

**DECISION OF THE DISCIPLINARY COMMITTEE  
OF THE GENERAL LEGAL COUNCIL**

**IN THE MATTER of Blossom M. Sinclair and  
Derrick Darby, an Attorney-at-Law**

**A N D**

**IN THE MATTER of the Legal Profession Act**

Before: Pamela Benka-Coker, Q.C.  
Gloria Langrin  
David Batts

Mr. Rudolph Francis representing the Complainant  
Mr. Derrick Darby - in person

Dates of Hearing: 18<sup>th</sup> May, 2002, 16<sup>th</sup> November, 2002

Date of Judgment: 12<sup>th</sup> April, 2003

1. An Application against the Attorney-at-Law, Mr. Derrick Darby in this matter was signed by Blossom M. Sinclair and is dated 30<sup>th</sup> day of November, 2000. It refers to and is supported by an undated Affidavit of Blossom Sinclair. The period since the filing of that application and the commencement of this matter saw an exchange of correspondence between the General Legal Council, the Attorney-at-Law Mr. Derrick Darby and attorneys representing the complainant. That correspondence we will not consider or refer to, save and to the extent that it is in favour of Mr. Derrick Darby who was absent for a part of the hearing before this Tribunal.

2. The hearing commenced before us on the 18<sup>th</sup> May, 2002.

On that date the complainant's attorney indicated he was not ready to proceed as he had had a meeting with Mr. Darby. The Tribunal determined that it would nevertheless proceed. Mr. Darby was present. We will therefore in this judgment set out in full the exchange which passed between this tribunal and Mr. Darby prior to the commencement of the taking of evidence.

**“Darby: I wish to apologize for my late arrival. There has been a course of negotiation between Mr. Francis and myself the issues are rather non issues. The amount of money to be paid over to the complainant, there is no contest to this. There is correspondence from myself to Mr. Francis to say that this outstanding amount will be paid by myself. There is no contest what is to be done in relation to this matter.**

**Panel: What do you mean by that?**

**Darby: On the record there is an admission as to how much money is to be paid. It is a matter I submit for the judgment of the panel. In relation to this matter I have asked the Council for sometime. The position I am in is that I will ask that you would allow payments to be made and for the matter to be brought back in a suitable time if the parties agreed and it would still give the panel a right to punish if that is the appropriate sanction. In respect to the application what I am trying to do is to put the panel in a position to see that whatever the complainant asked for will be dealt within a reasonable amount of time.**

**Panel: These are complaints of professional misconduct, we are not hereto collect debts and to proceed to settlement. We are hereto to hear complaint in a professional capacity. The complainant is asking for a refund of an amount of money that she alleged that you have received from as far back as 1992. (Panel reads complaint) Ten years ago.**

**Darby: There has been several points of agreement between the**

complainant and myself. There is on record correspondence that admits the time at which the funds became available. We did not collect any money in 1992. The date was sometime in 1997.

**Panel:** I am talking about when funds were paid over by the complainant.

**Darby:** When our client died in 1995 that property was sold and in 1997 funds were available to settle the debt. These funds were never paid to us.

**Panel:** Is that true Mr. Francis.

**Francis:** Yes. It is the undertaking that he made.

**Darby:** There was no undertaking. These funds were due to be paid but there was never an undertaking.

**Panel:** Certainly Mr. Francis have you looked at your complaint? The first thing that you should have examined is the affidavit. What is the complaint with regard to Mr. Darby.

**Francis:** That he gave an undertaking contained under letter dated 21<sup>st</sup> October, 1998.

**Panel:** Funds were to be collected to refund these money. You are able to pay the sums but you are unable to pay the interest?

**Darby:** These debts have not been paid. It is my recollection that at the time that the agreement....

**Panel:** This is not a debt, why do you call it a debt?

**Darby:** Its an obligation. This obligation will be allowed to be dealt with and brought back before in a period of time.

**Panel:** Admission that you collect the money, promise to pay and have not paid it. It is a grave matter that you are admitting this.

**Panel:** In my view I do not think we can allow this to hang any longer and we are going to start the matter. We designated certain

**days for this matter to be heard. This matter has been going on from 2000. This lady lives abroad.**

**Darby: What I am asking is that I'd be allowed to pay off the money within a reasonable time and the matter be brought back here."**

3. The complainant did not attend to give evidence in person nor was her Affidavit tendered as an exhibit. Instead Mr. Lancelot Clarke (Snr.) The attorney who acted for the complainant at some stage of the transaction, gave sworn evidence.

4. Mr. Clarke, Snr. deponed that in 1993 Miss Blossom Sinclair retained his services. She had contracted to purchase land but was unhappy with the services received from her then attorney Mr. Smart Bryan. The purchase price of the land was \$1.5 Million. Mr. Clarke then wrote to Mr. Smart Bryan and obtained three (3) receipts. Copies were tendered in evidence as follows:-

Receipt dated 9 <sup>th</sup> December, 1992	-	U\$5,000.00 - <b>Exhibit 1A</b>
Receipt dated 9 <sup>th</sup> December, 1992	-	\$111,000.00 - <b>Exhibit 1B</b>
Receipt dated 16 <sup>th</sup> November, 1992	-	\$492,000.00 - <b>Exhibit 1C</b>

5. Mr. Derrick Darby's firm was acting for the vendor. Mr. Clarke wrote to Mr. Darby and also lodged a caveat on the title to the land being purchased. Copy Statutory Declaration in support of Caveat dated 20<sup>th</sup> October, 1998. Copy Caveat was put in evidence as **Exhibit 2**. That declaration recorded the total deposit paid as \$746,129.24.

6. Mr. Clarke deponed that he commenced legal proceedings for specific performance against Mr. Darby's client and also wrote to Mr. Darby letters dated 20<sup>th</sup> September, 1994 and 5<sup>th</sup> December, 1994, copies of both were tendered as **Exhibits 3 and 4** respectively. There was no response to these letters. A letter dated 8<sup>th</sup> February, 1996 was tendered and admitted as **Exhibit 12** and read as follows:

**"February 8, 1996**

**Lancelot Clarke & Co.  
Attorneys-at-Law  
10 King Street  
Spanish Town  
St. Catherine**

**Attention: Mr. Lancelot Clarke, Jnr.**

**Dear Sirs:**

**Re: Proposed Sale 20 Barbican Avenue, Kingston 8  
Leslie Tucker et al to Blossom Sinclair**

**We are in receipt of yours dated 5<sup>th</sup> December 1995 in respect of the above. We have since contacted our clients who have informed us that they are now in a position to settle the claim of your client.**

**Our instructions are that your Ms. Blossom Sinclair had informed our clients that she would, on receipt of a full refund of the monies paid over together with an amount for interest, withdraw all action against our clients and the captioned property.**

**To this end, our clients have negotiated a mortgage from Jamaica National Building Society on the premises to allow them to settle their indebtedness. We have a letter from the Building Society (copy enclosed) confirming that we will be paid the sum of \$948,000.00 on completion of the registration of the mortgage. Our instructions are to pay over to you an amount to be agreed from the proceeds of the mortgage.**

**Please contact us urgently with a view to settling the amount due to your**

client, after which we will ask you to arrange with Mr. Smart Bryan for the withdrawal of the caveat which he had lodged on behalf of Ms. Sinclair.

We look forward to your urgent and immediate response.

Yours faithfully,  
DERRICK DARBY & CO.  
PER:  
DERRICK J. DARBY”

7. By letter dated 18<sup>th</sup> March, 1996, **Exhibit 7** Mr. Darby wrote as follows:

“March 18, 1996  
Lancelot Clarke & Co.  
Attorneys-at-Law  
10 King Street  
Spanish Town  
St. Catherine

Attention: Mr. Lancelot Clarke, Snr.

Dear Sir:

Re: Blossom Sinclair & Leslie Tucker et al

We confirm our discussion of even date wherein we were advised that you will request that Mr. Smart Bryan prepare the Withdrawal of Caveat herein.

We ask that you do this as a matter of urgency since as we explained Mr. Leslie Tucker is very ill and obviously the mortgage proceeds to settle the debt to your client will only be paid out during his lifetime, not after his death.

Your urgent attention is anticipated.

Yours faithfully.  
DERRICK DARBY & CO.  
Per:  
DERRICK J. DARBY”

**St. Catherine**

**Attention: Mr. Lancelot I. Clarke**

**Dear Sirs:**

**Re: Blossom Sinclair v Leslie Tucker et al**

**We refer to the above and to previous correspondence therein. We regret the delay in replying but wish to point out that we have had several difficulties with the settling of the various debts of the estate of Leslie Tucker.**

**We are at this stage only just been placed in a position to settle the indebtedness of our client to Miss Blossom Sinclair. In this regard, we are able to pay the sum of \$800,000.00 inclusive of interest and costs in full and final settlement of the debt. You may recall that suit was filed and the sum claimed therein was \$746,129.00. The estate of Leslie Tucker has no funds to allow for the payment of any substantial interest on the said sum and we believe that it is in the interest of all the parties that this matter be settled rather than go to any unnecessary and costly trial.**

**We no look forward to your very early response.**

**Yours faithfully,  
DERRICK DARBY & CO.**

**Per:**

**DERRICK J. DARBY**

**encl.”**

9. Mr. Clarke deponed that he got no money from Darby, "not a thruppence". He again wrote requesting payment on the 10<sup>th</sup> March, 1999. That letter was tendered as **Exhibit 8**. That letter read as follows:

**"March 10, 1999**

**Messrs. Derrick Darby & Co.  
Attorneys-at-Law  
65 Barry Street  
Kingston**

**Attention: Mr. Derrick Darby**

**Dear Sirs:**

**Re: Blossom Sinclair vs Leslie Tucker et al**

**We ask that you deal with this matter urgently. Our client will soon take us to the Bar Association for neglect.**

**Yours faithfully,  
LANCELOT CLARKE & COMPANY**

**Per:  
LANCELOT CLARKE Snr.**

**LC/db"**

10. By letter dated 8<sup>th</sup> November, 1999 **Exhibit 10** Darby wrote as follows:

**"November 8, 1999**

**Lancelot Clarke & Company  
Attorneys-at-Law  
10 King Street  
Shop #2 Spanish Town Mall  
Spanish Town**



**Saint Catherine**

**Attention: Mr. Lancelot Clarke, Snr.**

**Dear Sir:**

**Re: Blossom Sinclair & Leslie Tucker**

**We understand your client's frustration in this matter given the long history of this unsettled liability. Our file however, shows a clear indication of an intention to settle by way of our letter to you dated October 21, 1998.**

**To this day, your response has been to meander to no clear conclusion about the sum which your client is willing to accept.**

**Regarding your reporting the matter to the General Legal Council, we ask only that as a matter of courtesy you let us have a copy of our written undertaking to settle Mr. Tucker's liability. We have not been able to find an undertaking on our file.**

**Looking forward to your early response.**

**Yours faithfully,  
DERRICK DARBY & CO.  
PER:  
DERRICK J. DARBY"**

11. **Exhibit 11** was a copy of the Title to 107 Barbican Road the subject matter of the contract. Mr. Clarke deponed further that the caveat he had lodged was lifted to facilitate a second sale and a mortgage to secure \$630,000.00 on the clear understanding that the money deposited by Blossom Sinclair would be repaid.

12. The hearing adjourned and resumed on the 16<sup>th</sup> November, 2002. On that occasion Mr. Darby did not appear. The Committee satisfied itself that notice was duly posted to the last known address for Mr. Darby on the 23<sup>rd</sup> October, 2002 as required by

Rule 21 of the Fourth Schedule to the Legal Profession Act.

13. Further evidence was led from Mr. Clarke who said that the lifting of the caveat was done, **“on the advice, instructions commitment given by Mr. Darby. The contract was in order for transfer to be registered. He undertook to pay us the purchase money.”** The lifting of caveat was as a result of letter dated 18<sup>th</sup> March, 1996 **Exhibit 7** from Mr. Darby. He said further that in view of **Exhibit 9** he was expecting \$800,000.00. He stated that a response was done in writing and letters dated 29<sup>th</sup> October, 1998, 2<sup>nd</sup> November, 1998 and 7<sup>th</sup> January, 1999 **Exhibits 13, 14 and 15** were tendered in evidence. **Exhibit 15** was said to be the acceptance of Darby’s offer and read as follows:

**“January 7, 1999**

**Messrs. Derrick Darby & Company  
Attorneys-at-Law  
65 Barry Street  
Kingston**

**Attention: Mr. Derrick Darby**

**Dear Sirs:**

**Re: Blossom Sinclair v Leslie Tucker et al**

**We ask if you will let us know when we may expect the cheque in settlement.**

**Yours faithfully,  
LANCELOT CLARKE & COMPANY  
Per:  
LANCELOT CLARKE**

**LIC/db”**

14. A letter dated 11<sup>th</sup> January, 2000 from Darby was tendered as **Exhibit 16**. Mr. Clarke says he did respond and indicated he would accept. Insofar as the civil action was concerned it was not pursued given the arrangement with Mr. Darby.

15. In his submissions before the Committee, Mr. Rudolph Francis stated that Miss Sinclair paid \$746,129.24 and consented through her attorneys to that money being used to discharge a mortgage registered on the title. However, the sale to Miss Sinclair was never completed and Miss Sinclair requested the return of her money. Mr. Darby who at all times acted for the vendor proceeded to act in a subsequent sale. He said further that Mr. Clarke lodged a caveat to protect Miss Sinclair's equitable interest. This caveat was lifted says Mr. Francis on Mr. Darby's undertaking contained in letter dated 21<sup>st</sup> October, 1988 **Exhibit 9**.

16. In answer to the question from the panel as to what would be his submission if **Exhibit 9** was not in fact an undertaking, Mr. Francis said that the legal position remained the same because it would be dishonourable of the attorney not to pay the money. At the very least, submitted Mr. Francis the money should have been placed in a joint interest bearing account. He said it was a plain case of a failure to account as the second sale of \$3.9 Million was about double the price of the sale to Miss Sinclair. He said that a compensatory order was sought for interest after the discharge of caveat in February 1999.

17. Such then was the evidence and the submissions. This committee is conscious of the fact that Mr. Darby was absent for some part of these proceedings. It is therefore important that every consideration and absolute fairness be manifested in our deliberations. Any points he may have taken we must endeavour to elucidate on his behalf.

18. The Committee is also cognizant of its responsibility, when considering complaints of professional misconduct, not to make a finding adverse to the attorney unless the evidence is such as to make the Committee sure. The complainant in such matters has a burden of proving the allegations so that this committee is satisfied beyond a reasonable doubt. *Bhandari v Advocates Committee [1956] 3 ALLER 742, In re a Solicitor [1992] 2 AER 335.*

19. The first issue to be determined is whether or not Mr. Darby gave his professional undertaking. The Committee is cognizant that a professional undertaking to be effective need not use the word undertaking so long as the surrounding facts and circumstances demonstrate that that is what was intended.

The Law Society's guide to the Professional Conduct of Solicitors, 8<sup>th</sup> edition (1999) at p. 351 defines an undertaking as,

**“Any unequivocal declaration of intention addressed to someone who reasonably places reliance on it and made by:**

- (a) a solicitor or a member of a solicitors staff in the course of practice; or
- (b) a solicitor as 'solicitor', but not in the course of practice."

The undertaking may be oral or in writing and "need not necessarily include the word undertake." It must however be clear and unequivocal, In ***John Fox (a firm) v Bannister King [1987] 1 ALLER 737*** the solicitor wrote as follows:-

**"I see your letter of the 29<sup>th</sup> September and no doubt you and Geoff will sort out as to the £18,000.00 which is still in my account and which of course I shall retain until you have sorted everything out."**

The court held that this was a clear unequivocal statement that the money would be retained and constituted an undertaking which was breached by the payment out to the client of those monies. *Per Lord Justice Nicholas, at p. 741.*

**"When in these circumstances Mr. Bannister wrote to Mr. Fox in the terms of his letter of 30<sup>th</sup> September he made to Mr. Fox a clear and unequivocal statement that he would not part with the sum of £18,000.00. I can see no reason why Mr. Fox was not entitled to rely on that as a commitment by Mr. Bannister.....Further, that was a commitment given by Mr. Bannister in his capacity as a solicitor, for it was in that capacity he was holding the £18,000.00 in question."**

20. On the other hand the court has declined to apply a punitive sanction when the undertaking did not involve a breach of trust but was in the nature of a debt. Civil action was recommended. In that case, ***Geoffrey Silver & Drake (suing as a firm) v Thomas Baines [1971] 1 ALLER 473***, an attorney in the defendant firm (one H.C. Batts), gave the following undertaking,

**“In consideration of you handing to me the sum of £4,000.00 we hereby undertake to repay the said sum to you together with interest at 2% a month on the 21<sup>st</sup> day of May, 1969, and at the same time we hereby undertake to pay to you the sum of £4,500.00 for Mr. Izzet on you handing to me the deeds of 21 Westminster Road N.9 on or before the said date.”**

The sum was not paid and upon demand made to the leader of the firm liability was denied. On application for a summary enforcement by the court *Lord Denning MR.* said,

**“But this case is very different from either of those cases. The solicitor here was not holding money in his hands at all. All that happened was that Mr. Batts received money and paid it over to a client, Mr. Izzet, and promised to repay it to Mr. Silver. It was an undertaking to repay money lent. That is all.....That is not an undertaking ‘in his capacity as a solicitor.’ In any case, however, this is not a case in which the court should exercise its summary jurisdiction. The court has a jurisdiction which it will only exercise in a clear case. This is not a clear case....I should have thought it was very arguable whether Mr. Batts had any implied or ostensible authority.”**

21. The evidence before this Committee is not sufficient to satisfy us so that we are sure Mr. Darby gave or intended to give his professional undertaking. In this regard the Committee is not satisfied such that it is sure that Mr. Darby gave an undertaking to Mr. Clarke in return for the lifting of the caveat. The letters relied upon by Mr. Francis do not use the word undertaking. Further, it would have been the easiest thing for Mr. Clarke to have stated in a letter at the time of lifting the caveat that the caveat was being lifted pursuant to Mr. Darby's professional undertaking. In fact the word undertaking plays little part in the correspondence and Mr. Darby at all material times described the

situation as a debt due by his client. Indeed he repeatedly denies giving an undertaking. He promised to pay as soon as an agreement as to interest is arrived at. This further suggests that there was uncertainty as to the amount due, a further reason to doubt the existence of a professional undertaking. The promise was neither clear nor unequivocal, was it to refund the deposit from the proceeds of the second sale or was it to repay \$800,000.00? It is not without some moment that Mr. Clarke's letter of the 7<sup>th</sup> January, 1999 (**Exhibit 15**) which purports to accept the offer contained in the letter of the 21<sup>st</sup> October, 1998 merely asks when the cheque "in settlement" is to be expected.

22. Neither does this Committee see that there has been a failure to account. The initial deposit was used with Miss Sinclair's consent and the consent of her then attorneys to discharge the mortgage. This was done in expectation of the sale being completed. There was therefore no money in the possession of the attorney for which an account was to be given to Mr. Clarke or his client.

23. We therefore make the following Findings of Fact:

- (a) Miss Blossom Sinclair entered into a contract to purchase land in or about November 1992.
- (b) The purchase price was \$1.2 Million of which she paid \$746,129.24 by way of deposit. By and with the consent of Miss Blossom Sinclair and her legal representative that deposit was subsequently used to clear the mortgage on the property. [In that regard see Exhibit 3 letter dated 29<sup>th</sup> September, 1994 from Lenworth Clarke & Co. to Mr. Derrick Darby].

- (c) The vendor failed to complete and Miss Sinclair's attorneys lodged a caveat and eventually commenced proceedings for Specific Performance.
- (d) That after an exchange of correspondence between Miss Sinclair's attorneys and Mr. Derrick Darby it was agreed that the caveat would be lifted to enable the vendor to obtain a mortgage and thereby repay the amount due to Miss Sinclair. [Letters dated 8<sup>th</sup> February, 1996 Exhibit 12; 18<sup>th</sup> March, 1996 - Exhibit 7].
- (e) No undertaking in this regard was solicited or obtained from Mr. Derrick Darby.
- (f) The Caveat was lifted to facilitate the grant of a Mortgage for this purpose.
- (g) That by letter dated 21<sup>st</sup> October, 1998 Mr. Darby indicated that he was in possession of \$800,000.00 and that he was on his client's behalf prepared to pay that amount in full satisfaction of the claim, interest and costs.
- (h) That this offer was orally accepted but that that amount was not paid over notwithstanding several letters requesting the payment.
- (i) That Miss Blossom Sinclair was at all material times separately represented by her own attorney.
- (j) The vendor or his estate who was at all material times represented by Mr. Derrick Darby entered into another agreement for sale for a price of \$3.9 Million to another purchaser. That transfer was registered on the 16<sup>th</sup> February, 1999 but we have no evidence of the date of that sale agreement.



- (k) That there was no professional undertaking given by Mr. Darby for the repayment of the deposit or for the payment of \$800,000.00 and further that he held no money on trust for Miss Sinclair or for which he had a duty to account to her. That money was held on behalf of his own client for the purpose of settling his client's indebtedness to Miss Sinclair.
- (l) We make no findings as to what has happened to the money there being no evidence in that regard.

24. The absence of a professional undertaking and the finding that there was no failure to account to Miss Sinclair is not an end of the matter. This Committee is charged with a responsibility to maintain professional standards.

25. The Legal Profession (Canons of Professional Ethics) Rules sets forth the ethical rules by which the conduct of attorneys may be judged.

Canon 1(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 VIII provides very useful guidance to attorneys,

**“Where in any particular matter explicit ethical guidance does not exist, an Attorney shall determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the Legal System and the Legal Profession.”**

26. A failure to act according to Canon VIII when there is no express guidance can in certain circumstances be dishonourable to the profession. In other words if an attorney acts in a manner that does not promote public confidence or rather reduces or diminishes public confidence in the profession then he is very likely to be acting dishonourably.

27. In the instant case Mr. Darby acted for the vendor. He, on her behalf, received the deposit for the sale. He, with the purchasers consent, used that deposit to clear the mortgage knowing that the purchaser did this in expectation of completing the sale. Mr. Darby continued to act for the vendor when that sale was not completed and also acted for the vendor in a subsequent sale of the same property to someone else for a higher price. This was done without a refund of the deposit paid by Miss Sinclair. Mr. Darby continued to act when the caveat lodged by Miss Sinclair's attorneys was lifted in order to facilitate a mortgage. This was to Mr. Darby's certain knowledge in the expectation that the deposit would be repaid from the proceeds. Mr. Darby continued to act in the matter and yet failed to ensure that his client made this refund.

28. The failure to repay the first deposit was unlawful, as being in breach of contract. So too was the failure to repay after the caveat was lifted and when the second sale was completed. There was at the very least a breach of a quasi-contractual duty to return money paid on a consideration which had wholly failed.

29. Is the attorney who is at all material times fully cognizant of the breach of the first contract, the entry into the second and the failure to refund the money, acting honourably? Does such conduct promote public confidence in the profession or does it tend to diminish public confidence?

30. It is the view of this Committee that such conduct is not honourable. The integrity of the profession is affected when an attorney continues to act and thereby facilitates such unlawful acts. It is the duty of the attorney to advise his client to act lawfully. If the client insists on an unlawful course of conduct it is the duty of the attorney to withdraw. Moreso, where the attorney is aware of a lawful debt which the client has in breach of contract incurred but refuses to settle. Such conduct by an attorney would tend to diminish public confidence in this honourable profession.

31. We are bolstered in this view by the recent decision of this Committee in *Redhi v Wellesley, Complaint #33/99* decided 10<sup>th</sup> May, 2002. In that matter the attorney acted for the vendor in the first sale and continued to act in the second sale without informing the purchasers and without immediately returning the deposit. By the time the first purchasers were advised it was too late for them to take legal action or lodge a caveat. In giving judgment the Committee said,

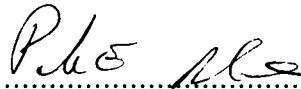
**“We repudiate the notion that an Attorney in doing his best for his client should participate or indulge in deception, or that it is permissible to pursue a course of conduct on his client’s behalf which amounts to a breach of his client’s contractual obligations, and particularly where, as in the instant case the contract charged the Attorney with the responsibility for overseeing completion of the**

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 agreement on his client's behalf by providing he had carriage of sale and permitting him to use the deposit paid by the Complainants for the purpose of <sup>Stamp 19</sup> stopping the agreement. The proper course for an attorney in that position who is instructed that his client does not intend to honour the contract is to terminate the retainer and cease acting and we do not conceive that an attorney who withdraws in such circumstances could be accused of a breach of duty by the client who insists on a course of conduct which violates contractual obligations."

32. We therefore find the attorney Derrick Darby guilty of conduct which constitutes misconduct in a professional respect contrary to Canon I (b) and Canon VIII (d). He is therefore subject to an Order pursuant to Section 2 (4) of the Legal Profession Act.

33. This Committee notes that in his letter of the 21<sup>st</sup> October, 1998 (**Exhibit 9**) Mr. Darby reported to Mr. Clarke that he had been placed in a position to settle the indebtedness. The clear meaning of the letter is that Mr. Darby's client had entrusted that sum to him. There is no evidence to indicate a change in that state of affairs, nor did Mr. Francis lead evidence, as well he might, from Mr. Darby's client that the money had not been retrieved. It may also have been a cause for serious enquiry had Mrs. Sinclair pursued the legal action against Mr. Darby's client (or his Estate). In the event this was not done and this Committee is left only with evidence that Mr. Darby admitted receiving money and his admission to us before the commencement of proceedings that the debt was his to honour. Nevertheless, and as there is no complaint from Mr. Darby's client, to whose account that money would have been held, this Committee will not and does not find it necessary to embark any further on that enquiry.

- (b) That Mr. Derrick Darby is hereby ordered to pay to Miss Blossom Sinclair by way of restitution the sum of \$746,129.24 with interest thereon at a rate of 12% per annum from the 21<sup>st</sup> October, 1998 to the date of payment.
- (c) That Mr. Derrick Darby do pay costs of \$75,000.00 to Miss. Blossom Sinclair.



.....  
PAMELA BENKA-COKER, Q.C.



.....  
GLORIA LANGRIN



.....  
DAVID G. BATTS