DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO. 103/2016

In the Matter of SOCRATES HYLTON and CHARLES GANGA-SINGH, an Attorney-at-Law.

AND

In the Matter of the Legal Profession Act, 1971

Panel:	Jerome Lee - Chairman Marjorie Shaw Anna Gracie
Appearances:	The Complainant, Mr. Socrates Hylton
	The Respondent, Mr. Charles Ganga-Singh
Hearing:	19th January, 30th March, 1st June and 4th July 2019 and 7th Decemb.

COMPLAINT

1. The complaint against the Attorney-at-Law, Charles Ganga-Singh, (hereinafter called "the Respondent") as contained in Form of Application Against an Attorney dated the 18th March 2016 and Form of Affidavit by Applicant sworn to on the 21st March 2016 by Socrates Hylton, (hereinafter called "the Complainant") is that the Attorney:

    (a) Is in breach of Canon 1(b) which states that an Attorney shall at all times maintain the honour and dignity of the profession and abstain from behaviour which may tend to discredit the profession of which he is a member.

(b) has not provided me with all the information as to the progress of my business with due expedition, although I have reasonably required him to do so.

(c) has acted with inexcusable or deplorable negligence in the performance of his duties.

EVIDENCE

2. To assist with recording the Evidence in Chief, the Form of Application, the Form of Affidavit sworn 21 March 2016 and the Affidavit of the Complainant sworn 14 April 2018 were admitted as **Exhibits 1 through 3** respectively. The Panel asked and the Respondent had no objection and so, the Complainant's letter of dismissal dated 25 September 2012, his contract of employment dated 16 January 2012, his first and final salary slips and other documents admitted into evidence compendiously as **Exhibit 4**.

3. The evidence of the Complaint in relation to the 2016 complaint was that following the second hearing of the 2013 complaint, he attended the offices of Sherwin Williams, his previous employer, on 23rd June 2015 to secure copies of his documents which had been lost by the Respondent Attorney. The Complainant was unsuccessful in securing the documents and enlisted the services of a firm of Attorneys to assist with securing these documents and assisting him with his claim. The Attorneys advised the Complainant that they were of the view that his claim was statute barred but they nonetheless wrote to Sherwin Williams on 22nd July 2015 and received a response on 3rd August 2015. The Complainant advised that he was called to a meeting on 14th August 2015 at which time the firm of Attorneys confirmed that his claim was statute barred and provided him with a copy of Sherwin Williams' letter of response.

4. The genesis of both complaints commenced on or about 26th September 2012 when the Complainant received a letter from Sherwin Williams dated 25th September 2012, referring to meeting to held on 21st September 2012 to enquire into an altercation between the Complainant and a fellow employee. The letter referenced instances of similar offences for which the Complainant was cautioned; stated that the Complainant continued to disregard the company's warnings, rules and instructions; and stated that the Complainant's behaviour would no longer be tolerated. The letter ended by stating that the Complainant's services would be terminated effective 26 September 2012. That on the recommendation of a Mr. Junior Chamberlain, the Complainant visited the Respondent's home at Plantation Spring on the 27th September 2012 at which time he handed the Respondent a package containing a number of documents which included his original contract of employment dated 16 January 2012, his first pay slip dated 22nd September 2000 and his original letter of dismissal dated 25 September 2012.

5. The Complainant's evidence was that Mr. Chamberlain did not at any time deal with anything on his behalf. His exact words were "Mr. Chamberlain has not gotten any delegated power of attorney to have authority over any of my business." The Complainant stated that Mr. Chamberlain's role was restricted to making the introduction to the Respondent. The Complainant stated that on 10th November 2012 it was he who paid the Respondent the sum of $15,000.00 as a result of the Respondent saying that the Complainant had a good case. The Complainant advised that it was based on the Respondent representing that he would charge $15,000.00 that the sum was paid. The Complainant stated that at no time did he ask back for his money but that the Respondent

sometime after gave Mr. Junior Chamberlain the $15,000.00 which Mr. Chamberlain gave back to the Complainant in front of his wife. The Complainant gave evidence that when he contacted the Respondent originally, the Respondent stated that he could not find the documents but later his tone changed to how much the Complainant wanted for his loss. That as a result of this change in the Respondent, the Complainant filed the first complaint on 4th December 2013.

6. Finally, the Complainant stated that because of Mr. Ganga-Singh's negligence in dealing with his case, his case became statute barred.

7. In response to questioning under cross-examination as to the lack of a receipt in proof of payment, the Complainant indicated that at the time he paid the money he requested a receipt from the Respondent Attorney but was told that the receipt book was at his office and that the Respondent would have it drawn up. The Complainant further stated under cross examination that the $15,000.00 represented retainer fees for his matter.

8. In further response to cross-examination, the Complainant went on to state that the Respondent Attorney repaid the $15,000.00 to Mr. Chamberlain and when the Complainant asked why the money was returned without the documents, he was told that the documents were lost. The Complainant stated that he called the Respondent Attorney and was advised that the Respondent was in the process of looking for the documents and when he found them he would then "recollect" the $15,000.00.

9. In response to cross-examination in relation to the documents handed to the Respondent, the Complainant testified that at the first complaint he made mention of all the missing

documents. The Complainant stated that the main problem was the dismissal letter and the contract of employment. The Complainant stated that the first time the December 2013 complaint came up before the Panel, the Respondent attorney admitted to getting the documents but that he was negligent in handling them. The Complainant further testified that the Respondent Attorney had stated that if the Complainant would allow him, he would go to Sherwin Williams to get the documents as the Respondent had a good rapport with the HR Manager.

10. The Complainant testified that the Respondent got the allowance and the permission but at the second hearing of the December 2013 complaint when asked by the Panel where the documents were the Respondent stated that he went to Sherwin Williams but was advised that as he was no longer the Complainant's lawyer, the documents would not be released to him.

11. Following further cross examination, the Complainant was adamant that he had legal dealings with the Respondent, stating that his name was recorded at the security post of the Respondent's premises. The Complainant stated that at the first hearing of the December 2013 complaint, the Respondent came with some of the documents which was recorded by the Panel at the time.

12. In response to questions by the Panel, the Complainant confirmed that he only visited the Respondent once in September 2012 at which time he handed over the documents. He stated that at the time he handed the documents to the Respondent, the Respondent indicated that he would "take a look" at the papers and then get back to him. The Complainant stated that the Respondent did get back to him and advised that he had a

good case and asked the Complainant how much money he wanted. The Complainant said that this question surprised him as the Respondent was the Attorney and it was the Respondent who should be guiding him. The Complainant clarified that the $15,000.00 was paid to the Respondent in November 2012 again at the Respondent's home in Plantation Spring in front of Junior Chamberlain and that it was sent back via Junior Chamberlain in December 2012 and handed back to the Complainant in front of his wife.

13. The Complainant advised that he would not be relying on the evidence of Mr. Howen Roberts and called Mr. Leroy McDonald to give evidence on his behalf. Mr. McDonald's Affidavit filed 30th July 2018 was admitted into evidence as **Exhibit 5**. Mr. McDonald's evidence did not take the matter much further as his evidence was limited to what transpired at the Complainant's home. He confirmed that Mr. Chamberlain contacted the Respondent on the 26th September 2012 and it was Mr. Chamberlain who reported that the Respondent said to bring the documents for the Respondent "*to see if there is anything on it*." Mr. McDonald also confirmed that on the 27th September 2012, Mr. Chamberlain arrived at the Complainant's house to take him to see the Respondent. Mr. McDonald stated that he saw the Complainant with documents

14. The Affidavit of Mr. Charles Ganga-Singh was admitted into evidence as **Exhibit 6**. The Respondent's evidence was that Mr. Junior Chamberlain was the person who retained him and paid the $15,000.00 to get legal advice on an employment-dismissal issue involving Mr. Chamberlain's business associate. The Respondent stated that the Complainant never visited his office and that there were no documents to evidence an Attorney/ Client relationship. The Respondent denied getting the Complainant's contract

of employment and stated that he advised Mr. Chamberlain that based on the Complainant's situation that was described to him by Mr. Chamberlain, the Complainant would not be getting any big settlement that he was anticipating.

15. The Respondent stated that the Complainant called and advised that her grew up with gunmen, accused the Respondent of working for his employers and requested that he be refunded the money that he paid to the Respondent. That in response to this conversation and even though the money was not paid by the Complainant, the Respondent refunded Mr. Chamberlain all moneys and the Respondent and Mr. Chamberlain agreed that the Respondent "would have no more part with this employment-dismissal issue".

16. Finally, the Respondent stated that "*the GLC ruled in my favour in a previous matter that involved Mr. Hylton, in which the Panel did not find that I was given Mr. Hylton's employment contract, and found that there was nothing to indicate that there was a lawyer-client between myself and Mr. Hylton.*"

17. In cross-examination, the Respondent stated that he received a photocopy of a dismissal letter from Mr. Junior Chamberlain. When questioned about what transpired at the hearing dated 18th April 2015, the Respondent stated that he did not recall.

18. Though indicating at the March hearing that he wished to proceed without the evidence of Mr. Junior Chamberlain, the Respondent following the June hearing changed his position in that regard and as a result, time was given to the Respondent to secure the attendance of his witness. On the 4 July 2019 hearing date, Mr. Chamberlain having not attended, the Respondent closed his case.

19. Having reviewed the evidence, both parties gave conflicting accounts of what took place at the April and June 2015 hearings of the December 2013 complaint. Though reciting their version of the facts neither party in their List of Documents or at any time during the course of the proceedings sought to place reliance on the Form of Application or Form of Affidavit filed or the Minute Sheets of 18th April or 20th June 2015.

20. The majority view taken be the Panel was that as these documents were not before them they could not take notice of the contents.

21. The following facts are not in dispute:

    (a) The Respondent Attorney's assistance was sought in relation to a legal matter.

    (b) The Respondent Attorney was paid $15,000.00 in connection with the legal matter.

    (c) The Respondent Attorney refunded the sum of $15,000.00 and no further sums were paid to/ collected by the Respondent.

    (d) A Complaint was filed against the Respondent Attorney in December 2013.

    (e) Hearings in relation to the December 2013 complaint were held and the complaint subsequently came to an end.

    (f) The Claimant's case is statute barred.

22. We have not set out all the evidence given, but we wish to assure both parties that by omitting to set out all the evidence we mean no disrespect to them however, we are of the view that it is not relevant to the real issue in this case, which is a legal one.

INEXCUSABLE AND DEPLORABLE NEGLIGENCE

23. Before determining if the Attorney's negligence was inexcusable and deplorable we must first determine if he was negligent at all and the starting point is whether or not he owed a duty of care to the Complainant.

24. The Panel has noted that there was a two-month gap between the provision of the documents and the payment of the $15,000.00. The Panel has also noted that the sum of $15,000.00 was returned in December 2012. Thus the question for the Panel is was a legal relationship created on 27th September 2012 with the handing over of the documents, if not was one created in November 2012 when the payment of the $15,000.00 was made, and if was there an intention to create an Attorney/ Client relationship, what was the state of that arrangement as at December 2012, when the moneys were returned by the Respondent.

25. The Panel has had the benefit of seeing the demeanour of all witnesses as well as testing their recollection of the events. The Panel accepts that Mr. Chamberlain had the pre-existing legal relationship with the Respondent. That Mr. Chamberlain was the one who facilitated the introductions between the Complainant and the Respondent at the time when the documents were handed over to the Respondent. The Panel finds that as at 27th September 2012, there was no intention to create a legal relationship between the Complainant and the Respondent.

26. On the Respondent's own evidence the $15,000.00 was paid for consultation/ advice and that at the time the Respondent returned the money to Mr. Chamberlain, it was on the understanding that the Respondent was to have nothing further to do with the employment-dismissal issue and not the business decision which was referred to originally.

27. The Panel therefore accepts the Complainant's version that following the assurance from the Respondent that the Complainant had a case there was an intention to create an Attorney/ Client relationship between the Complainant and the Respondent as evidenced by the payment of $15,000.00 in November 2012. The Panel however finds, that the Respondent attempted to bring the arrangement to an end in December 2012 when the money was returned but finds that he was unsuccessful in doing so by virtue of the Canons[1].

28. The Panel finds that it is unlikely that the Respondent made any representations that he intended to recollect the money as it is accepted that the Respondent, for whatever reason, wanted the Attorney/ Client relationship to be brought to an end with the repayment of the $15,000.00 albeit he was unsuccessful in doing so.

29. If the Panel is incorrect, and there was no existing Attorney/ Client relationship, the absence of such a relationship does not however absolve the Respondent from a finding of negligence. The law provides that in addition to his immediate client, and Attorney

[1] Canon IV (n)(iii) provides that An Attorney may terminate the retainer where his client freely assents to the termination. Canon IV (o) (iii) provides that an Attorney who withdraws from the employment by virtue of Canon IV (n) shall not do so until he has taken reasonable steps to avoid foreseeable prejudice or injury to the position and rights of the client including delivering to the client all documents and property to which he is entitled. A breach of Canon IV (o) shall constitute misconduct in a professional respect and an Attorney who commits the breach shall be liable to the orders in Section 12 (4) of the Principal Act (see Canon VIII (d)).

may owe a duty of care to third parties (see: **Hedley Byrne & Co. Ltd v Heller Partner Ltd [1963] 2 All ER 575** and **Ross v Caunters (a firm) [1979] 3 All ER 580**).

30. Further section 12(1) of the **Legal Profession Act** provides 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, and the Registrar or any member of the Council may make a like application to the Committee in respect of allegations concerning any of the following acts committed by an attorney, that is to say-
>
> (a) any misconduct in any professional respect (including conduct which, in pursuance of rules made by the Council under this Part, is to be treated as misconduct in a professional respect);
>
> (b) any such criminal offence as may for the purposes of this provision be prescribed in rules made by the Council under this Part."
>
> (Emphasis Ours)

31. We find that the Complainant was at all times an aggrieved party within the meaning contained in section 12 of **Legal Profession Act** and that the Respondent owed a duty of care to the Complainant as by his actions and/or omission in failing to advise of the applicable limitation period involved and in misplacing the Claimant's documents, it was reasonably foreseeable that the Complainant could suffer loss/harm.

32. In the case of **Dr. Sandra Williams-Phillips v South East Regional Health Authority and The Attorney General [2017] JMSC Civ.127** Evan Brown, J at paragraph 31 of his judgment stated "*A claim for wrongful dismissal is characteristically one for a breach of contract. In essence, it is a breach of the stipulation in the contract of employment which speaks to how the contract of employment may be brought to an end. So that, if the contract is for a fixed term and the employer dismissed the employee before the expiration of the stated term, the employee would have a claim for wrongful dismissal. Similarly, if the contract is for a term, terminable by notice, and the employer terminates the employment either without notice or with an abbreviated period of notice, a claim would be maintainable.*"

33. As with all claims for a breach of contract, the time within which to commence a claim for wrongful dismissal is six years from the date of the breach.

34. The Complainant's contract commenced on 17 January 2012 and was to come to an end on 31 December 2012. Clause 9 of the contract provided that the requisite notice to terminate the contract was two (2) weeks while Clause 10 (b) provided that the Agreement could be terminated by the Company without notice if the Complainant breached any of the rules and regulations of the company in force at the time.

35. The Contract of Employment when read in conjunction with the letter of dismissal would suggest that the termination was in accordance with the terms of the contract as agreed by the parties. Thus it seems that the only avenue open to the Complainant was to pursue a claim for unfair/ unjustifiable dismissal as there was no apparent breach of the contract, which only had three months left before it came to an end by effluxion of time.

36. In the case of **Calvin Cameron v Security Administrators Ltd. [2013] JMSC Civ 95** Anderson, K., J. at paragraph 2 of the Judgment stated "*In Jamaica, a claim for unfair dismissal, can only be pursued by means of the statutory provisions as contained in Jamaica's Labour Relations and Industrial Disputes Act. The provisions in that Act, used to permit only a claim by a unionised employee to be brought before the Industrial Disputes Tribunal, seeking appropriate relief arising from a former employee's unfair dismissal. The law in that regard was changed however, as of March 22, 2010. In Act No. 8. of 2010, it was, in essence, provided for, that even a non-unionised former employee, could, pursuant to the provisions of that Act, seek relief arising from his or her, unfair dismissal. The case of Village Resorts Limited v Industrial Disputes Tribunal- Supreme Court Civil Appeal No. 66 of 97, has made it abundantly clear, that matters of unjustifiable, or in other words, unfair dismissal, are to be addressed, utilising the provisions of the Labour Relations and Industrial Disputes Act.*"

37. Section 2(b)(ii) of the **Labour Relations and Industrial Disputes Act** defines an "industrial dispute" as "***a dispute between one or more employers or organizations representing employers and one or more workers or organizations representing workers, and- in the case of workers who are not members of any trade union having bargaining rights, being a dispute relating .wholly to one or more of the following: the termination or suspension of employment of any such worker***"

38. Section 11B of the **Labour Relations and Industrial Disputes Act** states that "*Notwithstanding the provisions of sections 9, 10, 11 and 11A, where an industrial dispute exists in any undertaking which relates to disciplinary action taken against a*

worker, ***the Minister shall not refer that dispute to the Tribunal unless, within twelve months of the date on which the disciplinary action became effective,*** *the worker lodged* ***a complaint against such action with the Minister.***"

39. Thus at the time when the December 2013 complaint was commenced and during the course of the hearings in 2015, it is clear that the Complainant was unaware that his matter was already statute barred. In fact, it is only when the Complainant sought the services of the firm of Attorneys that the issue of his claim being statue barred seems to have been brought to his attention.

40. The question is then whether between January to September 2013, the Respondent by his acts or omissions caused the Complainant's case to become statute barred. Or put another way was it unreasonable for Complainant to have waited on the Respondent to provide the documents or should the Complainant have made overtures to his previous employers to secure copies of his contract and letter of dismissal. Further, should the Complainant have waited to re-engage the Respondent or should he have found another lawyer. Finally should the Complainant be held to know the applicable limitation period in the absence of any advice from the Respondent whom he engaged, at the very least to provide legal advice on his matter.

41. The answer to these questions is that a lay person doesn't know the various statutes and corresponding limitation periods or processes to commence action. It is for this very purpose that the Complainant would have sought legal advice from the Respondent. The Complainant having not been aware on any account that he had one year to write to the

Minister concerning his industrial dispute and having recently been dismissed would have understandably been reluctant to return to his previous employer from whom he was summarily dismissed to get copies of the lost documents, and would not unreasonably have waited the ten months for the Respondent to find his documents. Finally, without his contract of employment or his letter of dismissal it would have been difficult for the Complainant to seek the services of another Attorney to provide him with legal advice on to his matter.

42. The Panel views the loss of the Complainant's documents and the failure to advise of the relevant limitation period as careless and negligent, but the question is whether this negligence has risen to the level of inexcusable and deplorable so that disciplinary sanctions should be imposed against the Respondent. The Panel has also given consideration to the fact that as the relevant documents had been lost or misplaced, the Respondent may not have had the issue of limitation at the forefront of his mind.

43. In the decision of the General Legal Council in **Guy Hibbert and Lois Hibbert v Freddie Brown, Complaint No. 123 of 197**, the Panel referred to the Canadian case of *Tiffin Holding Limited v Millican, 49 DLR 216* in which the following obligations with regard to duty of care and skill were stated:-

"***The obligations of a lawyer are, I think, the following: (1) To be skillful and careful; (2) To advise his client on all matters relevant to his retainer, so far as may be reasonably necessary; (3) To protect the interest of his client; (4) To carry out his instructions by all proper means; (5) To consult with his client on all questions of doubt which do not fall within the express or implied discretion left to him; (6) To keep***

his client informed to such extent as may be reasonably necessary, according to the same criteria."

44. The Panel noted that the extent and scope of the duty of care must depend on the particular circumstances of each case. The Panel then went on to consider the Jamaican case of **Leslie L. Diggs-White v George R. Dawkins [1976] 14 JLR 192** which applied the dicta of Lord Esher's judgment in *In Re Cooke [1889] 5 TLR,* in which the Master of the Rolls stated:

"***But in order that the Court shall exercise its penal jurisdiction on a solicitor it was not sufficient to show that his conduct was such that it could support an action for negligence or want of skill. It must be shown that the solicitor had done something which was dishonourable to him as a man and dishonourable to his profession. A professional man whether he were a solicitor or a barrister was bound to act with the utmost honour and fairness with regard to his client. He was bound to use his utmost skill for his client...A solicitor must do for his client what was best to his knowledge, and in the way which was best to his own knowledge, and if he failed in either of those particulars, he was dishonourable***."[Emphasis supplied]

45. In the decision of the General Legal Council in **Leonard Wellesley v Lynden Wellesley, Complaint No. 25 of 2009**, the Panel at paragraph 16 referred to an extract from the Judgment of Scrutton LJ in **Fletcher & Son v Jubb, Booth & Helliwell [1920] KB 175** which states:

"*Now it is not the duty of a solicitor to know the contents of every statute of the realm. But there are some statutes which it is his duty to know; ... What is the duty of a*

solicitor who is retained to institute an action which will be barred by statue if not commenced in six months? His first duty is to be aware of the statute. His next is to inform his client of the position...One would expect that as the time drew near the solicitors would tell them that if they did not bring an action their claim would be barred..."

46. In **Leonard Wellesley v Lynden Wellesley, Complaint No. 25 of 2009**, the Panel noted at paragraph 19 that "***It is well established that it is negligent for an attorney who is retained to pursue a claim to allow the limitation period to run out without filing action or informing the client of the necessity to file an action: Kitchen v Royal Air Force Association [1958] 1 WLR 563; Fletcher & Son v Jubb, Booth v Helliwell [1920] KB 175. However, the Canons import a more stringent test of the degree of neglect or negligence that constitutes professional misconduct. As stated by Carey J.A. in the case of Earl Witter v Roy Forbes (1989) 26 JLR 129:***

> ***'Specifically, rule (s) of Canon IV is concerned with professional conduct for Attorneys. It is expected that in any busy practice some negligence or neglect will occur in dealing with the business of different clients. But there is a level which may be acceptable, or to be expected, and beyond which no reasonable competent Attorney would be expected to venture. That level is characterized as "inexcusable or deplorable".'"***

47. The Panel makes the following findings of fact:-

(a) The Attorney having decided to terminate the retainer with the Complainant failed to return the Complainant's documents;

(b) The Attorney having lost/ misplaced the Complainant's documents failed to take any step such as writing to Sherwin Williams to secure copies of the lost/ misplaced documents;

(c) The Attorney failed to advise the Complainant of the applicable limitation period; and

(d) The Attorney failed to advise the Complainant of the steps to be taken to preserve his rights or advise the Complainant to seek the services of another Attorney to assist with his matter.

48. Having read the affidavits and exhibits and having heard the evidence of the Complainant and the Respondent, the Panel finds the following have been established beyond reasonable doubt which is the standard of proof in disciplinary proceedings such as these. **Winston Campbell v David Hamlet [as Executrix of Simon Alexander] Privy Council Appeal No. 7 of 2001.**

CANONS

49. In all these circumstances we find that the Attorney has breached Canon IV (r), Canon IV (s) and Canon I(b) of **the Legal Profession (Canons of Professional Ethics) Rules** and is guilty of professional misconduct as per **Canon VII of the Legal Profession (Canons of Professional Ethics of Rules)**. For ease of reference we set out below the said Canons:

Canon I (b) states:

> *"An Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member."*

Canon IV (r) provides that:

> *"An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by his client provide him with all information as to the progress of the client's business with due expedition."*

Canon IV (s) provides that:

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

50. Given our finding and in keeping with the decision in **Owen Clunie v The General Legal Council, SCCA No. 3 of 2013**, the Panel directs that a date for hearing be set to permit the parties to address us on sanction before handing down same.

Dated the 7th day of December, 2019

JEROME LEE

MARJORIE SHAW

ANNA GRACIE