The Court of Appeal held further that a failure to make those checks before continuing with the transaction would amount to a breach of Canon I(b).

10. It is only necessary to summarise the red flags identified by the Court of Appeal as sufficient to require the appellant to have made further enquiries, because the question whether in the aggregate they were sufficient to trigger the putative duty to enquire was not something about which the appellant obtained permission to appeal. They were as follows:

(i) Ms Alexander's failure to disclose to the appellant, when instructing her to act in the sale, that Ms Smith was a co-owner of Lot 393 and had already (if it was genuine) signed the November 2011 PoA,

(ii) Ms Alexander's excuse for Ms Smith being unable to respond to enquiries about her power of attorney being that Ms Smith was in custody.

(iii) The fact that the donors of both PoAs shared a common address and that both were witnessed by a common witness, although apparently signed many months apart.

11. Having found the appellant guilty of a breach of Canon I(b) the Court of Appeal remitted the matter of sanction to the committee, which imposed a fine of J$1 million and orders for costs. The appropriateness of the sanction is not part of this appeal, and it is not clear whether the fine was to be paid to Ms Smith by way of compensation for the loss of her share of Lot 393 or its proceeds. The committee had power to, but did not, order restitution.

12. The appellant sought permission to appeal by reference to six questions, listed as (a) to (f) in her application. The only question on which she has obtained permission is as follows:

> "(b) whether there is any duty on an Attorney-at-Law in Jamaica to look behind a foreign power of attorney which:
>
> (i) is regular on its face being signed by the donor and witnessed by a duly commissioned notary public;
>
> (ii) satisfies the requirements of the 16th Schedule of the Registration of Titles Act;
>
> (iii) satisfies the due execution requirements of the Probate of Deeds Act;
>
> (iv) contains no requirement on its face to look behind it."

13. The appellant had also unsuccessfully sought permission to raise this follow-on question:

> "(c) Does the appearance of the existence of facts deemed to be 'red flags' in a transaction relate to standard of care towards those to whom there is an existing duty of care and if no, despite the absence of any duty of care can an Attorney-at-Law be said to be in breach of Canon I(b) towards a third party alleging the Attorney's failure to see and act on 'red flags' in the transaction."

14. In the Board's view an affirmative answer to the 'any duty' question (b) on its own would afford little assistance to the parties or to the legal profession in Jamaica, without explaining what that duty might be and when it might arise. It is question (c) which, as it

were, puts the flesh on the bare bones of question (b). Furthermore it captures the essence of the appellant's main argument before the Board which is, in substance, that the presence of red flags merely sets the standard for a duty of care which must be shown already to exist between the attorney and the complainant, before any breach of Canon I(b) can be shown to have occurred. The Board will therefore address question (c). Ms Smith's written case as first respondent to the appeal sensibly accepted that the Board should do so.

15. The well-presented submissions of Ms Caroline Hay KC for the appellant may be summarised as follows:

(i) The retainer by Ms Alexander to act in the sale of Lot 393 gave rise to no duty of care on the part of the appellant (in tort or in contract) owed to Ms Smith. This is indeed what the Court of Appeal held.

(ii) Whereas red flags pointing to a risk of harm to her own client might well give rise to a duty to look behind a power of attorney, such that failure to do so might be negligence within Canon IV(s) and/or a breach of Canon I(b), red flags pointing to a risk of harm to some third party who was not the attorney's client could not trigger a duty to that third party with whom the attorney was in no kind of duty relationship. Accordingly, there being no duty to enquire owed to anyone, there was no breach of duty capable of falling within either of those canons.

(iii) Canon I(b) had no life of its own in the absence of a pre-existing duty relationship between the attorney and the complainant. A third party who was merely harmed or disappointed by the attorney's conduct could not by a complaint to the disciplinary committee clothe that disappointment with the trappings of civil liability on the attorney, so as to obtain redress from the attorney which was unavailable under the general law.

16. There having been no challenge by the respondents to the finding of the Court of Appeal that the appellant owed Ms Smith no duty of care, the Board will necessarily assume for the purposes of what follows that there was no such duty of care. But it should not be thought that the Board would, if that question had been in issue, have agreed with the Court of Appeal.

17. It is true that Ms Alexander originally retained the appellant to act in the sale of Lot 393 on behalf of Mr McKenzie alone, so that Ms Smith was at that stage unknown to the appellant and in no kind of relationship of proximity to her sufficient to give rise to a duty of care. But once the appellant discovered that Ms Smith was a co-owner of the property, raised the matter with Ms Alexander and received a copy of the November PoA, she was in the position of an attorney acting in the sale of the property on behalf of both

its co-owners, apparently retained by both of them through the fiduciary agency of Ms Alexander acting under separate powers of attorney from each of them. It was the co-owners, not Ms Alexander, who stood to suffer harm if the appellant mishandled the sale. Ms Alexander was to be a bare trustee of the proceeds of sale for the co-owners, and the appellant's fees were no doubt to be paid from the proceeds which were their property, not from Ms Alexander's personal resources.

18. If the November PoA had been valid, there would probably have been a full contractual retainer between Ms Smith and the appellant. While the fact that the November PoA was a forgery may be fatal to the existence of any contract, it is not obvious why that should mean that Ms Smith lacked the necessary relationship of proximity with the appellant to give rise to a duty of care in tort, since the appellant knew that she was a co-owner of the property which she was retained to convey on sale, and that part of her remuneration was to come from the proceeds of sale of property which Ms Smith co-owned with Mr McKenzie.

19. There is a wealth of authority, both in England and elsewhere, on the question when a duty of care may arise between an attorney and someone who is not her client. Some of it, including *Ross v Caunters* [1980] Ch 297 and *White v Jones* [1995] 2 AC 207 has attracted considerable academic and other controversy. Perhaps the nearest on its facts is *Penn v Bristol and West Building Society* [1995] FLR 938 (Ch). But the point was not argued before the Board, so no useful purpose would be served by its analysis. The Board will proceed on the assumption, but dubitante, that at no stage did the appellant owe Ms Smith a duty of care, or indeed any other duty known to the law.

20. The first part of Ms Hay's second submission is also correct. It may not infrequently happen that red flags arise in the conduct of a transaction which alert an attorney to a risk that some third party to whom she owes no duty of care may suffer harm. The existence of those red flags does not give rise to a duty to that third party, who may (for example) be on the other side of an adversarial transaction, with lawyers of their own to protect their interests. Thus it may not involve a breach of duty owed to anyone for the attorney to continue with the transaction without making further enquiry.

21. But beyond that the Board rejects Ms Hay's argument. It is important at this stage to focus on the context of powers of attorney. Red flags warning of risks as to the validity of the power may loosely be described as falling into two classes. In the first class are flags which point to risks of invalidity of which the donee of the power is unaware, and which may expose the donee to liability for having acted without authority. An example is a red flag suggesting that the donor might have lacked the requisite mental capacity when signing the PoA. In such a case (assuming that the donee is a client of the attorney) the duty of care owed to the donee will plainly require the attorney to follow up the red flag by making appropriate further enquiry.

22. In the second class are cases like the present where the red flag points to a risk that the PoA may be a forgery, where the donee is well aware of the facts and is using the PoA as an instrument of fraud. In such a case the attorney owes no duty to the donee to enquire into matters which may defeat the attempted fraud. Rather the attorney owes a duty to herself, to her profession and to the public at large not without further enquiry to become a facilitator of, or participant in, a transaction which may be or involve a fraud. Breach of that duty falls squarely within the conduct prohibited by Canon I(b), because it is conduct which is likely to bring the profession into disrepute. It is what Laing JA (ag) accurately described in the Court of Appeal, in the passage cited above, as a duty to be "on guard against fraud or dishonesty, and to make additional checks in order to satisfy himself or herself that all is in order, and that he is not unwittingly facilitating dishonesty, fraud or illegal conduct".

23. It is in the Board's view wrong to regard breach of a duty owed to the complainant as a pre-requisite of disciplinary proceedings based upon a breach of Canon I(b). Nothing in the Rules makes it a condition of locus standi to make a complaint of professional misconduct that the complainant has a private law cause of action against the attorney, nor even that the complainant has suffered a loss consequential upon the attorney's conduct. Section 12 of the Legal Profession Act permits any person alleging herself aggrieved by an act of professional misconduct committed by an attorney to apply. So may the Registrar or any member of the General Legal Council, or a judge. Nor did Ms Hay suggest otherwise. Her point was that, if conduct which did not amount to a breach of duty owed to the complainant could be made the subject of a complaint of professional misconduct under Canon I(b), then that would open an avenue to recovery of compensation or restitution by way of sanction in respect of a loss for which the general law offered no remedy.

24. The Board regards this submission as misconceived. The Disciplinary Committee has a wide discretion as to the sanction to be imposed for professional misconduct. It expressly includes an order for restitution, and the Board was told that compensation may be achieved by an order that all or part of a fine be paid to the complainant. But the existence of these discretionary powers, which exist for the better regulation of the profession, does not convert a complaint of professional misconduct into the pursuit of a form of civil claim. It may be that issues regarding the existence and ambit of any duty owed by the attorney to a complainant could properly be raised at the stage when the form of sanction is considered by the Disciplinary Committee, for it to consider the extent to which the complainant should be made the beneficiary of any sanction which is imposed. But the Board does not have to examine this further on this appeal, because this feature of the disciplinary regime does not undermine the fundamental point made above, that the professional standard being enforced under Canon I(b) is a general standard which does not depend upon the existence of any duty in private law owed to the complainant.

25. Canon I(b) speaks of the honour and dignity of the profession, and of behaviour which may tend to discredit the profession. That language is far removed from conduct

which must necessarily invade the civil rights of the complainant. While this is not the occasion to attempt to list types of conduct which would fall within Canon I(b) without triggering civil liability to the complainant, the Board regards it as clear, as did the Court of Appeal, that ignoring red flags that pointed to a risk that the attorney might be facilitating a fraud is one of them, regardless whether the fraud was taken to its conclusion, or caused anyone any loss.

26. For those reasons the Board will humbly advise His Majesty that this appeal be dismissed.