DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL
COMPLAINT NO: 68/2014

IN THE MATTER OF **BLOSSOM VASSEL and MR. MAURICE FRANKSON,** an Attorney-at-Law

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT, 1971

BETWEEN	BLOSSOM VASSEL	COMPLAINANT
AND	MAURICE FRANKSON	RESPONDENT

Panel:
Mr. Walter Scott QC - Chairman
Mrs. Ursula Khan
Mrs. Tana'ania Small Davis

Appearances:
Ms. Blossom Vassel via Skype
Mr. Maurice Frankson

Hearing dates:
29 January 2016 and 20 May 2016

COMPLAINT

1. Before the Panel is a complaint against Attorney-at-Law, Mr. Maurice Frankson, (hereinafter called "the Attorney") laid by Ms. Blossom Vassel (hereinafter called "the Complainant"). The Complaint is that:
   (a) he has not provided me with all information as to the progress of my business with due expedition, although I have reasonably required him to do so;
   (b) He has not dealt with my business with all due expedition;
   (c) He has acted with inexcusable or deplorable negligence in the performance of his duties;
   (b) He is in breach of Canon I (b) which states 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.'"

2. The Panel conducted the hearing of this matter on 29 January and 20 May 2016 and evidence was taken from the Complainant and the Attorney-at-law, including cross examination of each by the other.

3. On the order of the Panel, the Complainant filed a Summary of Evidence of Professional Mismanagement and Failure to Promptly and Judiciously pursue claim on 10 June 2016. A copy of the Complainant's Summary was served on the Attorney-at-law on 4 July 2016. The Attorney-at-law filed his Written Submissions on 18 October 2016.

EVIDENCE

The Complainant's Case

4. The Complainant is a lecturer resident in Wolverhampton, England.

5. The Form of Application by the Complainant dated 29 May 2014 was admitted as **Exhibit 1** and the Affidavit in support along with twenty-four exhibited documents were admitted as **Exhibit 2**. All written correspondence referred to below have been exhibited to the Complainant's affidavit. No objection was taken to any of the documents by the Attorney.

6. The Complainant's evidence is that the Attorney was retained by her on or about 12 April 2007 following a motor vehicle accident in Montego Bay, in which a motor car ran over her foot, causing her injury. The Attorney-at-law agreed to take her case and to file action against the motor vehicle owner and driver, details of which were provided to him by the Complainant. The Complainant paid the Attorney-at-Law an initial payment of $10,000.00 and returned to England.

7. The Complainant said in early 2008 she received a Claim Form and Particulars of Claim from the Attorney-at-law with instructions that she should sign and return four copies to him, which she did. Subsequent to that, she received correspondence from the New Cross Hospital in Wolverhampton where she had received further medical treatment including hospitalization and being fitted with a cast following her return

to England. The correspondence notified her that the hospital was in receipt of a request from Messrs. Gaynair & Fraser, Attorneys-at-law for a medical report and that her consent to provide the report was needed. The Complainant duly gave the hospital the requisite consent to release her medical report to the attorneys.

8. The Complainant contacted the Attorney by telephone in February 2009 inquiring of progress with the claim and was informed that he would be filing the claim and would keep her informed. Having heard nothing from the Attorney, the Complainant wrote to the Attorney on 4 January 2010 seeking an update. The Attorney replied by email on 26 February 2010 informing the Complainant that the process server had been unable to locate the Defendant (singular) and that the only option available was to contact the Motor Vehicle Registry to ascertain an address for the owner of the motor vehicle.

9. The Complainant says that in a telephone conversation with the Attorney on the same date, the Attorney told her that he would be contacting the insurance company to ascertain the status of the policy of insurance over the motor vehicle and that he would publish the case in the Gazette.

10. The Complainant confirmed her willingness to continue pursuit of the claim in the manner advised by the Attorney and she made two further payments of $2,000 and $1,000 in 2009 and 2011.

11. The Complainant emailed the Attorney on 12 March 2010 requesting and update and specifically asked about progress on publishing the case and response of the insurance company to his inquiries. In that email, the Complainant complained of the length of time it was taking to even serve the parties. Having had no response, the Complainant emailed the Attorney again on 10 May 2010 and referred back to her questions in the previous email and asked whether it was viable to continue to process. There was no response.

12. The Complainant and the Attorney spoke in April 2011. The Attorney told the Complainant that he would have to do a second Claim Form and that he would mail it to her and that she should sign and return to him, which she again did.

13. They next spoke in November 2011 when the Attorney acknowledged receipt of the signed documents and that he had sent them to the bailiff

on 1 July 2011 to effect service. The Complainant says that in the same conversation the Attorney said that if the bailiff was unsuccessful he would effect service by publication in the Gleaner or Observer.

14. The Complainant telephoned the Attorney on 16 December 2011 for an update and he informed her that he had referred the case to the court and was awaiting a response. She spoke to the Attorney again in January 2012 and specifically asked about the third parties' response to the claim, i.e. whether they were contesting the claim. She had the same report from the Attorney in a telephone conversation on 3 February 2012. Then on 9 May 2012 the Complainant received an email from the Attorney stating that there was an offer to settle her claim for $500,000. The email set out reference to another case with similar injuries to those suffered by the Complainant and explained that it was unlikely that the Court would award as much damages as in that case since the Complainant's injuries were less severe.

15. The Complainant responded the next day requesting copies of the correspondence with the Court and the third party and asking whether the court had made a decision on the claim or whether the offer was an out of court settlement. She asked for details of the claim and the offer. She stated that she would need to receive the requested information in order to make an informed decision as to whether to accept the offer. Having had no response, the Complainant sent two emails on 27 and 28 June 2012 chasing up on the request for information and documentation.

16. The Complainant and the Attorney spoke on 2 June 2012. The Attorney apologized and told her that due to some inadvertence in his office the claim had lapsed. He said that the first filing failed and that the second filing was not in time The Attorney told the Complainant that the $500,000 offer was his personal offer and was in line with what he thought she could get through the court. Therefore, he suggested that the Complainant should identify another lawyer to negotiate a settlement of her claim with him so that she would be fairly compensated.

17. The Complainant made some inquiries and settled upon Mr. Phoebe Lawrence to conduct the negotiations with the Attorney on her behalf and so informed the Attorney by telephone on 1 March 2013 and by email on 20 and 22 March 2013. The Complainant spoke to both the Attorney and Mr. Lawrence on 26 March 2013. The Complainant followed up with a n email to the Attorney on 26 March 2013 again requesting a copy of the

proposal for settlement. On 5 April 2013 Mr. Lawrence reported to the Complainant that he had not yet received any documentation from the Attorney. The Complainant promptly emailed the Attorney on the same day asking that he attend to the matter of putting his proposal and documentation to Mr. Lawrence.

18. On 2 May 2013 Mr. Lawrence wrote to the Attorney. The letter reported that the Attorney had conveyed the opinion that the period for service of the claim could be extended on an application to the court. On 4 May 2013, the Attorney emailed the Complainant informing her that on 3 May 2013 he had filed an application to extend the time for service of the Claim Form and for substituted service on the Defendants by publication in a newspaper. The Attorney told the Complainant that if the orders are granted, he would be in a position to proceed with her claim. The Complainant emailed the Attorney on 18 June 2013 reminding him of her request for certain documentation and information. She followed up this email on 28 June 2013. The Attorney responded on 29 June 2013 asking to be reminded of the questions for which she was seeking answers. On 2 July 2013 Mr. Lawrence noted that the Attorney was pursuing the claim in court and asked for payment for his services. On 20 August 2013, the Attorney emailed the Complainant to inform her that the application was set for hearing on 4 November 2013. On 9 December 2013, the Complainant emailed the Attorney reporting on a conversation they had had on 22 November 2013 in which the Attorney had informed her that he had been unable to attend court on 4 November 2013 and that he would be applying for another date for hearing. The Complainant asked whether the case is still within the time limitation. There is no answer to this email.

19. The Complainant initiated the complaint process by writing to the General Legal Council on 13 January 2014.

20. The Complainant was cross examined by the Attorney. The thrust of the cross examination was that the Complainant's case was still before the court and viable and that progress was only pending a determination of the application for extension of time to serve the Claim Form. The cross examination was devoted to eliciting an acknowledgement from the Complainant of the Attorney's difficulties in having service of the Claim Form on the Defendant and that he was now seeking to redress that by obtaining an order an extension of time to effect service and for substituted service.

21. The Complainant's responses were by and large critical of the length of time that the matter had taken, the lack of communication by the Attorney and that the steps now being pursued were essentially too little too late. The Complainant repeatedly expressed doubt as to whether the claim was still viable, if it was indeed filed within the period of limitation and lack of confidence in the Attorney's ability to bring the matter to a successful conclusion. There was no challenge to any of the documents being relied upon by the Complainant.

22. The Complainant filed an Affidavit sworn 2 March 2016 in rebuttal of the Attorney's Affidavit. The Complainant's Affidavit in Response was admitted as **Exhibit 3.** In her rebuttal, the Complainant asserts that the Attorney's account that his offer to personally settle the claim was made after he had come to a view that the claim was statute barred is incorrect as his offer to her was made on 9 May 2012. She further challenged the Attorney's account in paragraphs 8 and 9 of his affidavit that it was after having discussed the matter with Mr. Lawrence that he came to a realization that the claim was not statute barred and thereupon filed the second action on 4 May 2012. She pointed out that her consultation and discussions with Mr. Lawrence began in February and March 2013. In this regard, a significant criticism levelled at the Attorney's actions was as follows:

> "Mr. Frankson states that on 4th May 2012 he filed a Claim Form and Particulars of Claim in the Supreme Court and instructed Bailiffs to issue to the Defendant on 7th May 2012 (F, Para 9). Yet on 9th May 2012 (V, Para 18) Mr. Frankson emailed me with an offer to settle my Claim. In other words, within a matter of 5 days the position has shifted from an Application to the Supreme Court to one in which I was offered a settlement."

23. The Complainant also posed eleven questions at the end of her Affidavit in response. Five of them are set out below:
    1. Is my claim Statute bar (sic)?
    2. Is it normal for the Court to allow extension of time for a Claim to proceed, outside the statute of limitation (Limitation of Action Act), in circumstances where the delay of a case is caused as a result of tardiness and dilatory behavior by the Attorney?
    3. What reasonable excuse has the Attorney submitted to the Court, in the application for extension of time, outside of the statute limitation and for the delay in filing the Claim to the Court and the Third Party Insurance?

4. Has the Insurance Company for the 3rd party, at any point, been served Notice of my Claim since 2007?
5. Was there a deadline for Claims to be submitted to the 3rd party Insurance?
6. Would the Court accept and are there any precedence of the Court accepting deplorable negligence and incompetence as grounds for allowing extension outside of the Statutory limitations?

24. The Complainant's Affidavit in Response ends by repeating that she has not received any of the documents or correspondence sent by the Attorney to other relevant parties and copies of their reply.

25. The Complainant's Affidavit in Response was delivered in hard copy to the Attorney by the Secretary of the Disciplinary Committee on 12 April 2016. The Attorney had been copied on the Complainant's email delivering soft copy of the affidavit on 24 March 2016.

The Attorney's Defence

26. The Attorney filed an Affidavit in response to the Complaint on 26 February 2016. The Affidavit was admitted as **Exhibit 4**. The Attorney's affidavit set out his defence as follows: he was retained on or about 12 April 2007 by the Complainant to file an action claiming damages for personal injuries sustained in a motor vehicle accident. On 11 February 2009, he filed an action in the Supreme Court. The court documents were delivered to the Bailiff in Kingston to effect service. Not having a response from the Bailiff, the Attorney delivered sealed copies of the documents to a process server. On 25 January 2010, he was informed by the process server that neither of the defendants was known at the address. The Attorney says that following that he came to the view that the claim had become statute barred before he was able to effect service and so he offered the Complainant compensation for her loss. The Attorney says that he became aware that the claim was not in fact statute barred and therefore filed a Claim Form and Particulars of Claim on 4 May 2012, which he sent to the Bailiff of the parish of Saint James for service on the first defendant. The Bailiff was unable to locate the defendants and so on 3 May 2013 the Attorney filed an application for orders extending the time within which to serve and for substituted service. He was unable to attend on the hearing on 4 November 2013 due to his engagement in the criminal court. On 27 February 2016, the Attorney filed a Notice of Adjourned Hearing (Exhibit MHF 5).

27. In his oral evidence in chief, the Attorney said that the matter has not run a smooth course because he was unable to effect service of the Claim on the defendant. He admitted that he had made an error in thinking that the claim had become statute barred which lead to his making an offer to settle the claim and had advised the Complainant to have her own attorney negotiate terms of settlement with him. However, after further review he realized that the claim was not statute barred and that he filed a fresh action. The Attorney asserted that the claim is still a viable claim and remains before the court and that he was prepared to continue with the claim.

28. The Complainant's cross examination of the Attorney was focused on a challenge as to (a) whether the claim was still viable and within the limitation period (b) whether the insurance company has received notice of the proceedings and (c) whether it was realistic to expect to be successful with service this time. The Complainant repeatedly put to the Attorney that he had mismanaged her case, had not given it any attention and had negligently handled the matter which is evidenced by the lengthy delay. The Complainant also pointed to the number of requests she had made for documentation which have been ignored and that the Attorney has not conducted the matter in a transparent manner.

29. The Panel also put some questions to the Attorney. The salient responses are as follows:
    (a) The Attorney does not have a record of when or whether Notice of Proceedings was issued to the third party insurers. He agreed he would have to amend the application to seek an order that the insurers be served with the Notice of Proceedings;
    (b) He has not checked the court file to ascertain what the Minute of Order of 4 November 2013 records as the disposition of the Notice of Application filed 3 May 2013;
    (c) He did not make any effort between 4 November 2013 and 27 January 2016 to get a hearing date. This was because of the dispute with the Complainant and the filing of the Complaint;
    (d) He has not filed an affidavit in support of the Notice of Adjourned Hearing setting out an explanation for the failure to attend on 4 November 2013;
    (e) He acknowledges that there does appear to be a lapse of time between his receipt of the second signed Claim Form dated 24 May 2011 and the filing date of 4 May 2012.

ANALYSIS OF THE EVIDENCE

30. The Complainant filed a Summary of Evidence that she puts forward as supportive of her complaint against the Attorney that he has failed to promptly and professionally manage her claim and which establishes the Attorney's negligence and incompetence.

31. The Complainant refers to the length of time between retaining the Attorney and February 2016 being 8 years and 10 months and that she believes the case to be statute barred. She points to the fact that the Attorney himself came to this view in June 2012 and made an offer to settle the claim personally. The Complainant submits that the Attorney's statement during the hearing that he has written to the insurers informing them of the claim is news to her and that is evidence of his failure to provide her with adequate information about her case despite her requiring him to do so.

32. The Complainant further submits that the Attorney's failure to take the requisite steps of advertising the claim and of notifying the insurers and inquiring of the status of the policy shows mismanagement or negligence on his part.

33. The Complainant chronicles the passage of time between communication from the Attorney and states this to be only after her persistence and determination in contacting him, seeking a report on how the case was developing. The Complainant concludes that there were long periods of inactivity by the Attorney and that he did not always provide fulsome, logical, reliable and factual information and that this therefore fell below the standards of competence and diligence that she expected from the Attorney.

34. In the Attorney's Written Submissions, he repeated the bare facts and submitted that he had acted with reasonable expedition between being retained on 12 April 2007 and filing the Claim Form and Particulars of Claim on 11 February 2009. He glossed over the period between delivering the Claim Form to the Bailiff for service and 9 May 2012 when he made the offer to settle the claim for $500,000 with the curtest of explanation being that the process server was unable to locate the owner of the vehicle. He asserts that the inability to serve the claim form was not his fault and is the main cause for the time the matter has taken.

35. Although the Complainant's Summary was served on the Attorney, he did not address or answer the submissions that she made.

36. Similarly, neither in his oral evidence nor his written submissions did the Attorney address many of the questions posed by the Complainant in her Affidavit in Response. Nor did he provide documentation to support his defence, which were pointedly requested by the Complainant.

37. A filed copy of the Claim Form and Particulars of Claim has not been produced to the Panel.

38. CPR 8.14 states the general rule that a claim form must be served within 12 months of the date it was issued or the claim form ceases to be valid. CPR 8.15 gives the court the discretion to extend the time for serving a claim form. The application must be made within the period for serving the claim form and must be supported by affidavit evidence. The Court may extend the time only if satisfied that the claimant has taken all reasonable steps to trace the defendant and serve the claim form but has been unable to do so or that there is some other special reason for doing so.

39. Being that the extension of time to serve the Claim Form is a discretionary exercise by a judge, adequate and convincing evidence must be submitted to satisfy the court that the case is one deserving of the court's discretion in its favour. It is by no means a foregone conclusion that the time will be extended. The Application was filed by the Attorney on the eve of the expiration of the limitation period. The case of Hasroodi v Hancock [200] EWCA Civ 652 and Hoddinott and others v Persimmon Homes (Wessex) Ltd [2007] EWCA Civ 1203 emphasize the need for the court to be satisfied that the claimant has taken all reasonable steps to serve the defendant and that in the absence of good reason, the court may not exercise its discretion favourably; the reason for the failure to serve within the prescribed time is a highly material factor. In considering the special circumstances of a personal injury claim and imminent limitation expiry, Lord Dyson quoted My LJ in Vinos v Marks & Spencer plc with approval:

> "It is unsatisfactory with a personal injury claim to allow almost three years to elapse and to start proceedings at the very last moment. If you do, it is in my judgment generally in accordance with the overriding objective that you should be required to progress the proceedings speedily and within time limits. Four months is in most cases more than adequate for serving a claim form. There is nothing unjust in a system which says that, if you leave issuing proceedings to the last moment and then do not comply

with this particular time requirement and do not satisfy the conditions in r 7.6(3), your claim is lost and a new claim will be statute-barred. You have had three years and four months to get things in order."[1]

40. In Hoddinott the Court expressed the view that where the extension of time sought extends the time over to a date when the claim would be statute barred, this is a highly relevant consideration in the exercise of the discretion as "the approach of the court should be to regard the fact that an extension of time might "disturb a defendant who is by now entitled to assume that his rights can no longer be disputed" as a matter of "considerable importance" when deciding whether or not to grant an extension of time for service: see *Hashtroodi* para 18."[2]

41. The second limb of the Application filed by the Attorney will also come under close scrutiny by the Court. In a well-reasoned judgment by Morrison JA (as he then was) in Insurance Company of the West Indies v Shelton Allen and others [2011] JMCA Civ 33 clarified the rule as it relates to substituted service, pointing out that an application for an order approving an alternative method of service to personal service must be supported by evidence on affidavit showing that the method of service proposed is likely to enable the person to be served to ascertain the contents of the claim form and particulars of claim. At paragraph 35 Morrison JA said this –

> "The plethora of references in rule 5.13 to the need for evidence of the likelihood of the claim form coming to the attention of the defendant by the claimant's choice of an alternative method of service seems to me to be a clear indication that the framers of the rule intended thereby to subject the option given to the claimant to the tightest possible control. Whatever may have been the history of the requirement under the pre-CPR rules and practice as regards the question of the likelihood of the substituted method of service bringing the documents to the notice of the defendant, it appears to me from the language of rule 5.13 to be unarguably clear that the option given by the rule to the claimant to choose an alternative method of service is expressly subject to the claimant being able to satisfy the court on affidavit, either that the defendant was in fact "able to ascertain the contents of the documents" (rule 5.13(3)(b)(i)), or that "it is likely that he or she would have been able to do so" (rule 5.13(3)(b)(ii))."

42. The Attorney did not provide a copy of the affidavit in support of the application and it is not clear that one was in fact filed. The Notice of

[1] [2001] 2 All ER 784 at [20]

[2] at [52]

Application for Court Orders exhibited to his affidavit as MFH 4 does not refer to reliance on an affidavit. The sole ground on which the application is made is "Efforts by the Process Server to serve the 1st Defendant at the address stated on the Claim Form have proven futile." The Complainant had asked a pertinent question in cross examination –
Q - "Do you know if Smith is alive and in Jamaica to serve the papers on?
A – I do not know."

43. A further matter is that the report is that the defendants were not known at the address set out in the first Claim Form. The second Claim Form although shown to the Panel, was not tendered in evidence. There is no evidence of the address given for the defendants and the source of information for that address. In other words, whether the address is/was a reliable one.

44. Turning now to the Notice of Adjourned Hearing (MHF 5). That document states –

> "Notice is hereby given to you of the adjournment of the Notice of Application for Court Orders which was fixed for hearing on the 4th day of November 2013 at 11:30am.
>
> You are hereby ordered to attend the adjourned hearing to be heard by a Judge in Chambers at the Supreme Court, King Street, Kingston on the day of ,2016 at a.m./p.m."

45. The Attorney admitted that he had not checked the Minute sheet on the Court file to ascertain what how the application was handled by the court on 4 November 2013 in the face of absence of the applicant. The likelihood is that the judge would have dismissed the application. The Attorney did not suggest that he had at least written to the Registrar to alert the court of his unintentional absence. Nor was there any suggestion that following the missed court date, there was correspondence with the Registrar in an effort to have the application relisted. None of the members of the Panel is familiar with a practice of simply filing a Notice of Adjourned Hearing in circumstances where the attorney failed to attend the hearing.

46. The evidence is that the Attorney was retained on 12 April 2007. He filed the first claim on 11 February 2009. There is no explanation for the passage of twenty-two months before the claim was filed. There is no explanation for the period between 26 February 2010 when the Attorney

responded to the Complainant's request for an update and 20 April 2011 when he informed the Complainant that he would need to file a second claim form. There is no explanation for the period of time between 24 May 2011 when the Complainant signed and returned the second claim form and 4 May 2012 when it was filed. There is no explanation for the period of time between 3 November 2013 and 27 January 2016 when the Notice of Adjourned Hearing was filed. These periods are suggestive of inactivity and inattention to the Complainant's case.

47. The Complainant was assiduous in her contact with the Attorney and repeatedly asked him of options to address the problems with service and notification of the insurers.

48. Having had the first claim form expire without service, it seems logical that the Attorney would have been especially mindful of paying keen attention to timely service of the fresh claim or timely application for substituted service.

49. Having arrived at a conclusion that he had allowed the claim to become stature barred such that he even made an offer to personally compensate the Complainant, upon discovery that he had in fact another eleven months, it is remarkably unfortunate that the Attorney appears to have dropped the barely recovered catch.

FINDINGS OF FACT

50. The Panel carefully considered the evidence, bearing in mind that the burden of proof is on the Complainant and that the standard of proof is beyond reasonable doubt.

51. In evaluating the evidence, the Panel had particular regard to the documentary evidence which supported the Complainant's evidence. The Complainant's evidence was clear, direct and carefully documented. In contrast, the Attorney's evidence of his conduct of the matter did not follow logically and there were many gaping holes in the chronology exacerbated by his failure to provide documents to support his statements.

52. Having seen the Complainant and hearing her evidence and having

reviewed the exhibits we find that the following has been established beyond reasonable doubt:

a. The Attorney represented the Complainant in bringing an action to recover damages in negligence following a motor vehicle accident on 6 April 2007 in which she sustained personal injuries, suffered loss and was put to expense.
b. The Attorney did not act with due expedition in the filing of her claim.
c. Having encountered difficulties in effecting service, the Attorney did not take reasonable steps to properly handle the claim.
d. Despite the Complainant's repeated communications seeking updates, reports on the progress and for copies of documents, the Attorney failed to provide her with all information with due expedition.
e. Having received the signed and dated Claim Form in or around May 2011, the Attorney did not file it until 4 May 2012. In doing so, he did not deal with the Complainant's business with due expedition.
f. Knowing as he did that there had been problems with locating the Defendants the Attorney acted with inexcusable or deplorable negligence in failing to take appropriate and reasonable steps to effect service on the defendants by an alternative method to personal service.
g. The Attorney failed to attend the hearing of the Application for extension of time to serve the Claim Form or to make appropriate arrangements for the Complainant to be represented at the hearing or to communicate his unavoidable absence to the Court.
h. Having failed to attend the hearing, the Attorney did nothing to attempt to rectify the situation for a period in excess of three years.
i. The filing of a Notice of Adjourned Hearing without so much as a letter to the Registrar to give an explanation for the absence from the hearing is inadequate to make a proper argument on the Complainant's behalf for a relisting of the application.
j. The Attorney's conduct of the Complainant's matter is inexcusable, deplorable and neglectful.
k. The Attorney has thereby failed to maintain the honour and dignity of the profession and his behaviour has discredited the profession of which he is a member in breach of Canon I (b) of the **Legal Profession (Canons of Professional Ethics) Rules**.

CANONS

53. We find that the Attorney is guilty of professional misconduct as per Canon VIII (d) in that he has breached **Canons I (b) and Canon IV (r) and (s) of the Legal Profession (Canons of Professional Ethics) Rules.**

54. The relevant canons are set out below.
Canon I (b) provides:
"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."

Canon IV provides:
(r) "An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client's business with due expedition.
(s) In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect."

55. A client is entitled to be provided with information about the progress of her case. The Complainant made many reasonable requests for information and documentation, most of which were not addressed by the Attorney. The Attorney failed to respond to the Complainant's correspondence and requests and for extended periods of time he did not attend to her matter.

56. This failure of the Attorney to provide the Complainant with information as to the progress of her matter with due expedition constitutes misconduct in a professional respect.

57. The requisite standard required by Canon IV (s) was addressed by Carey JA in Witter v Forbes (1989) 26 JLR 129, -

"We are not in this appeal dealing with professional misconduct involving an element of deceit or moral turpitude. Both rules of which the appellant was found guilty are concerned with the proper performance of the duties of an Attorney to his client. The Canon under which these rules fall, prescribes the standard of professional etiquette and professional conduct for Attorneys-at-Law, vis-a-vis their clients. It requires that an Attorney shall act in the best interest of his client and represent him honestly, competently and zealously within the bounds of the Law. He shall preserve the confidence of his client

and avoid conflict of interest. The violated rules, both involved an element of wrong-doing, in the sense that the Attorney knows and, as a reasonable competent lawyer, must know that he is not acting in the best interests of his client. As to rule (r) it is not mere delay that constitutes the breach, but the failure to deal with the client's business in a business-like manner. With respect to rule (s) it is not inadvertence or carelessness that is being made punishable but culpable non-performance. This is plain from the language used in the rules."

58. In Witter v Forbes, as in the present case, the attorney had shown a consistent failure in attending to the client's business for a significant duration of time. The various periods of delay as set out in paragraph 46 above are inexcusable and deplorable which is further exacerbated by the fact that the claim is now statute barred. All taken together, there is no doubt that the Attorney's conduct amounts to professional negligence.

59. Following the guidance of the Court of Appeal in Owen Clunie v. GLC, CA 3/2013 delivered on the 22nd of September, 2014, this Panel directs that a date be set to give the Attorney an opportunity to be heard in mitigation before a sanction is imposed.

Dated the 19th day of December 2017.

Mr. Walter Scott QC- Chairman
Mrs. Ursula Khan
Mrs. Tana'ania Small Davis