

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

**COMPLAINT NO: Complaint No. 56/2020**

IN THE MATTER OF **JUDITH PANTRY**, an Attorney-at-Law  
AND  
IN THE MATTER OF THE LEGAL PROFESSION ACT, 1971

**BETWEEN DAWN MATTHEWS  
AND JUDITH PANTRY**

**COMPLAINANT  
RESPONDENT**

**Panel:-**

Mrs. Ursula Khan- Chairman  
Ms. Delrose Campbell  
Ms. Sidia Smith

**Appearances:**

Mr Hadrian Christie, Complainant's Attorney-at-Law  
Mr Kent Pantry, Respondent Attorney-at-Law

**Hearing dates:**

January 30, 2021, February 11, 2021, February 19, 2021. The parties appeared by Zoom video conference on all occasions.

**COMPLAINT**

1. The Complaint laid against Mrs. Judith Pantry (hereinafter "the Attorney") is that:-
  - She has not accounted to the Complainant for all moneys in her hands for her account or credit although she reasonably required her to do so. The Panel granted leave to the Complainant to add the word "not" to her complaint as the Complaint was filed stated "*Attorney has accounted to me for all moneys in her hands for her account or credit although I have reasonably required her to do so.*"
  - She is refusing to return funds from a transaction which is short over US\$9000.

**HEARING**

2. The Panel heard evidence from the Complainant and the Attorney on January 30, 2021, February 11, 2021 and February 19, 2021.
3. Neither side called any witness on their behalf.
4. The Complainant in her evidence identified the Form of Application Against an Attorney-at-Law dated April 30, 2020 and the Form of Affidavit by Applicant sworn May 1, 2020 which were admitted into evidence as Exhibits **Ia** and **Ib** respectively. Also admitted into evidence were the following documents: -

- a Exhibit 2 - WhatsApp message from Judith Pantry to Dawn Mathews on March 28 2019.
- b Exhibit 3- Sample Letter to Sagicor Investments Jamaica Ltd contained in WhatsApp message from Dawn Mathews to Judith Pantry on August 5, 2020.
- c Exhibit 4A- Copy Sagicor Bank Cheque dated August 8, 2019, in the amount of US \$8000.00 payable to Dawn Matthews.
- d Exhibit 4B Copy Sagicor Bank Cheque dated August 8, 2019, in the amount of US \$159,748.74.
- e Exhibit 5A- Email dated February 11, 2020, from Dawn Matthews to Kent Pantry.
- f Exhibit 5B- Dawn Matthews transaction calculation details appended to Exhibit 5A.
- g Exhibit 6- WhatsApp message from Judith Pantry to Dawn Mathews on February 6, 2020.
- h Exhibit 7- WhatsApp message from Judith Pantry to Dawn Mathews on February 17, 2020.
- i Exhibit 8A- Email dated February 25, 2020, from Dawn Matthews to Judith Pantry.
- j Exhibit 8B- Letter dated February 24, 2020, from Moncrieffe Panty & Associates to Dawn Matthews (appended to Exhibit 8A).
- k Exhibit 8C Statement of Account without discount appended to Exhibit 8A.
- l Exhibit 8D Statement of Account with 50% discount appended to Exhibit 8A,
- m Exhibit 9A- Email dated March 2, 2020, from Christopher Bond to Janelle Pantry and Dawn Matthews.
- n Exhibit 9B – Statement of Account prepared by Christopher Bond appended to Exhibit 9A.
- o Exhibit 9C- Statement of Account prepared by Dawn Pantry appended to Exhibit 9A.
- p Exhibit 9D- Statement of Account worksheet prepared by Christopher Bond appended to Exhibit 9A.
- q Exhibit 9E Email dated February 27, 2020 from Sagicor Bank with banking fees.
- r Exhibit 10- WhatsApp message from Judith Pantry to Dawn Mathews on March 6, 2020
- s Exhibit 11 - WhatsApp message from Judith Pantry to Dawn Mathews on March 9, 2020
- t Exhibit 12A- Email from Judith Pantry to Dawn Mathews dated March 14, 2020.
- u Exhibit 12B- Letter dated March 14, 2020, from Moncrieffe Panty & Associates to Dawn Matthews attached to Email at Exhibit 12A.
- v Exhibit 12C- Statement of Account attached to Email at Exhibit 12A.
- w Exhibit 13-Email from Dawn Matthews to Dawn Pantry dated March 15, 2020.
- x Exhibit 14- Email exchanges between Dawn Matthews and Anthony Howard of Sagicor Investments Jamaica Limited.
- y Exhibit 15A - Bank of Jamaica Daily Trading Summary for United States Currency on July 30, 2018.
- z Exhibit 15B - Bank of Jamaica Daily Trading Summary for United States Currency on March 28, 2019.
- aa Exhibit 15C Bank of Jamaica Daily Trading Summary for United States Currency on August 8, 2018.
- bb Exhibit 16 - Letter of Authorization.

cc Exhibit 17 - WhatsApp message exchange between Dawn Mathews and Judith Pantry February 13, 2020.

5. The Attorney in her evidence identified her Affidavit sworn July 16, 2020, which was admitted as Exhibit 18A. Also admitted into evidence were the following documents: -
  - a Exhibit 18 - Letter from C Judith Pantry to the Secretary, General Legal Counsel dated 16 April 2020.
  - b Exhibit 19 - Moncrieffe Pantry & Associates, Statement to Close addressed to Mr & Mrs. L. Francis dated May 25, 2017.
  - c Exhibit 20 -Sagicor Bank Jamaica Limited Statement dated December 21, 2020.
  - d Exhibit 21-Extract of Text communication marked February 20, 2020.
  - e Exhibit 22 - WhatsApp communication between Judith Pantry and Dawn Mathews

## **EVIDENCE**

### *The Complainant*

6. The evidence of the Complainant is that she engaged the services of the Attorney to represent her parents, Mavis Francis and Lascelles Francis (Mr. and Mrs. Francis), in the sale of a property they owned. The Attorney and the Complainant were friends for over 35 years. The Complainant communicated with the Attorney on behalf of her parents in engaging the Attorney and throughout the transaction, the Complainant acted as the agent of her parents who are 91 and 93 years old. Mr. and Mrs. Francis never corresponded with the Attorney themselves.
7. At the hearing and after the filing of the Complaint the Complainant produced a notarized letter from Mr. and Mrs. Francis dated January 31, 2021, authorising her to represent them in these proceedings. [Exhibit 16]
8. The Complainant's evidence is that after the completion of the transaction the Attorney provided her with a statement to close [Exhibit 19] showing net proceeds of sale of \$26,096,800.00 due to the Complainant's parents.
9. The Complainant said she was unable to open a bank account to receive the money and left the funds with the Attorney after which she authorized the Attorney to place the funds on a certificate of deposit.
10. The Complainant said she requested that the Attorney disburse the sum of US\$9,000 by wire transfer to her son Dominic Matthews. These instructions were given to the Attorney in July 2018 and the funds were so transferred on July 30, 2018. The Complainant required the Attorney to transfer a further sum of US\$8,000 to Dominic Matthews this transfer of funds was done on March 28, 2019, the same day of the request.
11. The Complainant said she did not receive an accounting from the Attorney after the first transfer of funds and that she asked the Attorney at the time of the second transfer to provide an opening and closing balance, exchange rates, etc. This communication was by

WhatsApp text message and that in response the Attorney indicated that the amount left after cashing in the Certificate of Deposit and taking into account the cost of purchasing the US dollars and the cost of the wire transfer left a balance of \$23,954,521.54. [Exhibit 2]

12. The Complainant said she did not receive the information regarding exchange rates requested.
13. The Complainant in August of 2019 sought to recover from the Attorney the balance being held by the Attorney. She gave evidence that she initially sent a sample letter to the Attorney for the Attorney to use as a draft of a letter to be sent by the Attorney to Ms. Loren Edwards of Sagicor Investments alerting her of an impending transfer of the funds. The letter referenced the sum of \$23,954,521.54 to be transferred into an account of Mr. and Mrs. Francis. She later requested that the Attorney issue two cheques, one payable to the Complainant in the amount of US\$8,000.00 and the remainder payable to Sagicor Investments Limited.
14. She said her attempts to coordinate a time to be present at the bank with the Attorney at the time of the transactions was not facilitated by the Attorney.
15. The Complainant said she received 2 cheques from the Attorney on August 8, 2019, one in the amount of US\$8,000.00 payable to her [Exhibit 4A] and another for US\$159,748.74 [Exhibit 4B] payable to Sagicor Investments Limited.
16. The Complainant said that upon receiving the cheques she told the Attorney that the second cheque for US\$159,748.74 'looks short' and asked the Attorney what exchange rate was used in converting the payment. She said the Attorney responded that she did not know the rate used. The Complainant said she did not get any documentation from the Attorney regarding it.
17. The Complainant said she communicated with the Attorney directly in November 2019 and in January 2020 regarding what she saw as a short payment.
18. The Complainant produced in evidence a WhatsApp text message from the Attorney to the Complainant on February 6, 2020, when the Attorney said she wished to settle the matter and that she had an audit done and that the amount due to the Complainant's parents is \$2,776.00 [Exhibit 6].
19. The Complainant said she prepared a statement showing her own calculation of US\$9,056.61 due from the Attorney [Exhibit 5b] and sent that to the email address of the Attorney's husband Mr Kent Pantry on February 11, 2020. She said the email to Mr Pantry was brought to the Attorney's attention as the Attorney responded to it by WhatsApp text message on February 17, 2020 [Exhibit 7].
20. The Complainant said she received an email from the Attorney dated February 25, 2020 [Exhibits 8A], attaching a letter from Moncrieffe Pantry and Associates dated February

- 24, 2020 [Exhibits 8B] and attaching two statements of account.
21. One Statement of Account stating the net proceeds of sale before any payments to the Complainant as J\$25,421,100.00 converted to US\$184,880.00 [Exhibits 8C] and another stating the net proceeds of sale as J\$26,096,800.00 converted to US\$189,794.91 [Exhibits 8D]. The letter explained the difference between the 2 statements as being a withdrawal of the 50% discount in the Attorney's fees amounting to J\$580,000.00 specified in Exhibit 8C. The Attorney stated in that letter that "a balance remains owing to you of Four Hundred and Fifty-Two Thousand, Five Hundred and Sixty-Four Dollars, Twenty Cents (JMD452,564.20)"
  22. The Complainant gave evidence that on March 2, 2020, she received an email from Christopher Bond, a friend of the Attorney and herself. The email was directed to Jenelle Pantry, the Attorney's daughter and the Complainant and included a Statement of Account prepared by Mr Bond, [Exhibits 9A and 9B]. She said the Attorney asked Mr Bond who is a HR Consultant but good with spread sheets to assist with the impasse.
  23. Mr Bond's calculation showed a balance of US\$9,216.38 due to the Complainant's parents which Mr Bond said in his email was arrived at using the weighted average bank exchange rates on the date of the transactions and adding bank charges. Mr Bond supplied an email correspondence from Sagicor Bank to support the bank charges that he used.
  24. The Complainant said she received an email from the Attorney dated March 14, 2020, attaching a letter from her law firm Moncrieffe Pantry and Associates of the same date which stated, "*In light of the challenges in using multiple currency payments, we have revised the Statement to Close using only JMD dollars since the transaction was originated in JMD dollars.*" The Statement of Account stated a balance due of J\$256,344.00 after considering a withdrawal of the Complainant's 50% discount in the Attorney's fees [Exhibits 12A, 12B, 12C]. The Complainant rejected this balance in an email of March 15, 2020 [Exhibit 13].
  25. The Complainant offered evidence that she requested and received from Sagicor Bank applicable board rate for foreign exchange that obtained on August 8, 2019 [Exhibit 14]. Sagicor in its email to the Complainant of January 26, 2021, advised that the board rate for foreign exchange on August 8, 2019, to buy US currency draft was J\$136.70.
  26. She also tendered in evidence the Bank of Jamaica Daily Trading Summary on the dates of the transactions done by the Attorney that is July 30, 2018, March 28, 2019, and August 8, 2019 [Exhibits 15A, 15B, 15C].
  27. The Complainant said in cross-examination that she left for the USA on August 9, 2019 the morning after receiving the cheques, and that the first time she spoke to the Attorney about the matter again was sometime towards the end of September 2019.
  28. She said the Attorney visited the USA and returned to Jamaica after 2 months stay during

which time, she had seen the Attorney 3 or 4 times but did not speak to the Attorney about the shortfall. She said her failure to do so was because she had already raised it with the Attorney prior to her visit to the USA.

29. In explaining why she rejected the Statement of Account she got from the Attorney on March 14, 2020 [Exhibit 12C], the Complainant said she had an issue with the registration fee, with the reversal of the discount in the fees and that she didn't know what the item "service fee" was for. She said that she did not seek clarification from the Attorney as *"this was the fourth document, and every time she gave me something, and it was not accepted she moved on to something else and then she tried this thing, and it doesn't work she tried something else, that was the issue...."*

*The Attorney*

30. The Attorney's evidence is that she is a retired Attorney-at-Law, she was in practice for over 40 years in Conveyancing. The Attorney said the Complainant and herself were good friends for over 40 years. She stated that the Complainant was not her client and that her clients were Mr. and Mrs. Francis and that she had correspondence with the Complainant but there was never a client/attorney relationship between them.
31. The Attorney stated that she prepared and forwarded to the Complainant a statement of account addressed to Mr. and Mrs. Francis in relation to the sale of the property dated March 25, 2017, showing an amount due of \$26,096,800.00 [Exhibit 19].
32. The Attorney said that the proceeds of sale were placed in her client's account at Sagicor Bank. She said that at that time Mr. and Mrs. Francis as well as the Complainant were living in the USA.
33. The Attorney said she received requests from the Complainant to make a payment from the funds being held to the Complainant's son Dominic and to the Complainant herself. She listed the payments as a wire transfer on July 30, 2018 for J\$1,228,500.00, a wire transfer March 28, 2019 for J\$1,020,000.00 and on August 8, 2019 a payment of J\$23,000,000.00.
34. She said the payment on August 8, 2019, was made up of 2 cheques one payable to Sagicor Investment Jamaica Limited for US\$159,748.74, and one payable to the Complainant for US\$8,000.00. The 2 cheques were collected by the Complainant at the Attorney's home.
35. The Attorney travelled to the United States in September of 2019 where she stayed for 2 months, she said she saw the Complainant on 3 occasions during that period and that the Complainant only mentioned to her the difficulty she was having negotiating in the US the cheque for US\$8,000. The difficulty she said was due to the cheque being drawn on the local Sagicor Bank US Account. She said she offered to take the cheque back to Jamaica to resolve it, but the Complainant did not return the cheque to her.

36. The Attorney said she heard nothing more about the matter until sometime in February of 2020 when the Complainant mentioned to her that she had discussions with someone at Sagicor Bank about the matter. She said based on the Complainants' "mutterings" she suggested to her that she would have the accounts audited and so she invited a mutual friend Christopher Bond and the Attorney's daughter Jenell to look into the matter for her.
37. The Attorney said Mr. Bond worked on the figures and without her permission or knowledge emailed his statement entered in evidence as exhibit 9B to the Complainant and the Attorney's daughter Janelle.
38. The Attorney said she did not accept the statement of Mr Bond due to the exchange rates used in the calculations. She said when purchasing from Sagicor Bank the rates were not necessarily the "board rate" and depended on the amount of money being purchased. She said the rate that the bank uses depends on the particular purchase so the board rate cannot be used in any calculation. Mr Bond's calculation would require the exact rate that the bank gave for that purchase she said.
39. This Attorney said she prepared a statement of account outlining the transaction in Jamaican dollars showing the balance owing was J\$256,344.00 [Exhibit 12 C]. She said she used information she extracted from her clients' account.
40. The Attorney fee of \$1,600,000.00 stated in the Statement of Account [Exhibit 12 C] was due to her withdrawing the 50% discount initially given. She explained that the discount was based on her friendship with the Complainant.
41. The Statement of Account [Exhibit 12 C] was sent to the Complainant with a letter which reads "*Re: Payment of Proceeds from Sale of your Parent's House. In light of the challenges of using multiple currency payments we have revised your statement to close using only JMD dollars since the transaction was originated in JMD dollars. Please see attached your statement to close. Kindly indicate in writing who the cheque should be made payable to and an agent authorized to collect same*". She said she got no indication from the Complainant of who the cheque should be made payable to but that the Complainant responded by text message on February 20, 2020, rejecting the statement [Exhibit 21].
42. The Attorney said she did not steal any money from the Mr. and Mrs. Francis or the Complainant, that she accounted fully for the transfer of the house and provided a Statement of Account of the money held in her account.
43. In cross-examination the Attorney said she worked under the law firm Moncrieffe Pantry and Associates', that the arrangement with the Complainant was not in writing, there was no discussion or agreement as to the fees to be charged. She said she had it in mind to tell the Complainant that the fee charge is usually 4% (of the purchase price) but had not done so. She made the decision to charge 2% as a discounted fee at the time she prepared the Statement of Account. The Attorney said she charged a fee which is normally charged by Attorneys.

44. In further cross-examination the Attorney said Moncrieffe Pantry and Associates is registered to collect General Consumption Tax (GCT). She admitted that she did not charge the Purchasers GCT, for the half fee they were paying but that the Complainant was charged GCT. She said she used her discretion in the charging of GCT depending on the relationship with the person paying or the amount of the fee.
45. The Attorney admitted that the statement of the Registration Fee charged was an error and should be \$72,500.00 and not the \$145,000.00 charged.
46. The Attorney agreed that when she went to the Sagicor Bank in August 2019 she was supposed to give the Complainant all the monies in the account and said she did so.
47. She said she gave the teller of the bank the figure she had worked out as being due to Mr. and Mrs. Francis and asked the teller to calculate the funds [the conversion to US dollars]. The Attorney would not say what figure was given to the teller. She did not admit to advising the Complainant that at July 30, 2018 a figure of \$23,954,521.54 was due. The Attorney said that figure of \$23,954,521.54 was incorrect.
48. The Attorney said she had two Jamaican dollar client's account one at Sagicor from which the bank statement of account was extracted [Exhibit 20] and one at Scotiabank. The Attorney said she could not say if the funds being held for Mr. and Mrs. Francis were held in the Sagicor account as she moved funds from time to time to the other clients' account.
49. Counsel for the Complainant sought to cross examine the Attorney on the bank statement she had put in evidence [Exhibit 20]. The Attorney was unwilling to look at the bank statement, she said "*My lighting is not very good I cannot see the figures*". The Attorney said she was unable to get a flashlight to assist with lighting and Counsel for the Attorney when asked if he could read the document to her said he too had difficulty with his vision after multiple eye surgeries.
50. The Attorney in cross-examination said the client's money was not placed on a certificate of deposit. When asked about Exhibit 2, the WhatsApp message from the Attorney to the Complainant on March 28, 2019 advising of the encashment of a Certificate of Deposit to transfer money to the Complainant's son Dominic, the Attorney said she encased a deposit but that it was not the Complainant's money.
51. The Attorney said she did not provide the Complainant with any documentation showing the exchange rates used on the three dates on which monies were converted to US dollars as this was not requested by the Complainant. In further cross-examination she said she saw the request for documentation showing the exchange rates of the first two transactions but none for the August 8, 2019, transaction.
52. The Attorney said she was unaware of the email of February 25, 2020, from her email account to the Complainant until she received the Complainant's bundle. She said the email, and 3 attachments [Exhibit 8A, 8B, 8C] a letter on Moncrieffe Pantry & Associates



letter head and 2 statements of account one titled Statement of Account with Discount and one titled Statement of Account Without Discount; were not created nor sent by her. She said unknown to her Mr Bond did the letter, created, and sent the email or had it sent, she is not aware if Mr. Bond has the password to her email account.

53. The Attorney said she did not have on file the records from the bank indicating the conversion on the three occasions. She said they were misplaced and, in her words, "*i cannot ask the bank to wade through thousands of transactions to find the rate for each transaction*".

### **STANDARD OF PROOF**

54. The Panel reminds itself that the standard of proof in disciplinary proceedings is the criminal standard which is beyond all reasonable doubt (**Campbell v Hamlet [2005] UKPC 19**).

### **THE Demeanour OF THE Complainant**

55. The Panel found the Complainant a credible witness who spoke the truth. She was consistent and her evidence was not weakened in cross examination. We accept her evidence as being true in all material particulars.

### **THE Demeanour OF THE Attorney**

56. The Panel found the Attorney to be very cavalier about the proceedings and this posture was maintained in her approach to providing evidence upon cross-examination. She appeared evasive and generally not forthright or candid throughout the proceedings. For example, when asked how many Jamaican dollar clients' accounts she maintained, she responded "that is my business"; when asked to explain the bank statement she asked to be admitted in evidence she maintained that the lighting did not allow her to read it and was unwilling to make any effort to improve the lighting despite appearing remotely.
57. What was most inexplicable was the Attorney insisting that she knew nothing about an email from her own email account to the Complainant. She knew nothing about the lengthy letter on her own firm's letter head, and a statement of account attached to that email sent to the Complainant. She suggested that it was sent by her friend Mr. Bond without her permission, yet she could not say how Mr Bond could have accessed her email account or have some of the details expressed in the letter.

### **COMPLAINANT 'S SUBMISSIONS.**

58. Counsel for the Complainant made submissions in writing some of which will be highlighted here. He submitted that the Complainant was a more credible witness, and that the Attorney's demeanor and evidence does not merit belief or credibility. He

submitted that based on the evidence there should be a finding that there was a prior discussion and agreement for the Attorney to place the client's funds on a certificate of deposit and that the messages sent by the Attorney to the Complainant support this. He submitted too that the Complainant raised the shortage of funds paid from August 8, 2019 and that the Attorney was therefore on notice from that time that she needed to fully account to her clients.

59. The Complainant's Attorney submitted that the Complainant is entitled to pursue these proceedings as agent of her parents and cited the reasoning in *Causwell v The General Legal Council* (ex parte Elizabeth Hartley), [2019] UKPC 9 Privy Council Appeal 0037 of 2017 to support a finding of agency. He argued that the letter of authority from the Complainant's parents (Exhibit 16) cures any defect in the Complainant commencing and continuing the Complainant. He pointed the Panel to local Court of Appeal decision in *Arlean Beckford v The General Legal Council* Civil Appeal No. 32 of 2005, judgment delivered on 31 July 2007 and, *Fredrick Scott v Elsie A. Taylor* a 30 July 2009 decision of Court of Appeal Civil Appeal No. 8 of 2004 [ in support of his submission that the Complainant has locus standi also as "a person alleging [herself] aggrieved by an act of professional misconduct".
60. Counsel submitted that whether retired or not, the Attorney remains an Attorney-at-Law on the Roll in accordance with ss. 2 and 5 of the Legal Profession Act, is subject to the jurisdiction of this Committee; and also that the misconduct alleged against the Attorney pre-dates her retirement and concerns the period during which she was in active practice, so the Committee has jurisdiction to hear this complaint.
61. The Complainant's Attorney submitted that the belated withdrawal of the friendly discount by the Attorney was unlawful and unethical and he also cited the Attorney's obligation pursuant to r. 8 of the Legal Profession (Accounts and Records) Regulations, 1999 (the Accounting Regulations"), to account to the Complainant for interest where such money is held in an interest-bearing trust account.
62. Counsel asked the Panel to find that the initial Statement to Close was inaccurate as it deducted an excessive sum for the Vendor's half of registration fee; and it deducted GCT when the legal basis on which to do so had not been proven at the time of deduction.
63. He submitted that and that the Attorney failed to provide an accurate account of funds within a reasonable time after being required by the client to do so and has failed to provide supporting documentary information to explain or substantiate certain deductions made by her from the clients' money. He calculated that, there is a sum of at least J\$1,131,374.69 that the Attorney ought to have in her possession to pay over to her clients.

#### **ATTORNEY'S SUBMISSIONS**

64. The Counsel for the Attorney made written submissions on behalf of the Attorney. He submitted that The Complainant had no *locus standi* to bring the Complainant as she was not the Attorney's client, and the complaint was not filed by the Complainant as agent of

the client. He said the Privy Council case of *Causwell v The General Legal Council (ex parte Elizabeth Harley)*, [2019] UKPC 9 is instructive as in that case Mrs Elizabeth Hartley filed the complaint to the General Legal Council "*on behalf of the client Mr Lester DeCordova.*" He proffered that the subsequent letters sent to the General Legal Council by Mr Lester DeCordova could amount to a ratification but that in this case the authority of Mr. and Mrs. Francis could not have the same effect as if she was not their agent [at the outset] they cannot ratify her action, that the Complainant cannot be made an agent after the fact.

65. He submitted that the Attorney provided accounting in relation to the sale of the house and the payment of funds in her account and that all request for payment were honored when made. He asserted that when an audit identified a shortfall the Attorney acknowledged it and advised the Complainant accordingly and requested instructions from the Complainant as to whom the payment should be made but received no instructions.
66. He submitted that the fees were the Attorney's money and the withdrawal of the discount on fees was not a withdrawal of the client's money. He submitted that the Attorney accounted for the funds kept in her account for Mr and Mrs. Francis and provided explanations accordingly and that the complaint has not been established and should be dismissed.
67. Counsel for the Attorney prefaced his submission with the position that the failure of the Disciplinary Committee to provide the Attorney with notes of the proceedings has prejudiced the Attorney's submissions.

## **FINDINGS OF FACT**

68. Having listened to the evidence of the Complainant and the Attorney, read the affidavits, and studied all the exhibits we make the following findings:-
  - a The Complainant engaged the services of the Attorney to represent her parents Mr. and Mrs. Francis in the sale of a property they owned.
  - b The Complainant communicated exclusively with the Attorney on behalf of her parents, there was no evidence of any direct communication or correspondence between the Mr. and Mrs. Francis and the Attorney.
  - c There were no written terms of engagement between the Complainant and the Attorney or Mr. and Mrs. Francis and the Attorney.
  - d There was no upfront agreement regarding the Attorney's fees.
  - e The sale was concluded in December 2017.
  - f A statement to close was provided to the Complainant by the Attorney dated May 25, 2017, showing a balance of \$26,096,800.00 due to the clients.
  - g At the request of the Complainant, the Attorney transferred to the bank account of Dominic Matthews U\$9,000.00 on July 30, 2018, and US\$8,000.00 on March 28, 2019.

- h After the second payment to Dominic Matthews the Attorney indicated to the Complainant on March 28, 2019 that the balance in hand is \$23,954,521.54.
- i The Attorney told the Complainant in a WhatsApp text message on March 28, 2019 that she had placed the funds on a Certificate of Deposit which she cashed in to make the payments requested on that date.
- j The Complainant told the Attorney she cashed in the CD and received \$24,999.283.54 and that a balance of \$23,954,521.54 was left after deducting \$1,040, 662.00 to make the payments by wire. The Complainant instructed the Attorney to pay her the balance being held on account with two cheques, one payable to her in the amount of \$8,000.00 and another cheque payable to Sagicor Investments Limited for the balance on account.
- k The Attorney gave the Complainant two cheques on August 8, 2019, one in the amount of US\$8,000.00 payable to her and another for US\$159,748.74 payable to Sagicor Investments Limited.
- l Upon receiving the cheques, the Complainant told the Attorney that the second cheque for US\$159,748.74 seemed short.
- m The Complainant requested from the Attorney an accounting for the balance of monies on account in a number of exchanges including on March 28, 2019, on August 8, 2019, in November 2019, in January 2020 and February 6, 2020.
- n The Attorney at no stage provided the Complainant or the Mr. and Mrs. Francis with any proof of the exchange rate used or bank charges associated with the purchase of the US Dollars on the 3 different transaction dates, this information was first requested by the Complainant on March 28, 2019.
- o The several and varied statements of account sent by the Attorney to the Complainant were not supported with details of the exchange rate used or bank charges associated with the purchase of the US Dollars on the 3 different transaction dates.
- p The registration fee noted in the statement of account of May 25, 2017, given by the Attorney was an error, it should have stated \$72,500.00 instead of \$145,000.00.
- q The Attorney fees charged in the Statement of May 25, 2017, of \$580,000.00 was accepted by the Complainant. The Attorney revised the attorneys fee upwards to \$1,600,000.00 in a subsequent statement. The Complainant did not accept the fee of \$1,600,000.00.
- r The Attorney did not prove that she is entitled to charge General Consumption Tax, none of her statements indicated a Tax Registration Number.
- s The Attorney is inconsistent with charging GCT by her own admission she chooses when to charge it.
- t The Attorney did not account to the Complainant for interest on the monies held on behalf of the Mr. and Mrs. Francis.
- u The Attorney still owes Mr. and Mrs. Francis monies due to them from the property sale proceeds.
- v Sagicor "FX board rate" for August 8, 2019, to buy US currency draft was J\$136.70.

- w The published Bank of Jamaica Daily Trading US dollar conversion rate was 134.36:1 on July 30, 2018; 126.7 :1 on March 28, 2019 and 135.48:1 on August 8, 2019.

## **DISCUSSION & ANALYSIS**

### *Jurisdiction of the Disciplinary Committee*

69. The Attorney submitted that that the Disciplinary Committee has no jurisdiction over her as she retired as an Attorney-at-law on April 16, 2020. We do not agree with that assertion.
70. Sections 4 and 5 of the Legal Profession Act (hereinafter “the LPA”) empowers the General Legal Council (hereinafter “the GLC) to keep an alphabetical list of Attorneys-at-law referred to as a Roll and all legally qualified persons are entitled to have their names entered on that Roll. Each person, whose name appears on the Roll, is to be known as an Attorney-at-Law.
71. Section 12 of the LPA confers jurisdiction on the Committee to hear complaints brought by persons against Attorneys-at-law of alleged professional misconduct. After hearing the complaint, the Committee is empowered to impose sanctions against the Attorneys-at-law, if found guilty of misconduct. These sanctions may include, being struck off the Roll, suspended from practice, a reprimand, as well as being ordered to pay costs or restitution. The Attorney is saying she is not someone over whom the Committee has the jurisdiction to exercise discipline currently as she is a retired Attorney.
72. An Attorney-at-Law’ may remove himself from the jurisdiction of the GLC but retiring does not achieve this. The Attorney-at-Law would have had to apply to be removed from the Roll under section 5(8) of the LPA for the GLC to consider the application and remove her. This was the discussion in the Court of Appeal in **Jennes Anderson v Eileen Boxill (A member of the General Legal Council) [Civil Appeal No 22 of 2018]** paragraph 39. There is sound reason why the GLC would be required to consider an application for voluntary removal of a name from the Roll, undoubtedly it is to ensure that it retains jurisdiction over an Attorney-at-Law against whom there may be existing or pending complaint of misconduct.

### *The Complainant’s locus standi*

73. The Attorney submitted that the Complainant cannot pursue the Complaint as she was not the client of the Attorney, and that the Complaint was not initiated by the client. The Panel finds that the Complainant could have acted in her own right as a “person aggrieved” and also in her capacity as agent of the clients as she handled all the negotiations with the attorney. The letter of authority from the Mavis and Lascelles Francis to the to GLC confirmed and ratified the Complainant’s authority to act. The Complainant has *locus standi* to bring the Complaint.

74. The Panel takes guidance from the treatment by the Judicial Committee of the Privy Council in **Causewell v The General Legal Council (ex parte Elizabeth Harley) [2019] UKPC 9**. The issue in that case described by the Judicial Committee as “*whether disciplinary proceedings commenced under the Legal Profession Act (“the LPA”) by a person purporting to do so as agent for the Complainant, but without the Complainant’s authority, are capable of being made good by ratification by the Complainant, or whether they are a complete nullity incapable of ratification. The question turns upon the principles of the law of agency relating to ratification (which are the same in Jamaica as in England) and the true construction of the relevant provisions of the LPA*”.

75. The Judicial Committee recounted S 12 of the LPA in its entirety for its consideration but the panel will only quote the following:

*“12.-(1) 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.*

*(2) In any matter or hearing before a court a Judge, where he considers that any act referred to in sub-paragraph (a) or (b) of subsection (1) has been committed by an Attorney, may make or cause the Registrar to make an application to the Committee in respect of the Attorney under that subsection. In this subsection ‘court’ means the Supreme Court, the Court of Appeal, a Resident Magistrate’s Court, the Traffic Court or any other court which may be prescribed...”*

76. The Judicial Committee noted that Section 12 of the LPA gives statutory locus standi to bring a disciplinary complaint to the Committee to three categories of person namely: (1) any person alleging himself aggrieved by an act of professional misconduct committed by an Attorney (2) the Registrar of the Supreme Court and (3) any member of the GLC. The Committee stated that it is also common ground (although implicit rather than expressly stated in the LPA) that a person in category (1) may initiate and pursue such a complaint either in person or through an agent. It concluded that although the section is silent about agency and ratification that, there is no corresponding statutory requirement, express or implied, either in the LPA or elsewhere, which prohibits the validation of the initiation of proceedings under Section 12 of the LPA by way of ratification by the person alleged to be aggrieved.

77. It agreed with the conclusion of the Disciplinary Committee of the GLC that Mrs Hartley’s lack of authority when initiating the complaint could be, and therefore had been, cured by ratification based on three considerations. Lord Briggs stated at paragraph 12 of the judgment:

*“The first was that the initiation of a disciplinary complaint to the Committee without authority was not an illegal or criminal act which could not therefore be made right. Secondly, that the best analogy was the commencement of a civil action, where a lack of authority could, on settled authority, be made good by ratification. Thirdly the Committee relied upon the following dictum of Baron Martin in Brook v Hoak (1871) LR 6 Exch 89, at 96: “If a contract be void upon the ground that the party who made it in the name of another had no authority to make it, this is the very thing which the ratification cures...”*

78. The panel will also rely on the wider definition of the “aggrieved person” given by the Court of Appeal in **Arlean Beckford v The General Legal Council [Civil Appeal No. 32 of 2005]** to include persons other than those who could claim a client Attorney relationship. In that case it was the Complainant’s father and grand-aunt who owned the land that was sold and he based on the evidence was considered to have had a genuine grievance.
79. The decision of the General Legal Council in **Fredrick Scott v Elsie A. Taylor** is very instructive. In that case the Complainant was the one who instructed the Attorney to represent his sister in the purchase of a house. He was the link between the sister and the Attorney in delivering the deposit and the Agreement for Sale. The Committee found that he is person aggrieved by the conduct of the Attorney with *locus standi* to bring the Complaint and the Court of Appeal in its decision July 30, 2009 [Civil Appeal No. 8 of 2004] upheld the Committee’s decision.
80. This Panel concludes from the evidence that the Complainant was being relied on by her parents to direct the transaction and the Attorney understood this. It was the Complainant who selected the Attorney based on the longstanding friendship, she had all the interactions with the Attorney that were necessary for the transaction to be concluded and had the responsibility to receive the correct sum of monies due to her parents at the end of the transaction. The Attorney accepted and acted on her instructions entirely including instructions on the disbursement of the sale proceeds. The Complainant was connected to the entire transaction, the matter became her responsibility and any failing on the part of the Attorney would prejudice the Complainant’s own interest in carrying out what she was tasked by her parents to do. The Complainant passed the threshold question discussed in the Arlean Beckford i.e. whether the Complainant was “a mere busybody”.

#### *Failure to account*

81. The panel finds that the Attorney failed to account to her clients for the net proceeds of sale despite the Complainants requests.
82. An Attorney becomes a trustee of monies held by his/her client and accordingly owes a fiduciary duty to ensure that the money held for a client is returned to the client. The sum to be returned to the client would be arrived at using basic accounting principles; if money is held in an interest-bearing account, there has to be an accounting for the interest; if the monies are converted to another currency, there must be accounting for the rate of exchange; if there are bank charges associated with the retention of the clients’

money, those charges are deductible and so on. Not only should the interest amount, exchange rates and bank charges be stated, they should be substantiated by the Attorney if the client requires that. The panels finds that information was lacking in the accounts provided by the Attorney and that is at the core of the Complainant's dissonance.

83. The cases of **Kemisha Gregory v Debayo A. Adedipe** – Complaint No. 26/2018 (Decision delivered on the 23<sup>rd</sup> October, 2019); **Garrett Dawkins v Jermaine R. Simms** – Complaint No. 48/2009 (Decision delivered on the 21<sup>st</sup> September, 2017); and **Petitia Cooper and Neville Fearon v Daimian Masters** – Complaint No. 29/2014 (Decision delivered on the 25<sup>th</sup> September, 2015) are among the Disciplinary Committee decisions which have interpreted the meaning of failure to account as being where the Attorney has some money for the client and not handed it over.

#### *Accounting for Interest*

84. The Legal Profession (Accounts And Records) Regulations, 1999, Regulation 8 refers; it states:

*“Subject to Regulation 14 of these Regulations an Attorney who holds money for or on account of a client shall account to the client for interest or an equivalent sum in the following circumstances: (i) where such money is held in an interest bearing trust account the Attorney shall account to the client for the interest earned on that money and pay same to client; (ii) where such money is not so held in an interest bearing trust account, the Attorney shall, subject to Regulation 9 of these Regulations, pay to the client out of the Attorney's own money a sum equivalent to the interest which would have been earned during the period it should have been so held”*

85. Regulation 9 states that the Attorney must account to the client for interest for any sum exceeding \$200,000.00 held on the client's behalf for more than 30 days.

#### *Computation of Interest*

86. The Legal Profession (Accounts And Records) Regulations, 1999 Regulation 11 states:

*“For the purposes of regulation 8 (1) (ii) of these regulations the sum payable to the client shall be calculated by reference to: (i) the interest payable on an interest bearing trust account at the bank where the money is held; or (ii) where the money, or part of it, is held in successive and concurrent accounts maintained at different banks, the highest rate of interest which was being offered by those banks on such accounts on the day when the sum payable under regulation 8 (1) (ii) commenced to accrue; or (iii) where, contrary to the provisions of these Regulations, the money is not held in a trust account, the rate of interest stated by the Bank of Jamaica as the commercial banks weighted deposit rates for 1 month and less than 3 months during the relevant period.”*

87. There is no evidence as to the interest payable by Sagicor Bank on interest bearing accounts. The Complainant's Attorney sought in cross examination of the Attorney to



establish that a certain credit entry in the Sagicor account on August 8, 2019 (the day of the payment of the last cheques paid to the Complainant tendered in evidence by the Attorney) was an encashment of the certificate of deposit on which the funds for the Complainant's parents was placed. The Respondent must pay interest but the quantum is deferred at this time.

*Rate of Exchange and Bank Charges*

88. The Attorney said she misplaced the bank documents related to the rate of exchange and charges on the date of the three transactions, but it is the duty of the Attorney to restore this information by making a request of the bank to reproduce it and two show that information in her calculations of the amounts due to the Attorney. A client should not be left to guess or to speculate as to the accuracy or inaccuracy of the Attorney's information.
89. The Panel will take into account the published Bank of Jamaica Daily Trading US dollar conversion rate 134.36:1 on July 30, 2018; 126.7 :1 on March 28, 2019 and 135.48:1 on August 8, 2019 and regarding the bank charges will rely on the March 29, 2019 entry in Sagicor Bank Statement [Exhibit 20] which states J\$4,554.00

*Reversal of discounted Attorney's fee.*

90. The Attorney is wrong in reversing the discounted fee of \$580,000.00 charged in the statement of account to the Complainant of May 25, 2017. Although there was no prior discussion or agreement on fees, that charge was accepted by the Complainant. The revised fee of \$1,600,000.00 in the statement appended to the email of March Feb 25, 2020, three years after the completion of the transaction was not agreed or accepted by the Complainant.
91. The Court of Appeal in **Gresford Jones v The General Legal Council (ex parte Owen Ferron) Miscellaneous Appeal No. 22/2002 (delivered March 18, 2005)** found that the Attorney who altered a fee that was initially agreed with the client was guilty of professional misconduct. Harrison JA said at page 36 of the judgement: -  
  
*“the conduct off the appellant in respect of his attempt to change the initially agreed rate of remuneration is unfair and unreasonable ..... Such conduct was indeed unbecoming of the appellant as an Attorney and accordingly would itself also be a breach of Canon 1(b)”*
92. The Legal Profession (Accounts And Records) Regulations, 1999 Regulation 18 recognises that an Attorney has a lien over property in his possession until he is paid costs due to him *“Nothing in these Regulations affects an Attorney-at-Law right to lien, setoff, counter-claim, charge or any other right against moneys standing to the credit of a client account or trust bank account.”* The panel views this provision in light of the Gresford Jones case and applying the principles there find that the Attorney was not entitled to deduct a sum from the proceeds of sale, which she held on trust for the Complainant, without the client's agreement.

*Notes of proceedings.*

93. Counsel for the Attorney's submitted that a failure of the Disciplinary Committee to provide the Attorney with notes of the proceedings has prejudiced the Attorney's submission so we hasten point out that the Attorney is not entitled to receive copies of the notes of the proceeding until after an order has been made by the Committee. The notes are frequently afforded the Attorney if they are available, but only as a courtesy. The Attorney is entitled to a copy of the notes upon an appeal against the Committee's order on the payment of the prescribed charges. See **Rule 20, The Legal Profession (Disciplinary Proceedings) Rules.**

*General Consumption Tax*

94. The panel is not convinced that the Attorney is entitled to charge the client General Consumption Tax. None of her statements of account tendered to the Complainant by the Attorney indicated a Tax Registration Number as required by Regulation 8(1)(b) of the General Consumption Tax Regulations. The Attorney is inconsistent with charging GCT; by her own admission she chooses when to charge it depending on the relationship she has with the client, or the amount of fees involved. The General Consumption Tax Regulations does not allow for that flexible approach.

**CONCLUSION**

95. Having carefully considered the oral and affidavit evidence of both the Complainant and the Attorney together with the exhibits, the Panel finds that the evidence presented by the Complainant has met the requisite standard of proof, that is proof beyond a reasonable doubt in relation to the grounds complained of, that is, the Attorney has breached Canon VII(b) (ii) of the Legal Profession(Canons of Professional Ethics) Rules in that she has failed to account to the Complainant Dawn Matthews for all the monies in her hands for her account or credit although reasonably required to do so.
96. The Attorney has failed to account to the Complainant for the full sum of **\$24,011,946.00** due to the Client at March 29, 2019. That sum is arrived at as follows :-

<b>Sale Price of property</b>	29,000,000.00
<b>Cost of Sale :</b>	
• Transfer Tax	1,450,000.00
• Half Stamp Duty	580,000.00
• Half Registration Fee	72,500.00
• Legal Cost to prepare	45,000.00

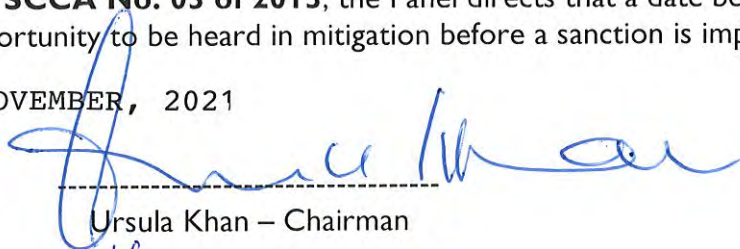
Agreement for sale	
• Legal cost Letters of Possession	7,500.00
• Legal Cost on Transfer	580,000.00
Less Total Cost of Sale	<b>2,735,000.00</b>
<b>Net Sale proceeds</b>	<b>26,265,000.00</b>
Deductions :-	
July 30, 2018, payment to Dominic	1,228,500.00
March 28, 2019 payment to Dominic	1,020,000.00
Bank Service Charge March 29, 2019	4,554.00
Total Deductions	2,253,054.00
<b>Due to client at March 29, 2019</b>	<b>24,011,946.00</b>

97. The Attorney has failed to account to the client for interest on the sum of **\$24,011,946.00** held on the client's account.

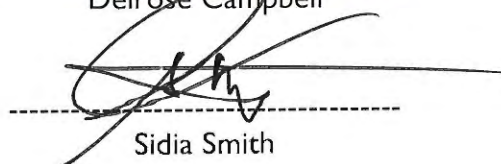
98. The Panel therefore finds the Attorney to be guilty of professional misconduct as per Canon VII (b) of the Legal Profession (Canons of Professional Ethics of Rules).

99. In accordance with the procedure recommended by the Court of Appeal in **Owen Clunie v General Legal Council SCCA No. 03 of 2013**, the Panel directs that a date be fixed to give the Attorney an opportunity to be heard in mitigation before a sanction is imposed.

DATED 11th DAY OF NOVEMBER, 2021

  
 -----  
 Ursula Khan – Chairman

  
 -----  
 Delrose Campbell

  
 -----  
 Sidia Smith

