

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

COMPLAINT NO: 29/2017

IN THE MATTER OF **MR. LASSEN HARVEY**, an Attorney-at-Law

AND

IN THE MATTER OF THE LEGAL PROFESSION ACT, 1971

BETWEEN MARGARETTE SIMMONDS

COMPLAINANT

AND LASSEN HARVEY

RESPONDENT

Panel:

Mrs. Judith Cooper-Batchelor - Chairman

Mrs. Tana'ania Small Davis

Mr. Jeffrey Daley

Appearances:

Ms Margarett Simmonds (by Skype)

Mrs Vivienne Washington – Complainant's Attorney

Hearing dates:

September 22, 2018; November 3, 2018; December 13, 2018

1 Before the Panel is a complaint against Attorney-at-Law, Mr. Lassen Harvey, (hereinafter called "the Attorney") laid by Mrs. Margaret Simmonds (hereinafter called "the Complainant"). The Complaint is that the Attorney:

- (a) Failed to perform services for which he was paid;
- (b) Failed to provide all information about the progress of her business with due expedition;
- (c) Failed to respond to communication and evading all attempts to contact him by telephone, letter, in person and through counsel

concerning the matter for which he was retained;

- (d) Failed to handle and resolve her business with due expedition;
- (e) Acted with inexcusable, deplorable and gross negligence in the performance of his duties; and
- (f) Is in breach of Canon I (b) which states that 'An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.'

2. Upon the Committee being satisfied that the Attorney had been duly served with notice of the hearing pursuant to **Rules 5 and 21 of the Legal Profession (Disciplinary Proceedings) Rules** set out under the **4th schedule to the Legal Profession Act** and, in exercise of its discretion to proceed with the hearing in the absence of the Attorney, which is provided for under **Rule 8 of the Legal Profession (Disciplinary Proceedings) Rules**, the Committee commenced the hearing of this matter on 22nd September 2018 with the evidence of the Complainant.
3. The matter was thereafter adjourned to 3rd November 2018 for continuation. The Committee sent the Notes of Evidence to the Attorney and notified him of the adjourned date. There was no appearance by the Attorney nor was he represented and therefore having been satisfied that the Attorney had been duly served with notice of the adjourned hearing, there being no further evidence, Counsel for the Complainant closed her case and the Committee concluded the hearing of evidence and directed that written submissions be filed for a decision to be delivered on 13 December 2018.
4. After the case was closed and judgment reserved, a letter from the attorney's legal representative, Mr Alton Morgan dated November 2, 2018 was received by the Secretary of the Disciplinary Committee and was brought to the attention of the panel. The letter asked for an adjournment and spoke of a medical certificate that had not been enclosed. The panel subsequently had sight of the medical certificate. The panel noted that the certificate from Dr S Singh was of very little assistance. The certificate lacked any detail upon which the panel could draw a proper understanding

of the Attorney's incapacity to attend or participate in the proceedings. It stated that the attorney was ill and unable to work from October 31, 2018 to November 13, 2018. The Panel directed that a letter be sent to both the Attorney and his legal representative Mr. Morgan, indicating that the Panel had concluded the hearing, reserved judgment and had fixed the date for delivery of its decision.

5. On the date that judgement was set to be handed down the panel took the decision to first call Mr Morgan in order to ascertain his position on the matter.
6. Mr Morgan informed the panel he had received the letter but that the Attorney had not put him in a position to appear and that he had no instructions. He went even further to say that he did not represent the Attorney. When asked directly, Mr. Morgan said that he was not seeking an adjournment or making a request that the Panel delay proceeding to deliver judgment. With that in mind, the Panel gave judgment for the Complainant, having found that the Attorney is guilty of professional misconduct and promised to put the reasons in writings.

The Facts

7. The Complainant's evidence consisted of her form of application, form of affidavit and the Complainant's second affidavit dated 12th March 2018. These were admitted as Exhibits 1, 2 and 3 respectively.
8. We accept the evidence as set out in the above documents.
9. The Complainant's aunt Edith Rose Powell, retained the services of the Attorney in or around 1979 to probate the estate of her late husband Stafford Powell. The panel has seen communication from the Attorney to Mrs Powell and to the Complainant. The last letter was received in 1980.
10. The Complainant has detailed all her efforts to contact the Attorney including, visiting the Attorneys office, telephone calls and securing the services of another Attorney at law who was also unsuccessful in contacting Mr Harvey.
11. The Complainant details the hardship she has had to undergo because of the Attorneys inactivity for in excess of 3 decades.

The Law

12. The panel is mindful that the criminal standard of proof is the correct standard to be applied in all disciplinary proceedings concerning the legal profession, that is, we must be satisfied beyond a reasonable doubt.
13. The panel examined Canons I(b) and Canon IV (r) and (s) of the Legal Profession (Canons of Professional Ethics) Rules.
14. Canon I(b) provides:
“An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.”
15. Canon IV provides:
(r) “An Attorney shall deal with his client’s business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client’s business with due expedition.”
(s) “In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect.”
16. A client expects to receive information from her Attorney at law about her matter. The Complainant made numerous attempts to communicate with the Attorney and from the evidence has not heard from the Attorney in years.
17. This failure of the Attorney to provide the Complainant with information as to the progress of her matter with due expedition constitutes misconduct in a professional respect.
18. The requisite standard required by Canon IV (s) was addressed by Carey JA in Witter v Forbes (1989) 26 JLR 129, –
“We are not in this appeal dealing with professional misconduct involving an element of deceit or moral turpitude. Both rules of which the appellant was found guilty are concerned with the proper performance of the duties of an Attorney to his client. The Canon under which these rules fall, prescribes the standard of professional etiquette and professional conduct for Attorneys-at Law, vis-a-vis their clients. It requires that an Attorney shall act in the best interest of his client and represent him honestly, competently

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

19. Witter v Forbes, is very useful in analyzing how to characterize the Attorney's inaction for decades. There is no doubt that the Attorney's conduct amounts to professional negligence.

FINDING

20. Attorney Lassen Henry is guilty of professional misconduct in that he has breached Canon I(b), IV(r) and IV (s) of the Legal Profession (Canons of Professional Ethics) Rules 1978.

21. A date will be set for a sanction hearing to give the Attorney an opportunity to make a plea in mitigation before the panel determines the sanction to be imposed.

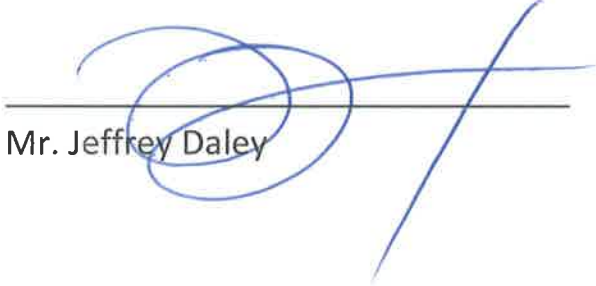
Dated the 13th day of December, 2019⁸



Mrs. Judith Cooper-Batchelor - Chairman



Mrs. Tana'ania Small Davis



Mr. Jeffrey Daley