

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

**COMPLAINT NO. 242 OF 2005**

**IN THE MATTER OF A COMPLAINT  
BY MILLICENT PORTER AGAINST  
MICHAEL WILLIAMS, AN ATTORNEY-  
AT-LAW**

**AND**

**IN THE MATTER OF THE LEGAL  
PROFESSION ACT**

<b>BETWEEN</b>	<b>MILLICENT PORTER</b>	<b>COMPLAINANT</b>
<b>AND</b>	<b>MICHAEL WILLIAMS</b>	<b>RESPONDENT</b>

**PANEL: Miss Hilary Phillips, Q.C.  
Mr. Richard Donaldson  
Mr. Stephen Shelton**

**The Complainant, Mrs. Millicent Porter** appearing in person on all hearing dates along with her son **Mr. Glenford Osbourne** who assisted her as her hearing is partially impaired.

**The Respondent** not appearing nor being represented on **14<sup>th</sup> July 2007**.

**The Respondent** not appearing as he was ill on **3<sup>rd</sup> November 2007** but being represented by his Agent **Mr. Frank Hutchinson**.

**The Respondent** being present but ill and represented by **Mr. Leonard Green, Attorney-at-Law** on **2<sup>nd</sup> February, 2008**.

**The Respondent** present and appearing in person on the **21<sup>st</sup> June 2008**.

**The Respondent** not appearing nor being represented on the **8<sup>th</sup> November 2008**.

Hearing Dates: 14<sup>th</sup> July 2007, 3<sup>rd</sup> November 2007, 2<sup>nd</sup> February 2008 and 21<sup>st</sup> June 2008 and 8<sup>th</sup> November 2007.

This is a Complaint which was brought by Mrs. Millicent Porter against Mr. Michael Williams on or about the 18<sup>th</sup> May, 2005 and in respect of which the Form of Application against AN ATTORNEY-AT-LAW was duly signed by the complainant on the 7<sup>th</sup> September 2005.

The Grounds of the Complaint were as follows:-

- (a) Mr. Michael Williams did not provide me with all the information as to the progress of my business with due expedition although I have reasonably required him to do so.
- (b) He has acted with inexcusable or deplorable negligence in the performance of his duties.”

The Complainant swore a Form of Affidavit on 7<sup>th</sup> September 2005 in support of her Complaint.

The Respondent did not respond to this Complaint although invited to do so. The matter was considered by the Disciplinary Committee and the decision was taken that the matter should be set for trial.

The parties were duly notified of the trial dates and the matter proceeded on the dates aforementioned, in the absence of the Respondent who neither appeared nor was represented on the 14<sup>th</sup> July 2007 and 8<sup>th</sup> November 2008.

## **EVIDENCE**

The entire evidence in this matter was given by the Complainant and a summary of this evidence follows:-

- (1) Mrs. Millicent Porter, a farmer of Top Hill Road, Lyssons, St. Thomas originally contacted Mr. Richard Williams, an attorney-at-law, in relation to the matrimonial home which she helped her husband to build and which after completion his family ran her out of.
- (2) When Richard Williams died in or about 2001, the case was taken over by his brother, Mr. Michael Williams who was also an attorney-at-law who had practiced with his brother.
- (3) The case she had arose out of the fact that she had an Order against her husband for maintenance in 1998 when he was ordered to pay her \$500 per week and when he did not pay for over three months he was arrested for non payment of \$8,000.00 of arrears. His family then came and threw her out of the matrimonial home.
- (4) When she went to see Mr. Michael Williams, he charged her \$25,000 to do the case about recovering the matrimonial home and she started paying him.
- (5) He told her he was waiting on some papers from the Supreme Court and in 2003 he gave her a date of the 15<sup>th</sup> May 2003 to go to Court.
- (6) When she went to Court in May 2003 her name was not on the Court list and a man told her that her name was not there for any other date and he advised her to go back to see Mr. Williams.
- (7) She went back to Mr. Williams and he told her he was going to get another date.
- (8) He did not give her another Court date, instead he gave her a Notice to serve on the family and told her that if they did not come out then he would issue a Summons against them in the Morant Bay Court.

- (9) She went to Court in Morant Bay on ten (10) occasions and Mr. Williams did not show up. On the eleventh occasion he came to Court and told the Judge that he was going to take the matter to the Supreme Court.
- (10) She received no other date and Mr. Williams kept telling her it was the Supreme Court who was holding up the matter.
- (11) She kept checking at Mr. Williams' office, and there was no date. On one occasion he told her he got three papers from the Supreme Court but no date.
- (12) On another visit to his office a lady showed her some papers, but still no date.
- (13) A bundle of court documents in Suit No. E 240 of 1999 was exhibited as Exhibit 1.
- (14) She paid Mr. Michael Williams \$19,960.00 out of the \$25,000.00 he was charging her and stopped when she saw that he was not doing anything.
- (15) She exhibited a bundle of nine receipts for monies paid to Mr. Michael Williams between 4<sup>th</sup> January 2002 and 23<sup>rd</sup> April 2004 totalling \$19,960.00 along with three letters as Exhibit 2.
- (16) She went back to Mr. Williams' Office on many occasions and heard nothing further.
- (17) She then went back to his office and requested a return of the money she paid him. He made her come twice for the money and did not pay her. On one occasion she waited for half the day and his clerk told her that his baby was sick so he could not come in and that she should come back in two weeks time for it.
- (18) When she went back she saw him and he told her he had just had a motor vehicle accident and so he did not have any money.
- (19) As she had heard nothing about her matter and she had not recovered any of her money, she reported the matter to the General Legal Council in

2005 and the hearing in the matter was started on 14<sup>th</sup> July 2007.

- (20) On the 21<sup>st</sup> June 2008 Mr. Williams attended one of the hearing dates. He did not cross examine the Complainant, he merely undertook to settle the matter with Mrs. Porter by paying her the sum of \$19,960.00 and \$2,000.00 for her costs by the 27<sup>th</sup> June 2008.
- (21) On the 8<sup>th</sup> November 2008 Mrs. Porter attended before the Panel, Mr. Williams neither attended nor was he represented. Mrs. Porter informed the Panel that to date despite efforts which were made by her son on her behalf to collect the money, she has not received any money.

This evidence was taken from the Complainant on the 14<sup>th</sup> July 2007 when the Respondent was neither present nor represented.

The transcript of the evidence taken on the 14<sup>th</sup> July 2007 was however sent to the Respondent along with the Notice of Hearing which was set for the 3<sup>rd</sup> November 2007. Other Notices of Hearings which were set for 2<sup>nd</sup> February 2008, 21<sup>st</sup> June 2008 and 8<sup>th</sup> November 2008 were also sent to the Respondent.

The Panel after hearing that the Respondent had not honoured his undertaking to repay the Complainant the sum of \$19,960.00 plus costs of \$2,000.00 by the 27<sup>th</sup> June 2008 enquired from the Complainant if she had any further evidence she wished to call. She told them no and her case was accordingly closed.

The Panel then reserved its Decision in this matter.

## **FINDINGS**

The Panel having considered the evidence makes the following findings:-

- (a) The Respondent took over the Complainant's case in or about 2001 after Mr. Richard Williams the brother of the Respondent died.
- (b) The Complainant paid him over the period 4<sup>th</sup> January 2002 to 8<sup>th</sup> April 2004 the sum of \$19,960.00 out of the agreed fee of \$25,000.00
- (c) The Respondent did not diligently pursue, proceed with and/or follow up the proceedings which were filed in the Supreme Court on behalf of the Complainant in Suit E 240 of 1999.
- (d) The Respondent did not diligently pursue the proceedings which were initiated on behalf of the Complainant in the Morant Bay Resident Magistrates Court.
- (e) We find that the Respondent's failure to diligently pursue or proceed with or to follow up the Complainant's matters amounts to inexcusable or deplorable negligence or neglect.
- (f) The evidence is replete with requests by the Complainant for the Respondent to supply her with information in relation to the progress of her case. We find that the Respondent in dereliction of his duty to the Complainant failed to sufficiently or at all, inform the Complainant as to the progress of her matter. In fact, the lack of information became so frustrating to the Complainant that she requested the return of her money.

- (g) We find that the Respondent's failure to repay the Complainant the sum of \$19,960.00 and costs of \$2,000.00 by the 27<sup>th</sup> July 2008 or at all as was undertaken by him in the presence of the Panel amounts to a breach of a professional undertaking.

## **THE LAW**

### **The Standards of Professional Conduct**

The standards of professional conduct are governed by the Legal Profession (Cannons of Professional Ethics) Rules (hereinafter called the Canons) made pursuant to Section 12 (7) of the Legal Profession Act.

The following Canons have been brought into focus in this matter, in that the Complainant's contentions are such as would amount to breaches of:-

CANON IV(r)- An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client's business with due expedition.

CANON IV (s)- In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect.

CANON VI (d)- An Attorney shall not give a professional undertaking which he cannot fulfill and shall fulfill every such undertaking which he gives.

## **THE STANDARD OF PROOF**

We are well aware of the burden of proof placed on a Complainant in these disciplinary complaints. In order to succeed on a Complaint of professional misconduct the Panel must be satisfied on the evidence so that we are sure, that is beyond a reasonable doubt that the attorney is guilty of breaches of the Canons.

See: **Winston Campbell v Davida Hamlet** [2005] 66 WIR 346

## **THE LAW IN RELATION TO PROFESSIONAL UNDERTAKINGS**

The important question to ask, when determining whether or not an attorney's undertaking should be enforced and the attorney punished in some way, is whether the undertaking was given by the attorney in his character as an attorney. Once it is so given, it matters not whether some technical defence is available or whether the attorney is guilty of blameworthy conduct. Indeed, Coleridge, J observes In **Re Hilliard** -(1845) 14 LJQB 225 at 226 that an attorney is "*never compelled to enter into [undertakings]; if he does, he should secure himself by his arrangement with his client, and he must be taken to know the legal consequences of his own act*". In that case, although the undertaking before the Court was void by section 4 of the Statute of Frauds, the Court ordered its enforcement by the attorney.

Hamilton J in **United Mining and Finance Corporation Ltd v Becher** [1908 – 1910] All ER Rep 876 further explained that "*the conduct which is required of [attorneys] is ...raised to a higher standard than the conduct required of ordinary men, in that it is subject to the special control which a Court exercises over officers so that in certain cases they may well be called upon summarily to perform their undertakings, even where the contention that they are not liable to*



the Panel would have welcomed some explanation from the attorney-at-law, especially when he is of such seniority. This unfortunately was not forthcoming, as the Respondent actually appeared before the Panel twice but only once for the hearing of the matter. On that occasion he gave no evidence or explanation, he just undertook to repay the Complainant by the 27<sup>th</sup> June 2008.

The Respondent without excuse or explanation absented himself from the hearing on the 8<sup>th</sup> November 2008.


The Panel therefore had no choice but to conclude the matter in the absence of the Respondent and to make their decision as to whether the Respondent conducted himself as an Attorney-at-Law within the requirements of the Canons. The Panel has accordingly ruled in this regard and all that now remains is for this Panel to Order the sanctions which should be imposed on the Respondent.

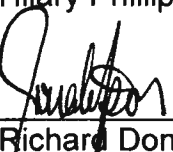
**SANCTIONS**

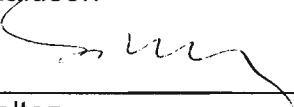
By virtue of the powers given to us under Section 12 (4) of the Legal Profession Act we hereby order the following:

- (a) That the Respondent Attorney-at-Law Michael Williams do make restitution to the Complainant by paying to her the sum of \$19,960.00 in relation to the undertaking which he did not honour.
- (b) That interest be paid by him to the Complainant on this sum at the rate of 12% per annum from the 23<sup>rd</sup> April 2004 (the date of the payment of the last installment to him) to the date of payment.
- (c) That the Respondent Attorney-at-Law do pay a fine to the General Legal Council of \$50,000.00 for his failure to act expeditiously.
- (d) That the Respondent Attorney-at-law do pay a fine to the General Legal Council of \$50,000.00 for his inexcusable negligence and neglect in the execution of his duties.
- (e) We also order that the Respondent Attorney-at-Law pay to the Complainant costs of \$25,000.00.

Dated the 13<sup>th</sup> day of December 2008

  
\_\_\_\_\_  
Hilary Phillips Q.C.

  
\_\_\_\_\_  
Richard Donaldson

  
\_\_\_\_\_  
Stephen Shelton