

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

Complaint # 175 of 1986

FREDRICK SCOTT

COMPLAINANT

A N D

ELSIE A. TAYLOR

RESPONDENT

PANEL: Miss Hilary Phillips Q.C.
Mr. Clayton Morgan
Mr. Bert Samuels

The Complainant was unrepresented.

The Respondent was represented by Mr. Huntley and Dr. Diana T. Harrison

The matter had many trial dates and a long period commencing in 1998 and completing in 2001. Different points of law and procedure were taken which contributed to the period being protracted. Nonetheless we sincerely apologize for the delay in delivery of this judgement.

The Proceedings

The complaint commenced by way of form of application being filed by Fredrick Scott on the 8th day of January, 1997 in which he complained that Mrs. Elsie Taylor should be required to answer allegations set out in the Affidavit in support of the application in that the matters deponed to therein contained conduct unbecoming in her capacity of Attorney-at-Law.

The Affidavit in Support of the complaint was sworn to on the 13th day of January, 1997 and in the Affidavit Mr. Scott alleged the following:

- (1) That he had engaged the services of Mrs. Elsie A. Taylor on July 10, 1996.
- (2) That pursuant to that engagement he had handed to her cheque for Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00) and instructed her to act on his behalf to purchase a house in Harbour View.
- (3) Having handed her the cheque, when he returned to her office on August 12, 1996 he was told that Mrs. Taylor was out of office, off the island on vacation leave; that another Attorney was left to oversee her business whilst she was on leave.
- (4) That he made several visits to her office the last being on the 29th August, 1996 when he was informed that she was scheduled to return to work on September 2, 1996.
- (5) On September 2, 1996, the Complainant requested Mrs. Taylor to return his monies but she told him that she had handed the cheque over to Mr. Fred Brown on July 11, 1996 for him to endorse the same and return it to her. However, Mr. Brown had not done this.
- (6) On September 4, 1996, the Complainant reported the matter to the Fraud Squad.

- (7) The report to the Police not having been fruitful on the 13th June, 1997 the Complainant lodged this complaint with the Disciplinary Committee.

On the basis of the allegations made in the form of Affidavit as set out above, the Complainant stated that the Respondent:

- (i) had not dealt with his business with due expedition
- (ii) had acted with inexcusable and deplorable negligence in the performance of her duties
- (iii) had not accounted to him for all the monies in her hands for his account or credit although he had reasonably required her to do so.

The Complainant, therefore, charged Mrs. Elsie Taylor with having acted in breach of Canons IV(r), IV (s), VII (b)(ii).

On the 19th day of January, 1997, Mrs. Elsie Taylor swore to and filed an Affidavit wherein she deponed to the fact that:

- (1) She was an Attorney-at-Law
- (2) In July, 1996 Fredrick Scott engaged her services re the proposed sale to him of a property at 27 Reef Avenue, Harbour View.
- (3) Mr. Fred Brown, Attorney-at-Law of 60 Laws Street had Carriage of Sale. A copy of the Agreement for Sale was attached
- (4) Shortly after being engaged by Mr. Fredrick Scott she received Manager's cheque # 043574 in the amount of Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00 drawn by Jamaica National Building Society to Fred Brown as a deposit

- (5) That she spoke to one Mr. Porter a Real Estate Broker and said that she was not prepared to act in the matter if Mr. Fred Brown, Attorney-at-Law was involved in the transaction.
- (6) That Mr. Porter told her that Mr. Brown had said that he was in trouble with people's money and so he would ask her to handle all the money.
- (7) That it was upon that condition that she indicated to Mr. Porter that she would handle the matter as she would have no problem with the purchaser's money.
- (8) That Mr. Brown spoke to her and confirmed that he would allow her to handle the money
- (9) That she handed the cheque handed to her by the Complainant to Mr. Fred Brown, requested him to endorse it and let her have it "but he said that he could not let her have it."
- (10) She therefore called Mr. Porter and told him what had transpired
- (11) Four (4) days after handing over the cheque to Mr. Brown she left the island for vacation and returned at the end of August, 1996
- (12) On return from vacation she "was confronted by 2 reports"
 - (i) Mr. Brown's client had failed to sign the Agreement for Sale
 - (ii) Mr. Brown had encashed the cheque handed to her from the Complainant
- (13) That she was unable to contact Mr. Brown either at his office or at home
- (14) Eventually he was located and promised to return the money

- (15) At that time no part of the money had been returned
- (16) She believed that she had dealt with the business of the Complainant with due expedition.
- (17) That Mr. Brown as the vendor's Attorney-at-Law had
 - (i) a right to receive the cheque as well as
 - (ii) a duty to repay the same after the sale fell through

ORAL EVIDENCE

On the 24th January, 1998 the matter commenced and Mr. Fredrick Scott gave evidence.

Mr. Scott told the Panel that he had responded to an advertisement in the Sunday Gleaner in respect of a house for sale in Harbour View. He called Mr. Porter a real estate agent the Monday following. He indicated to Mr. Porter that he was interested in the house for his sister.

Mr. Scott made it clear. The house was being purchased for his sister. It was her money that was going to pay for it. He was the 'biggest one' so he was seeking it out for her, and was going to deal with it for her.

He said that his sister was aware of his actions at all times. In June, 1996 Mr. Porter, his sister and himself went to visit a house in Harbour View. He said they went to Mr. Porter's office and then to Laws Street, at Mrs. Taylor's office to make 'the necessary arrangements.'

Mr. Scott said the matter was discussed in detail with Mrs. Taylor. She was instructed to represent them as Attorney-at-Law 'to do the legal transactions in relation to purchasing the house.' Mrs. Taylor agreed to act on their behalf, he

said, so on the 10th July, 1996 he took the Manager's Cheque to her in the amount of Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00) made out in the name of Fred Brown

He said that Mr. Porter had told him that Mr. Brown was the vendor's Attorney-at-Law and so he should make out the cheque accordingly. Mrs. Taylor made up the receipt and gave it to him.

The Receipt was tendered as Exhibit 1. It was dated 10th July, 1996 The money was stated to be received from Mr. Fredrick Scott for deposit on the purchase of 27 Reef Avenue, Harbour View, \$375,000.00 – signed by Elsie Taylor, Attorney-at-Law.

The Agreement for Sale was next tendered as Exhibit 2. Mr. Scott could not remember if he had received the Agreement the same day or at a later date.

Mr. Scott said he took the Agreement for Sale to his sister's mother. He read it all to his sister. She signed once on her own behalf and on behalf of the other purchaser.

He took the Sale Agreement back to Mrs. Taylor and she advised him to return in two (2) weeks but when he returned to her office he learnt that she had left her office and Jamaica and gone on vacation. He said that although another Attorney had been left to deal with her business in her absence, he was told to wait on Mrs. Taylor's return to office.

Mr. Scott said he should have made a further payment of Twenty-Five Thousand Dollars (\$25,000.00) on the 13th August, 1996 but he was told to wait on Mrs. Taylor to come to pay that sum.

When she returned to office Mr. Scott went to check-up on his transaction and was told that the people had not signed the Sale Agreement.

Mrs. Taylor told Mr. Scott that she had given Mr. Brown the money. The papers had not been signed.

Mrs. Taylor told Mr. Scott to go to Brown.

She said she could not as he would kill her.

Mr. Scott said that his response was that he was just a small person so what then would this Mr. Brown do to him?

He said he did not know Mr. Brown.

Mrs. Taylor also told Mr. Porter that the cheque had been changed in less than 24 hours.

Photocopy of the Manager's Cheque showing the endorsement was tendered in evidence as Exhibit 3.

Mr. Scott said he went to the Fraud Squad and reported the matter. His sister also gave a statement.

Mr. Scott said he returned to Mrs. Taylor's office at a later date and asked for a refund of his monies. He said she had not accounted for monies given to her. She had acted in inexcusable negligence in the performance of her duties and especially had made no effort to resolve the matter.

He spoke of an unfortunate incident at Mrs. Taylor's office with the police.

He said that he had not received any monies from Mrs. Taylor in her office and no letter of explanation from her office either.

In cross-examination, Mr. Scott's constant statement was that he gave Mrs. Taylor, a cheque which she claimed she had given to Mr. Brown to have it endorsed, yet he (Mr. Brown) went away with it. In his view she should have kept it until everything went through.

He maintained that his sister had obtained the cheque and given it to him to conduct the business on her behalf. It was in the name of Fred Brown.

He said that he was surprised that Mrs. Taylor handed over the cheque to Mr. Brown 'because no papers were signed'. He expected the vendors to have signed the Agreement for Sale. It was suggested to Mr. Scott that his efforts to obtain the monies from Mrs. Taylor with the assistance from the Police was 'chucking badness'.

Mr. Scott's response was that he had worked at Singer for 24 years and did not "chuck badness". He went to Mrs. Taylor's office with 4 – 5 Police in an effort to get back his money.

In fact Mr. Scott insisted that Mrs. Taylor had a cheque for Mr. Brown, but she could not just take it and give it to anyone, she should have waited until after the Agreement was signed. Mr. Scott indicated what he was going through. He said that he had to sell his house to give his sister back her money

Mr. Scott said that the first time he saw Mr. Brown was at the Half-Way-Tree Court. He insisted that his business was with Mrs. Taylor not Mr. Brown.

In further cross-examination on the 10th October, 1998 Mr. Scott reiterated that he did not know Mr. Fred Brown as an Attorney-at-Law, so he could not say whether he was a good or bad Attorney or a fit person to practice law in Jamaica.

Mr. Scott insisted that the transaction should have been completed in 90 days and Mr. Brown would have had to endorse the cheque first to be encashed lawfully, but he would not have expected that to be effected without a signed Sale Agreement.

In re-examination, he said that his sister had only seen Mrs. Taylor once and he would wish her to be present to put the lie to the suggestions being made on behalf of Mrs. Taylor. He asked Mr. Huntley to tell Mrs. Taylor that she had been retained to act on his behalf and do so to the best of her ability. He said that he had not been telling any lie on her, but he believed that Mrs. Taylor and Mr. Brown were in it 'fifty-fifty' He said that Mrs. Taylor had told him that the place could not be sold because it was a wife and husband matter, which was tied up in the Supreme Court.

On the 4th November, on a request for further questions in cross-examination Mr. Scott indicated on oath that he had received some money from Mr. Brown at the Half-Way Tree Court but he could not say if Mr. Brown had been charged with specific reference to the cheque, the subject of the matter before the Panel.

Then Miss Beverley Scott gave evidence:

She confirmed that Mr. Scott was her brother and that he was responsible for all the arrangements for the purchase of the house.

Miss Scott confirmed also that Mr. Porter had spoken with her brother and herself. That the three (3) of them had visited the premises, the subject of the purchase. She said that she had been told to obtain the sum of Three Hundred and Seventy Five Thousand Dollars (\$375,000.00), which she did by way of a

Manager's cheque. She gave it to her brother at her mother's house. She identified the other person's name on the Sale Agreement as being that of her cousin Denise Lewis.

She identified one of the signatures on the Sale Agreement as her own. Miss Scott confirmed that she had received three (3) sums with regard to the return of her money; one for Eighty Thousand Dollars (\$80,000.00) collected by her brother, and Thirty Thousand Dollars (\$30,000.00) collected by her. There was a further sum but she could not recall the exact amount.

On the 19th November, 2000, Mr. Scott confirmed that the third amount was Thirty-Three Thousand Dollars (\$33,000.00) all sums were received at the Half-Way-Tree Court.

In cross-examination she had the following to say:

Miss Scott said that it was Mrs. Taylor who told her brother to make the cheque out to Mr. Brown, but she said that if Mrs. Taylor knew that Mr. Brown was in problems, she should not have given it to him.

She further stated that although she wanted the transaction to be completed quickly she was unable to confirm that that meant handing over the cheque to Mr. Brown quickly. She said that Mrs. Taylor had never told her what she had done with the money, she was only seeing Mrs. Taylor for the first time in the disciplinary proceedings.

In answer to the question posited to her.

"Do you know if Mrs. Taylor kept the cheque?"

Miss Scott said "I was told that she gave it to the lawyer and he changed it at the gas station. We knew that when we went to the Police Station that he was locked up."

In answer to the question 'you knew that Mrs. Taylor did not keep any of the money? She said "I don't know when the Lawyer changed the money how the money go. So I do not know." However, she did confirm that some of the money had been repaid to her from Mr. Brown at the Half-Way-Tree Court House.

She confirmed that Mr. Brown was tried for the money. She stated her position which was that Mrs. Taylor should not have paid over the money if she knew that Mr. Brown was in problems. She just wanted the refund of the money so that 'she and her mother can live comfortable'.

That was the end of the evidence given in this case for the Complaint.

Mr. Huntley then made a no-case submission formulating it thus:

The complaint against Mrs. Taylor had not been made out. He said that the complaint against Mrs. Taylor was in three (3) sections.

Firstly; that she had not dealt with his business with due expedition. The clear answer to this, it was submitted was that a cheque had been paid over to Mr. Brown within 24 hours of receipt by Mrs. Taylor, and that was expedition.

Complaint # 2: That Mrs. Taylor had acted with inexcusable and deplorable negligence.

The clear answer to this, it was submitted is that the cheque was made out to Mr. Brown. It must be presumed that he was known to be an Attorney-at-Law. That

was commonsense. The cheque was made out to Mr. Brown as he was intimately connected with the matter. There was therefore not only expedition in the handing over of the cheque but it was handed over to whom it was made out and the person who was acting on behalf of the vendors.

Finally: Mrs. Taylor has not accounted for all monies in her hand on behalf of the complainant. The clear answer to this allegation, it was submitted was that the allegation was that only that cheque was ever handed over to Mrs. Taylor and the complainant knew that it was encashed at the gas station. Mr. Huntley submitted that accounting means 'tracking the journey of the money'. Since the Complainant and his sister knew that the cheque had been transferred to Mr. Brown, that was the accounting, since there was no evidence of any other money coming into her hands, there is no other evidence to support this charge.

Mr. Huntley was asked to address the Panel on the stage when the cheque should be handed out to the vendors' Attorney.

His response was that there was an Agreement for Sale. It was signed by both sides and the cheque was handed over to the vendors' Attorney. (This however was not correct from the evidence as Exhibit 3 does not disclose any signature of the vendors, and there was no oral evidence adduced to that effect either.) In any event, Mr. Huntley further submitted that it is not fatal as the cheque was handed over, and it was handed over to the Vendor's Attorney. There was expedition and no negligence as the status in the matter of the person to whom the cheque was given had been provided.

At the end of the submissions the Panel ruled that the Respondent must answer all three (3) allegations.

The matter was adjourned to the 27th January 2001.

On that day 27th January, 2001 Mr. Huntley commenced the hearing by asking that the matter be dismissed.

He referred to the Complainant's Affidavit in Support of the application by Mr. Frederick Scott and submitted that 'any person aggrieved' with regard to S. 12 of the Legal Profession Act, means a person who is a client of the Attorney.

He further submitted that Mr. Scott had no business with Mrs. Taylor. The business was with Miss Beverley Taylor and Miss Denise Lewis, who are stated in the Agreement for Sale. Mr. Scott was only a messenger.

Mr. Huntley further argued that there was no nexus between Mrs. Taylor and Mr. Scott. On inquiry from the Panel as to whether a person who instructed the Attorney acting for and on behalf of a third person cannot have the requisite nexus to be a person aggrieved under S. 12(1) of the Legal Professions Act, Mr. Hunter insisted that the only person with the requisite locus standi was the client of the Attorney, whom the Attorney could sue for his/her fees. Further, Mr. Huntley said that since Miss Scott was in Jamaica, available, that is, not being ill or incapable of dealing with her matter and therefore she should have been the person to lodge the complaint.

Mr. Huntley maintained that if that were not the case, there could be a multiplicity of claims arising out of one transaction with the Attorney, which the Act did not encourage.

Mr. Huntley submitted that Mrs. Taylor only owed a duty of care to her clients and, in this case, in spite of the closeness of Mr. Scott to his sister, Beverley Scott and Miss Denise Lewis, he still remains only an agent and the sufficient nexus did not arise. He is not a victim. He remains a messenger carrying a cheque. In keeping with those submissions he maintained that Mrs. Taylor would have no duty to account to him for monies in her hands.

The fact that Mr. Scott indicated that he had to sell his house to repay his sister did not imbue him with the required nexus either.

Finally, Mr. Huntley submitted that since Mrs. Taylor was the Attorney simply handling a cheque for Fred Brown which she was obliged to pass over to him and as she could not have endorsed the cheque herself, and there had been no stipulation by any 'client' to do so, the complaint must fail.

Mr. Huntley relied on the case ***Diggs-White (Leslie L.) v Dawkins (George R.) (1976) 14 JLR, 192***

Mr. Huntley also relied on the case of ***Kenneth McLeod v Lucilda McLeod (1986) 23 JLR, 103*** for that proposition.

Mr. Scott then made his submission. He stated that he handed a cheque over to Mrs. Taylor. He did not give her any instruction to pay it over to anybody. He was given a receipt by her. The Sale Agreement was drafted and given to him to take to his sister to have it signed and returned to Mrs. Taylor which he did. He queried why the cheque had been handed over without any signed document being given to her in return.

The Panel indicated that as no notice had been served indicating that this point would be taken, the Panel intended to reserve its decision on the submissions.

The Panel then asked Mr. Huntley about the Affidavit on file from the Respondent sworn to on the 15th day of January, 2001 which was filed with the office of the Disciplinary Committee the following day. Mr. Huntley informed the Panel that the Affidavit had not been served on Mr. Scott. He also indicated that he did not intend to make any submission on the matters raised therein, as the Affidavit spoke for itself.

The Affidavit alleged that on the last date for hearing of the matter; 18th November, 2000 one Mr. Porter had been present at Court as he was to give evidence on her behalf. The matter was adjourned for a short period as Mr. Scott was not feeling well. Mr. Porter was alleged to have represented to Mrs. Taylor that he overheard a conversation between Mr. Scott and Mr. Bert Samuels, one of the Panelists.

Mr. Porter is also supposed to have heard Mr. Samuels say that the Agreement for Sale was not good as it was not signed by Mrs. Taylor.

Mrs. Taylor also deponed that after the matter adjourned, on that day, as she came out of the room she heard Mr. Scott saying that "I am going to get justice – I must get through because Mr. Bert Samuels is the one who makes the decision – Next time I must get the money because the judge is the one who makes the decision."

As a consequence of the above incident Mrs. Taylor further deponed that the conduct of Mr. Samuels was unjudicial and evidenced bias. She did not believe

she could get a fair hearing and she wished Mr. Samuels to be recused and that the matter should commence de novo.

Mr. Huntley was asked why he did not deal with this application at the beginning of the hearing and not wait until submissions in relation to the locus standi had been made. His incredible response was that if the ruling was not in the Respondent's favour then he intended to use the Affidavit. If the ruling was positive then he would not have had to deal with the Affidavit. He then said he thought that the Panel would have dealt with that application at the beginning !!!

Mr. Scott was asked about the incident and said **on oath** that when his sister was feeling ill on the last occasion he went outside with her with the agreement of the Panel. He said he saw Mr. Porter who spoke with him and his sister and said that he hoped that they got back all their money. Mr. Scott vehemently denied that he had any discussion with Mr. Samuels. He said he did not know which of the members of the Panel was Mr. Samuels, which one was Mr. Morgan. He had not spoken to Mr. Samuels. He did not wish to cross examine Mrs. Taylor and he did not wish any member of the Panel to be recused. He wanted the Panel to continue to complete the matter.

The meeting was adjourned and was resumed on the 20th October, 2001 for the Panel to give its ruling on the two (2) outstanding issues.

The Panel ruled on the issue of whether Mr. Samuels was to be recused as follows:

"The Affidavit of Mrs. Taylor makes a specific reference to the statement which is presumably the one which she argues grounds the application for

one of the members of the Panel to be recused on the basis of disclosed bias. However, the statement is allegedly made by one Mr. Porter and is as follows:

Para. 7 “Mr. Porter also reported to me and I verily believe that he heard Mr. Samuels tell Mr. Scott that the Agreement for Sale which was tendered as evidence Exhibit 3 in the matter is not good because it was not signed by me.”

Mr. Porter, however, did not give any evidence by way of Affidavit or viva voce. We find this extraordinary. This is a serious allegation. We are not prepared to accept this allegation **of impropriety** by way of an “I verily believe” without Mr. Porter being tested on the same.

Mr. Scott has denied on oath making the statement. He said he did not know Mr. Samuels different from Mr. Morgan. Perhaps Mr. Porter entirely misunderstood what he is supposed to have said he heard, or was unable to identify the person who made such a statement , if any in fact were made.

The other statements attributed to be made by Mr. Scott have also been denied by him.

We do not feel that there is any credible evidence before us for any member of the Panel to be recused.

This matter has taken a very long time to reach this stage. We think it is in the interest of justice that we proceed as presently constituted to have the matter determined.”

Although not stated in the ruling it must be stated here that we were also of the view that the application, made as it was after the application in respect of jurisdiction and the manner in which it was made, lacked any sincerity whatsoever.

Mr. Huntley then indicated that he had further submissions to make on the basis that the Panel had no jurisdiction. He handed up two (2) authorities:

(i) ***Ex-parte Sidebotham. In re Sidebotham***

1879 Ch. D Vol. XIV. 458

(ii) ***Buxton and others v. Minister of Housing and Local***

Government

[1961] 1 Q.B. 278

The Panel ruled that:

Under S. 12 of the Act, the person who has locus standi is 'any person aggrieved'. Having perused the evidence and on a literal interpretation of the statute, the Panel found that Mr. Scott fit the description of a person aggrieved, and he had locus standi herein, and the Panel indicated that Mrs. Taylor must therefore answer to all three (3) charges.

Mr. Huntley then indicated that Mrs. Taylor would not give any evidence in the matter and was not calling any witnesses. She relied on the submission of her Counsel and her Affidavit sworn to on the 19th January, 1998.

Mr. Huntley then addressed the Panel. He stated that Mr. Scot did not fall into the description of Claimant and again reiterated that he was not an "aggrieved

person” within the Act. He said that the receipt that Mr. Scott was given from Mrs. Taylor was received on his sister’s behalf, and he would not be entitled to any refund even though the receipt was in his name. He repeated his earlier submissions. He said only Miss Beverley Scott and Miss Denise Lewis could bring this complaint and that Mr. Scott was merely a messenger.

At the close of these submissions and those of Mr. Scott the matter was adjourned cur advult.

The issues, therefore, were:

- 1) Did Mr. Scott have the locus standi to bring these proceedings?
- 2) Could Mr. Scott in the circumstances of this case be considered a client or someone with sufficient nexus to Mrs. Taylor to make the complaints as previously set out.
- 3) Has Mrs. Taylor acted with due expedition.
- 4) Has Mrs. Taylor acted with inexcusable and deplorable negligence or neglect
- 5) Has Mrs. Taylor accounted for all monies in her hands to the account of Mr. Scott the Complainant when called upon to do so.

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The Burden and Standard of Proof

The burden of proof is on the Complainant to prove the allegations made against the Respondent. The standard of proof applicable once there is any claim of deceit or moral turpitude is a high standard of proof and not a mere balance of probabilities.

In this case the Complainant alleges that he gave Mrs. Taylor, the Respondent a cheque in the amount of Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00) as deposit on a Sale Agreement. The Sale Agreement has never been signed by the vendors. The cheque has been handed over to the vendors' Attorneys. The money has not been returned to him.

In this case, the Panel therefore should apply the criminal standard of proof, that is to say, proof to the point where the members feel sure that the charges are proven and proven beyond reasonable doubt.

See: *Re Bhandari & Associates 1956 All ER. 742 @ 744*

See: *Re Solicitor 1992 2 All ER. 35*

Findings of Fact

There were very few disputed facts in this case. The Complainant gave oral evidence. His sister did the same, supported by three (3) exhibits. The Respondent did not give any viva voce evidence but chose to rely on her Affidavit sworn to on the 19th January, 1998 and submissions made on her behalf at the end of the Complainant's case.

We make the following findings of facts therefore:

1. Property at Harbour View registered at Volume 962 Folio 18 was advertised for sale.
2. The Complainant, Mr. Scott responded to the advertisement and called Mr. Porter, the Real Estate Agent.

3. He was always doing business for his sister Beverley Scott. In this matter he acted as the agent for his sister throughout. Mr. Scott had the full authority to conduct the business on behalf of his sister. Mrs. Taylor dealt with him solely as the person who engaged her services.
4. In June, 1996 Mr. Porter, Mr. Scott and Miss Scott went to visit the property in Harbour View.
5. Mr. Porter and Mr. Scott attended the offices Mrs. Taylor, Laws Street and discussed the matter in detail. Mrs. Taylor was instructed to represent Mr. Scott as an Attorney-at-Law in the land transaction.
6. Mrs. Taylor agreed to act on their behalf.
7. On the 10th June, 1996 Mr. Scott took the Manager's cheque to Mrs. Taylor's office in the amount of Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00).
8. The cheque was made out in the name of Fred Brown.
9. This was done on the instruction of Mr. Porter who advised Mr. Scott that Mr. Brown was the vendors' Attorney-at-Law.
10. Mr. Scott was given a receipt by Mrs. Taylor. The receipt was made out in his name for the amount of Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00) which amount was stated to be for the purchase of 27 Reef Avenue, Harbour View.
11. Mr. Scott was given the Agreement for Sale by Mrs. Taylor to have the same executed by Miss Scott.

12. He took the Agreement for Sale to his sister and it was executed by her on her own behalf and on behalf of the other purchaser.
13. The Sale Agreement was returned to Mrs. Taylor and Mr. Scott was asked to return in two (2) weeks.
14. When Mr. Scott returned, he heard that Mrs Taylor had gone on vacation.
15. When Mrs. Taylor returned Mr. Scott was told that the vendors had not signed the Agreement.
16. Mrs. Taylor had given the cheque to Mr. Brown.
17. Mrs. Taylor said she could not go to Mr. Brown as he would kill her.
18. Mrs. Taylor also said that the cheque had been changed in less than 24 hours.
19. Mr. Scott went to the Fraud Squad and reported the matter.
20. He had an unfortunate experience in Mrs. Taylor's office with the Police.
21. Mr. Scott did not understand why the cheque was handed over without the Agreement being signed.
22. Mrs. Taylor had concerns about acting in the matter if Mr. Fred Brown was involved in the matter.
23. Mrs. Taylor had some information about Mr. Brown being 'in trouble with people's money.'
24. That it was on the basis that she Mrs. Taylor would handle the money that she undertook the transaction.
25. That she handed the cheque to Mr. Fred Brown and requested that he endorse it and return it to her but it was not returned.

26. Mr. Scott had to sell his own house to repay his sister the funds he had paid over on her behalf to Mrs. Taylor.

Findings of Law

Did Mr. Scott have locus standi to bring these proceedings? Was he in all the circumstances someone with sufficient nexus to make the complaints against Mrs. Taylor?

Under S. 12 (1) of the Legal Profession Act, "any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an Attorney may apply to the Committee for the Attorney to answer allegations contained in an Affidavit....."

On this legal point, the Respondent relied on the cases cited supra, in **re: Sidebotham and Buxton v. Minister of Housing and Local Government**. In those cases the definition 'person aggrieved' was examined. But in those cases the Court found that the applicants were either not proper litigants or had no rights as individuals under the statute or none of their common law rights were being infringed or they were not aggrieved in the sense that they were not entitled to appeal. They could not, therefore, be said to have suffered a legal grievance. In **re: Sidebotham**, CJ James stated that the words 'personally aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, and a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or unlawfully affected his title to something."

In the leading text of **deSmith, Woolf and Jowell** on "Judicial Review of Administrative Action" in Chapter 2, there is reference to the definition of 'person aggrieved' and it is stated that these words are often used in statutes and form the basis of locus standi for the Courts. The authors take the view that the expression will vary according to the context in which it is found, and referred to the interpretation given the definition in the **re : Sidebotham** case as the narrow and unduly restrictive definition, given by the Courts from a time in the past. In the authors' view a wider approach to the expression has been given by the Courts in recent times.

In our view in the circumstances of this case, Mr. Scott was clearly a 'person aggrieved'. He acted throughout as the agent of the person who was also the purchaser in the transaction. Mrs. Taylor accepted the deposit for him and gave him a receipt in his name. He would have been entitled to a refund of those moneys paid if they had become available. Mrs. Taylor never at any time doubted his authority ^{to} ~~at~~ act. She certainly never said so. Further, Mr. Scott personally suffered as he has felt obliged to refund his sister funds which had been misappropriated whilst he acted for her and on her behalf. Mr. Scott had more than sufficient nexus to this transaction. He was not merely a messenger as Mr. Huntley would wish to have the Tribunal believe.

The cases of **McCalla v. Disciplinary Committee (1994) 49 WLR 213** and **White v. Jones1995 1 All ER** give assistance in this regard where in the first instance, the Hon. Mr. Justice Rattray's dicta refers to the wide application to be given the definition, and in the latter case, the House of Lords addresses the

'assumption of responsibility' in the wider duty of care owed by the Attorney and persons for whom he undertakes to effect professional work.

Has Mrs. Taylor acted with due expedition?

Canon IV (r) of the Legal Profession (Canons of Professional Ethics) Rules requires that "An Attorney shall deal with his clients' business with all due expedition"

As the Canon refers to the client's business, the duty is one which exists based on the relationship of attorney and client.

The facts of this case suggested that Mrs. Taylor recognized and accepted that she was dealing with Mr. Scott who gave her money in respect of a sales transaction which set out Miss Scott and Miss Denise Lewis as purchasers of a property. She recognized Mr. Scott as her client. In accepting the cheque as payment for the deposit she was acting as an Attorney-at-Law. Indeed, in paragraph 3 of her Affidavit of 19th January, 1988, Mrs. Taylor stated "In July, 1996 Fredrick Scott engaged my services re the proposed sale to him of a property at 27 Reef Avenue, Harbour View." In paragraph 5 of her Affidavit, she deponed "Shortly after I was engaged by Fredrick Scott, he handed me as a deposit, a Manager's Cheque No. 043574 for Three Hundred and Seventy-Five Thousand Dollars (\$375,000.00) drawn by....."

In fact Mrs. Taylor does not mention Miss Scott in her Affidavit at all.

The definition of client in the Webster's Unbridged Dictionary is:

"A person or company in its relationship to a lawyer, accountant, etc. engaged to act on its behalf or loosely a customer"

The definition of client is the Legal Profession (Accounts and Records) Regulations, 1999 is stated as follows:

"Clients include any person from whom or on whose behalf an Attorney in connection with his practice receives money or other property,"

which although promulgated in March, 1999 subsequent to the commencement of these proceedings can give guidance especially when it is consistent with the dictionary definition.

It is our considered opinion that all the facts of this case suggest that the Attorney/client relationship existed between the Complainant in this matter and Mrs. Taylor, and he was therefore entitled to require the Attorney to answer his allegations in respect of Canons IV(r) and VII(b)(ii).

Re : Canon IV(r)

In this case, Mrs. Taylor deponed to the fact that she had been told that Mr. Brown was in trouble with people's money. It appears that Mrs. Taylor was prepared to proceed with the transaction once it was confirmed to her from Mr. Brown that he would let her handle the money. Yet, in this case she handed the cheque over to him and although in her Affidavit she says she requested him to endorse it and return it to her, he did not. But what does she do? Within four (4) days she left the island on vacation and returned at the end of August. Six (6) weeks later. Mr. Scott did not receive this information until in September, 1996. Was this acting in due expedition in all the circumstances of this case?

Needless to say, Mr. Brown appeared to have converted the money to his own use. Only One Hundred and Forty-Three Thousand Dollars (\$143,000.00) has been repaid through criminal proceedings in the Half-Way-Tree Courthouse. In our view based on the fact that (1) cheque dated 5th July, 1996 (2) the receipt dated 10th July, 1996 (3) the cheque was encashed on the 12th July, 1996,

We can only conclude that Mrs. Taylor did not act with due expedition as very little effort was made by her either to obtain :

- 1) A return of the cheque
- 2) An Agreement for Sale signed by the Vendors herein
- 3) To advise her client of the situation so that he could have endeavoured to protect his own interests

This was a transaction which ought to have been completed in 90 days.

Re : Canon IV (s)

In the performance of his/her duties an Attorney shall not act with inexcusable or deplorable negligence or neglect."

Has Mrs. Taylor so acted in the circumstances of this case?

The obligations placed on an Attorney-at-Law, once retained, is to exercise that reasonable care and skill which could be expected from a normally competent and careful practitioner. These obligations in relation to this particular case
----- would have been: -----

- (i) to ensure that the funds were submitted to the Vendor's Attorneys-at-Law in exchange for an executed and binding Agreement for Sale relative to the subject matter of purchase
- (ii) to carry out the work with the skill and care which a normally competent practitioner would bring to it.

These duties of care are set out in Canadian case of *Tiffin Holding Limited v Millican* 49 DLR (2nd) 216

Of course the extent and scope of the duty of care must depend on the particular circumstances of each case.

The Privy Council case of **Edward Wong Finance Co. Ltd. v Johnson, Stokes & Master (a firm) 1984 1A..C. 297** has given some guidance in this area of the law. In that case Attorneys acting for the mortgagees of purchasers of certain premises adopted 'the Hong Kong Style' of practice in closing the transaction, to wit, handing over the proceeds of the mortgage to the Vendor's Attorney on his undertaking to forward within ten (10) days of receipt of the mortgage documents all the relevant documents of title duly executed and to register the assignment of the premises from the Bank to the owner of the premises. The Vendor's solicitor without honouring his undertaking left Hong Kong with the money. The Attorneys for the mortgagee were held to be negligent. The Law Lords in the Privy Council reversed the judgment in the Court of Appeal and restored the judgement of Penlington J. stating the following:

- (i) the risk of loss to the mortgagees of placing the money at the disposition of the vendor's solicitor was a foreseeable risk, namely the risk of embezzlement by him;
- (ii) the risk could have been avoided without undermining the basic features of the 'Hong Kong Style' of completion by taking precautions to ensure that the appellants would have an unanswerable claim against the other side for specific performance of that party's obligation.
- (iii) In the case of property already subject to a mortgage which was to be discharged, so much of the purchase price as was needed to discharge the prior mortgage could have been paid by cheque in favour of the mortgagee and its duly authorized agent and not by cheque in favour of the vendor's solicitor.

In the speech of Lord Brightman, he canvassed the risks inherent in the 'Hong Kong Style' of completion which to our knowledge, is that operated here in Jamaica.

Lord Brightman stated at pg. 304, in explaining the procedure which is adopted in the UK (which is by way of simultaneous exchange) stated that this procedure is merely on reflection - in the context of a contract for the sale of land a common sense principle, that in the absence of an agreement for credit, the purchaser's money is not handed over to the vendor or anyone else except in exchange for the delivery of the subject matter of the sale, whether it be a loaf of bread or a parcel of land.....". Their Lordships canvassed the 'Hong Kong Style' of

completion but stated at pg. 305 – 9 of the judgement that the fact that the vendor's solicitor was a one-man firm only recently established 'spelt danger'. Later on they spoke to whether there had been 'warning bells' to alert one to any danger in the completion miscarrying. Finally, Lord Brightman stated that in assessing whether the Attorney had fallen short in the standard of care owed their client, three (3) questions should be considered:

- (i) does the practice as operated by the Respondent involve a foreseeable risk?
- (ii) If so could that risk have been avoided?
- (iii) If so were the Attorneys negligent in failing to take avoiding action?

The Law Lords finally stated that the practice was one which depended on trust and was one of courtesy and convenience only which was only relevant to the Attorneys and not the client. Also, it is the Attorney who has the better opportunity to assess the gravity or remoteness of the risk involved in a particular case, and it is also the Attorney, and not the client, who has the necessary expertise to analyse and guard against the risk, for example, to take reasonable steps to ensure that the vendor's attorneys have authority to receive the purchase money, and to protect the clients in an action for specific performance. In the instant case, Mrs. Taylor has not given viva voce evidence. There is no evidence, therefore, of a conveyancing practice to hand over the 'deposit' as against the balance purchase money in the **Edward Wong Finance** case, to the vendor's Attorneys, not even on an undertaking for the production of the executed Agreement for Sale. There is no correspondence before us to indicate

that the cheque was given to Mr. Brown on even an undertaking to provide the Agreement. It was handed over for 'endorsement', in circumstances where Mrs. Taylor knew, as she deponed in her Affidavit, that Mr. Brown was 'in trouble with people's money". We cannot think of any stronger 'warning bells!'

Mr. Scott said that Mrs. Taylor did not tell him to make out the cheque in her name. In the circumstances of the case, that is what she ought to have done and not part with the same until she could ensure that the document (Agreement for Sale) had been executed by the vendor. The purchaser was not protected in such a way that she could seek the remedy of specific performance in the absence of a signed agreement for sale which her Attorney failed to secure before parting with the cheque. Mrs. Taylor was clearly guilty of negligence. But inexcusable or deplorable? We are mindful of the dictates of the Hon. Mr. Justice Graham Perkins in the Diggs-White case who seemed to hold that a sorry lack of competence, and indeed the incompetence demonstrated in that case, did not amount to professional misconduct. However, that case is clearly distinguishable as the Committee made a finding of negligence ^{as} that Complaint was not before it so a finding of professional misconduct could not properly have been made. Also the Canons were amended subsequent to that case so that acts of an Attorney-at-Law in the performance of his duties amounting to inexcusable and deplorable negligence are deemed to be professional misconduct. He also referred to the dicta in the Re: Cooke case. (1889 5 TLR 407).

We are also mindful of the dicta of the Hon. Mr. Justice Ross in McLeod v. McLeod case supra, with regard to the duties that the law imposes on Attorneys-at-Law and what constitutes professional misconduct and the approach that the Disciplinary Committee ought to take with regard to discerning what charge has been laid by a layman relative to the facts in respect thereof, to ascertain whether professional misconduct had occurred in an effort to ensure that the interest of justice has been served.

We also find it noteworthy that Counsel for the Defendant although focusing on the issue whether the Complainant had locus standi or the sufficient nexus to bring the complaint, gave no assistance whatsoever to the Panel, in the alternative, that is to say if he did, was the act of passing over the cheque, in those circumstances negligent or inexcusably so. Further the Respondent declined when called upon to use the opportunity of viva voce evidence to advance an explanation.

In the circumstances of the case, we find that Mrs. Taylor was guilty of inexcusable negligence.

Re : Canon VII (b) (ii)

“.....An attorney shall account to his client for all monies in the hands of the attorney for the account or credit of the client, whenever reasonably required to do so.”

In this case, Mrs. Taylor was obliged to account to Mr. Scott for the moneys she received from him. Mr. Scott had requested a refund of the moneys given to her. The cheque given to her, however, was in the name of Fred Brown so she could

not lawfully have lodged that cheque to her clients' account. She has not accounted to Mr. Scott for the moneys but she has explained what has happened to those funds. In this case she has not benefited from the use of those funds, but as a result of her actions she has not been able to refund those moneys to Mr. Scott when called upon to do so.

The evidence in this case shows that Mr. Brown encashed the cheque and misappropriated the funds. In fact he has refunded some of those funds, to wit, One Hundred and Forty Three Thousand Dollars (\$143,000.00). To date Mr. Scott has not received the balance of Two Hundred and Thirty Two Thousand Dollars (\$232,000.00).

In the circumstances, we find that the Respondent was unable to return the cheque or the proceeds to the Complainant when called upon to do,^{so} and has therefore not accounted to the Respondent for the same. We do not accept that an excuse or explanation in respect of what has been done with the cheque, that is, that it was given to Mr. Fred Brown is sufficient to escape liability of the Canons.

As a consequence we find the Respondent guilty of Canon VII (b)(ii).

The submission of Mr. Huntley of tracking the journey of the money was made without any authority and we find no merit in the same.

Conclusion

In this case we find that the Complainant has proven his case beyond reasonable doubt as set out herein.

We accept the principles adumbrated above and find that the Respondent is in breach of Cannons IV(r), IV (s) and VII(b)(ii) as alleged in the Application and Affidavit of the Complainant.

We find that the allegations ground the charges made in Canon IV(r), IV(s) and VII(b)(ii) of the Legal Profession (Canons and Professional Ethics Rules).

In the circumstances we find that the Respondent has acted in breach of 12(1) of the Legal Profession Act and is guilty of misconduct in a professional respect.

Pursuant to S. 12(4) of the Legal Professions Act we order:

- (1) That the Respondent pay to Complainant the sum of \$232,000 being the balance of the sum due to the Complainant
- (2) Interest on the said sum from 19 November 2000 to 20 October 2001 at the rate of 12% per annum.
- (3) Costs in the amount of \$25,500 to be paid to the Complainant.

DATED the 28th day of November, 2003


HILARY PHILLIPS Q.C.


BERT SAMUELS

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

Complaint #175 of 1986

FREDRICK SCOTT

COMPLAINANT

AND

ELSIE A. TAYLOR

RESPONDENT

I have had the opportunity to read the Judgment of my learned Colleague and Chairman, Hillary Phillips, Q.C. and agree with the conclusions therein.

There are however three areas which I wish to address. These concern the following questions:

- (i) Is Mr. Frederick Scott an aggrieved person with the requisite locus standi to file the Complaint against the Respondent Elsie Taylor?
- (ii) Has the Respondent acted with inexcusable and deplorable negligence in the performance of her duties?
- (iii) Has the Respondent failed to account to the Complainant for all the monies in her hands for his account or credit although he has reasonably required her to do so?

I will first deal with the question of whether Mr. Scott can be legally described as an aggrieved person because if I find that he does not fall into that category of persons, his Complaint will fail.

Section 12(1) of the Legal Profession Act states that "any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an Attorney may apply to the Committee to require the Attorney to answer allegations contained in an Affidavit made by such person..."

The Act does not define an aggrieved person. We must therefore look at the Authorities and attempt to apply them to the facts of this Case.

Mr. Huntley, Counsel for the Respondent submitted that the Complainant, Frederick Scott had no locus standi on the matter as the Agreement for Sale identifies the Purchasers as Beverly Scott and Venice Lewis. He further submitted that Frederick Scott's name does not appear on the document and therefore at Law he could not be regarded as having engaged the Respondent to act on his behalf in relation to the sale/purchase of the relevant property and not being the contracting party he could not have suffered what he alleged that he suffered as Purchaser. The only person or persons with a legal right to make such allegation in the circumstances were Beverly Scott and Denise Lewis, he said.

Miss Beverly Scott (after being sworn) was extensively cross-examined by Mr. Huntley. It is clear from the evidence that Miss Scott had relied on her brother Frederick Scott to conduct the business on her behalf with the Respondent, Mrs. Taylor. She had placed her confidence in him.

She said the first time she saw Mrs. Taylor was "two weeks before last." In answer to a question from Mr. Huntley as to whether she knew if Mrs. Taylor had received any money than a cheque from her. She said, "I did not see Mrs. Taylor so I could not give her anything."

Mr. Frederick Scott (after being sworn) was also cross-examined by Mr. Huntley. It is clear from the interchange that Mr. Scott was the person who conducted the business with Mrs. Taylor on behalf of the Purchasers. He said that he did not know Mr. Freddie Brown (the Vendor's Attorney). The cheque was made out in the name of Mr. Brown. But it was handed to Mrs. Taylor in pursuant of the transaction in buying the house. Mr. Huntley asked him why did not wait before he handed over the cheque to the Respondent. His response was as follows: "Well, Mrs. Taylor instructed me to carry \$375,000.00 to give to her so I did that ..." The following exchange then took place:

Huntley: "When you brought the cheque did you also bring the Sales Agreement at the same time?"

Scott: "No... the cheque was given first. After I give her the cheque she called her Secretary to bring the receipt book to give me a receipt."

Huntley: "I am putting it to you that the cheque and the Agreement for Sale were handed over at the same time by Mrs. Scott to Mrs. Taylor."

Scott: "No."

In examination in Chief, Mr. Scott said that his sister Beverly Scott had asked him "to seek a house for her..." Sometime in 1996 he saw an advertisement in the Sunday Gleaner. He contacted one Mr. Porter who showed the house to his sister and himself. All three of them subsequently went to Mrs. Taylor's office. Mrs. Scott told the Panel. "We discussed the matter with Miss Taylor in detail that we want her to represent us as our Attorney-at-Law, do the legal transactions in relation to purchasing the house. We gave her the information." He further stated that on July 10, 1996, he took a manager's cheque for \$375,000 to the Respondent. The cheque was marked to Fred Brown. She gave him a receipt in his name marked July 10, 1996. The receipt was tendered in evidence and marked as Exhibit 1. He also later received the Agreement from the Respondent. He returned it to the Respondent. The Agreement was tendered in evidence and admitted as Exhibit 2.

I will now look at the Authorities in an effort to elicit the meaning of "aggrieved person." Counsel for the Respondent kindly submitted two cases, namely: Buxton and others v. Minister of Housing and Local Government 1961/QBD and Ex Parte Sidebotham. In the Sidebotham 1880 XIV Chancery Division, I regard both cases as major Authorities on the subject as several of the leading cases were reviewed in the Judgements.

In Ex parte Sidebotham, the Chancery Division had to decide whether a bankrupt or any of the creditors were persons aggrieved or had any locus standi to appeal from the refusal of a Court to act on a report by the Comptroller in Bankruptcy under the Bankruptcy Act of 1869 and the Bankruptcy Rules of 1870. It was held that "when the Court had refused to act on a report by the Comptroller in Bankruptcy that the Trustee in a Bankruptcy has been guilty of a misfeasance, neglect or omission by which the estate has sustained a loss which the Trustee has to make good, neither the bankrupt nor any of the creditors is entitled to appeal from the refusal." It was further

held that "if the Trustee had been guilty of misfeasance, either the bankrupt or any of the creditors is entitled to make an application of his own to the Court under Section 20, and if the person so applying is dissatisfied with the order made, he has a right to appeal from it."

It is important to note that Section 20 provides that "the bankrupt or any creditor, debtor, or any other person aggrieved by any act of the trustee, may apply to the Court and the Court may confirm, reverse or modify that act complained of, and make such order in the premises as it thinks just."

In his judgment, James L.J. said inter alia, "It is said that any person aggrieved by any order of the Court is entitled to appeal. But the words person aggrieved" do not really mean a man who is disappointed of a benefit, which he might have received if some other order had been made. A person aggrieved "must be a man who has suffered a legal grievance (my emphasis) a man against whom a decision has been pronounced which has wrongfully refused him something or wrongfully affected his title to something."

It is interesting to note that Section 20 after making specific reference to bankrupt, creditor and debtor, also made reference to 'other person aggrieved,' who may apply to the Court. The question may be asked as to who are these other category of persons aggrieved to whom the Section were referring. In my view these persons must be those referred to by James L.J. as those who can be said to have suffered a 'legal grievance.'

Section 12(1) of the Legal Profession Act did not go as far as Section 20 of the Bankruptcy Act aforesaid in describing the category of persons who can apply to the Committee for redress. It simply refers to "persons aggrieved." How wide a definition should such a person be given?

In *Buxton and others v. Minister of Housing et ux*, the Applicants by originating Motion applied to the High Court to ascertain whether they were persons aggrieved under the Town and Country Planning Acts 1947 to 1959. The Applicants were adjoining landowners to property, which was the primary subject of an Order of the Minister in allowing the appeal of the Respondents against the refusal of the Planning Authorities to excavate the process chalk on lands owned by the said Respondents. The Planning Inspector had found that "there was a serious risk of chalk dust being deposited on the land of the Applicants in quantities which would be detrimental to the user of the land..." The Minister rejected the Inspector's report. It was held that the landowners were not persons "aggrieved" within Section 31 of the Town and Country Planning Act 1959, because the Minister's action in allowing the appeal did not infringe any legal right of theirs, for their common law rights were not infringed and as individuals they has no statutory right under the Town and Country Planning Acts 1947 to 1959 to have their representations considered by the Ministers.

In my view the facts, law and circumstances of this case can easily be distinguished from those of the case in issue and Section 12(1) of the Legal Profession Acts as Salmon J. said "the relevant statutes in my judgement confer no right on the applicants as individuals. Accordingly, none of their legal rights have been infringed, and no legal obligation has been imposed on them by the Minister's action." Salmon J. also made reference to James L.J. dicta in the *Sidebotham*

where he defined the words “person aggrieved” and noted that his definition was generally accepted. He also made reference to dicta of Lord Howart C.J. in Seven Oaks.

Urban District Council v. Twynam 1929 2 UB at p. 443 who said “as had been said again and again there is often little utility in seeking to interpret particular expressions in one statute by reference to decisions given upon similar expressions in different statutes. The problem with which we are concerned is not what is the meaning of the expression ‘aggrieved’ in any one of a dozen other statutes but what is the meaning in this part of the statute?”

In reviewing the evidence of the case before me together with those outlined in the abovenamed authorities, I have no difficulty in finding that Mr. Frederick Scott is an aggrieved person within the meaning of Section 12(1) of the Legal Profession Act and was therefore entitled to lay the Complaint. It was he who contacted the Realtor. It was he who met with Mrs. Taylor. It was he who handed her the cheque. It was he who received the receipt, which was made out in his name. It was he who saw to the signing of the Agreement by the Purchasers. It was he who returned the Agreement to Mrs. Taylor. It was almost as if he had Power of Attorney to conduct the business on behalf of the Purchasers who appeared to know very little of the transaction. In cross-examination by Mr. Huntley, Mr. Scott stated that it was he who retained Attorney C.J. Mitchell to communicate with Mrs. Taylor about the matter.

At one point in the cross-examination of Mr. Scott by Mr. Huntley, the following exchange took place:

Huntley: “When the police visited Mrs. Taylor’s office, you did not intend to leave until you get your money?” (Emphasis mine).
Scott: Police come two different times. “Two police and myself make three.”
Huntley: The time when you used the phone.
Scott: Yes, I told the police that this is the place that I do business (emphasis mine)
Huntley: You had expect to get your money back from her same day?
Scott: Because she told me to come.
Huntley: You expect to get back your money.
Scott: To get back my money.

Mr. Huntley in his submission to the Panel stated that Miss Scott was not ill or incapable of dealing with the matter and so Mr. Scott “did not have to jump in her shoes...” But this is not correct. Under cross-examination by Mr. Huntley, Miss Scott stated that, “From I paid the money I have high blood pressure...” This statement was not challenged by the Respondent.” Mr. Scott in examination told the Panel “Her money (Beverly Scott) paid for it. I am the biggest one and she said I should deal with it for her.” Neither was this statement challenged by the Respondent.

I now turn to the question as to whether the Respondent acted with inexcusable and deplorable negligence in the execution of her duties.

The facts are that Mrs. Taylor represented the Purchasers as their Attorney-at-Law. She received the cheque for \$375,000.00 from Mr. Scott. She owed the Purchasers a duty of care to ensure

that their deposit was protected. She should not have handed it to the Vendor's Attorney Mr. Brown unless it was legally safe for her to do so. She failed in her duty of care to the Complainant. During the cross-examination of Miss. Scott by Mr. Huntley, the following exchanges occurred.

Huntley: "Were you surprised that she (Taylor) handed over the cheque to Mr. Brown?"
Scott: I was surprised because no papers were signed.
Huntley: "Who was the person authorised to cash that cheque? If she was handing the cheque to anybody who was the person she should have handed it over to?"
Scott: "... She claimed she gave the cheque to him (Brown) to be endorsed and he went away with it. She should have kept it until everything went through (emphasis mine).

There is a practice in real estate transaction whereby the Purchasers' Attorney sends to the Vendor's Attorney the deposit before the Vendor signs the Sales Agreement. This is a dangerous practice because if the deposit is handed to the Vendor by his Attorney and he absconds without signing the Agreement, the Purchaser is at grave risk. It is also unfortunate that on several occasions, the Vendor's Attorneys as in the present case, absconds with the deposit again leaving the Purchaser at risk.

In the present case, the cheque was made payable to the vendor's Attorney but was delivered to the Respondent Mrs. Taylor by the Complainant, Mr. Scott. Mrs. Taylor should not have delivered the cheque to the Vendor's Attorney, Mr. Brown until she was satisfied that it was safe to do so. In my view the time for delivery was in exchange for the duly executed Agreement for Sale by the vendor. This is the commonsense approach regardless of what is said to be the general practice of the profession. If authority is needed for this proposition I am guided by the decision in *Edward Wong Finance Co. Ltd. V. Johnson Stokes & Master (a Firm)* 1984/A.C. 297 where it was held (inter alia) that the risk of loss to the Appellant by placing money at the disposition of the Vendor's Solicitor was a foreseeable risk, namely the risk could have been avoided by ... taking precautions to ensure that the Appellants would have an unanswerable claim against the other side for Specific Performance of that party's obligations ..."

One must then consider whether the Respondent's behavior amounted to professional misconduct. Mr. Huntley, Counsel for the Respondent, referred the Panel to Diggswite v. Dawkins 14 JLR 192. In that case it was held inter alia that "even assuming that a finding of gross neglect or negligence was in the circumstances of that case, open to the committee such a finding did not amount to professional misconduct." However, the Canons were subsequently amended and actions by an attorney in the performance of his duties amounting to inexcusable or deplorable negligence (Canon IV(s)) are deemed to be professional misconduct.

Finally, I now turn to the question as to whether the Respondent has accounted to the Complainant for all moneys in her hands or credit. The facts are that the Complainant delivered the deposit to the Respondent in July 1996. Between July 1996 and September 1996, the Complainant made several unsuccessful attempts to obtain a refund from the Respondent. To date he has not succeeded in obtaining a full refund. Therefore I am of the view that the Respondent is guilty of this charge as alleged in his Affidavit.

I further find that the Complainant has proved his case beyond reasonable doubt. I agree with the orders made pursuant to S. 12(4) of the Legal Profession Act as set out in the judgment of my learned Colleague and Chairman.

Dated the 28th day of November, 2003.



Clayton Morgan