

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

**Complaint No. 146/2016**

<b>Between</b>	<b>Eunice Nicolene Hanshaw</b>	<b>Complainant</b>
<b>And</b>	<b>Lauren Boyd</b>	<b>Respondent</b>

**Panel:**       **Mr. Jerome Lee – Chairman**  
                  **Mr. Pierre Rogers**  
                  **Mr. Christopher Kelman**

**Hearing Dates:**

1. This is a complaint brought by Ms. Eunice Nicolene Hanshaw against Ms. Lauren Boyd, Attorney-at-Law (“the Respondent”) by way of an Application in Form 1 dated April 12, 2016 and in respect of which an Affidavit in Form 2 was sworn on the 12<sup>th</sup> day of April 2016 by Ms. Hanshaw (“the Complainant”).
2. The Complainant raised the following grounds of complaint against the Respondent:
  - i) She has not provided me with all information as to the progress of my business with due expedition although I have reasonably required of her to do so;
  - ii) She has not dealt with my business with all due expedition;
  - iii) She has acted with inexcusable or deplorable negligence in the performance of her duties;
  - iv) She is in breach of Canon 1(b) which states that “An Attorney shall at all times maintain the honor and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.”

3. The complaint was tried, and the panel heard evidence from both parties at sittings held on June 2 and September 28, 2018 and March 1 and June 28, 2019. Although the panel made an order for the parties to file written submissions to supplement their evidence, neither party filed written submissions.

### **THE EVIDENCE**

4. The essence of the Complainant's Affidavit evidence was that in May or June 2005 she engaged the Respondent in connection with a motor vehicle accident in which she was involved while crossing a public road. She signed a contract with the Respondent setting out the parties' obligations and settlement disbursement. Although in 2012 the Respondent contacted her and informed her that she was submitting a claim on her behalf to the insurance company and would call her back to let her know the final wording, she never did so. The Complainant accused the Respondent of neglecting her duties.
5. The following documents were tendered in evidence by the parties:
  - (i) Form of Application against the Attorney-at-Law dated April 12, 2016 – Exhibit 1;
  - (ii) Form of Affidavit sworn 12 April 2016 – Exhibit 2;
  - (iii) Affidavit of Lauren Boyd sworn on 21<sup>st</sup> day of September 2018 with 9 exhibits-Exhibit 3. The exhibits included a police report dated May 3, 2006 and the medical report dated September 27, 2006.
6. At the hearing, the Complainant testified under oath that she actually employed the Respondent in 2006 and not 2005 as she stated in her Affidavit. This was because the accident in which she was involved occurred on February 25, 2006. She sustained injuries to her back and left arm and employed the Respondent to get compensation from the owner of the vehicle which knocked her down. She signed an agreement for the Respondent to take 33 1/3% of whatever sum was received. The Respondent informed her she would put the case to the insurance company and would remain in contact. She testified that she sent a police record and medical record to the Respondent, as the Respondent required her to do. She never received any money from the Respondent and filed a complaint to the

General Legal Council in 2016. The Complainant completed her evidence by stating that she just wants compensation.

7. The Respondent testified that she first met with the Complainant on March 28, 2006. The Complainant signed a contingency agreement. The Respondent gave her letters to take to the police and the Falmouth Hospital to obtain a police report and medical report and these were presented to her in May 2006 and September 2006, respectively. The Respondent also met with an eyewitness which the Complainant took to her office. In October 2006, she contacted a Dr. Michael Godfrey at Falmouth Hospital and expressed concerns that the report from that hospital was inconsistent with her client's complaints about the extent of her injuries and poor health. The doctor said the report was consistent with the hospital's records. The Respondent maintained that as a result, she instructed the Complainant to see a private doctor, with a view to obtaining a further medical report reflecting her complaints not addressed in the report from Falmouth Hospital. She never received another report and consequently the Respondent did not submit a claim on the insurance company, or filed a claim in court.
8. Under cross examination, the Respondent maintained that ultimately it is the client who decides whether a medical report has substance. In answer to the Complainant, the Respondent acknowledged that she did not make a claim as she was still waiting on the Complainant for the "go ahead". The following exchange took place between the panel and the Respondent:

*Q-At any time, did you put your position in writing to your client, confirming the conversation and indicating to her that you are awaiting?*

*A-That is the greatest regret that I have in the transaction, that I never put in writing or documented what our conversations were especially after the medical report had come up and what the contents were and how it affected her case.*

*Q-Did you indicate to her at any point in time the lifetime of her claim, that is to say that she had only six years to bring it?*

*A-Yes, I would have told her that from the beginning.*

9. In the view of the panel, after her accident in February 2006, the Complainant moved expeditiously to retain the Respondent to bring a claim on her behalf. By September 2006 the Respondent had all she needed (in the form of police report and medical report) to contact the insurance company which insured the vehicle that knocked down her client. Not only did she not do so, but to make matters irretrievably worse she never filed a claim. For this, she blames the Complainant on the basis that the medical report obtained did not match the Complainant's description of her injuries and having asked her to get a further medical report, she neglected to do so. The Complainant asked her pertinently under cross who is to determine the adequacy of a medical report (i.e. the Attorney or the client) and again wrongly she said it is the client. The Complainant retained her purely relying on her expertise and guidance. There was nothing to prevent the Respondent, by the end of 2006, submitting to the insurance company a claim based on what was in her possession so far, while she awaited any additional medical evidence from the Complainant. The Respondent testified under oath of having advised the Complainant from the beginning that the claim was limited to a six-year period, yet she allowed that period to expire on account of her own folly. The Respondent's posture of awaiting the Complainant's go ahead was fatal to her client's legal interests.

## **THE LAW**

### **The Burden of Proof**

10. The panel reminds itself that the burden of proof to establish the complaint rests entirely on the Complainant.

### **The Standard of Proof**

11. The panel also reminds itself that in all complaints of professional misconduct the standard of proof is the same as in criminal proceedings, that is, proof beyond a reasonable doubt. The panel recognizes that no doubt this is so because of the potentially severe consequences for Attorneys in cases where the evidence of the

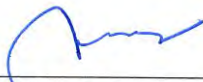
Complainant is accepted as proven and sanctions applied: See **Winston Campbell v David Hamlet** (2005) 66 WIR 346

### **Findings**

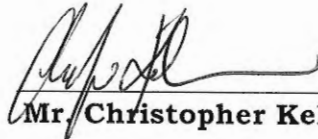
12. By virtue of section 15 of the Legal Profession Act, the panel is obliged to state its findings in relation to the facts of the case. Having read and heard the evidence on both sides, including the exhibits, the panel finds that:
  - i) The Respondent agreed to represent the Complainant in bringing a claim in respect of personal injuries suffered and expenses sustained in respect of a motor vehicle accident on February 25, 2006;
  - ii) The Respondent failed to protect the Complainant's interest in bringing a claim, fully aware of the limitation period and the impact to her client's case if the limitation period expired without a claim being filed;
  - iii) The Respondent failed to provide the Complainant with all information as to the progress of her business with due expedition, although she reasonable required her to do so contrary to Canon 4(r);
  - iv) The Respondent failed to deal with the Complainant's business with all due expedition contrary to Canon 4(r);
  - v) The Respondent's acted with inexcusable or deplorable negligence in the performance of her duties contrary to Canon 4(s);
  - vi) The Respondent is in breach of Canon 1(b) which states that "An Attorney shall at all times maintain the honor and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member."
  
13. Based on our findings, we find that the Respondent is guilty of professional misconduct.

14. Following the guidance of the Court of Appeal in **Owen Clunie v the GLC**, CA 3/2013, the panel directs that a date be set to give the Respondent an opportunity to be heard in mitigation before a sanction is imposed.

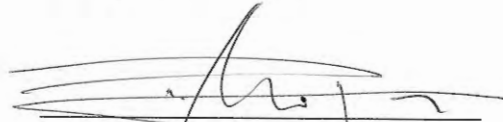
Dated the 29<sup>th</sup> day of April, 2021



Mr. Jerome Lee



Mr. Christopher Kelman



Mr. Pierre Rogers