DECISION OF THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL

COMPLAINT NO. 177/2022

In the Matter of Donesha Desgouttes
And Garth Taylor, an Attorney-at-Law.
AND
In the Matter of the Legal Profession Act, 1971

Panel: Daniella Gentles-Silvera, K.C. - Chairman
Anna Gracie
Rose Bennett-Cooper

Appearances: The Complainant, Donesha Desgouttes.
The Respondent, Garth Taylor.
The Respondent's Attorney, Mrs. Jacqueline Cummings

Hearing Dates: July 1, 18 and 29, 2023

COMPLAINT

1. The complaint against the Attorney-at-Law, Garth Taylor, (hereinafter called "the Respondent") as contained in Form of Application Against an Attorney dated 7th November 2022 and Form of Affidavit by Applicant sworn to on the 7th November 2022 by Donesha Desgouttes, (hereinafter called "the Complainant") is that:

a) The Respondent has failed to provide her with information as to the progress of her matter although she reasonably required him to do so (Canon IV (r));
b) The Respondent did not deal with her business with due expedition (Canon IV (r));
c) The Respondent acted with inexcusable or deplorable negligence in the performance of his duty (Canon IV (s)); and
d) The Respondent breached Canon I (b) which provides that an Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.

There were other complaints, but they were dismissed upon the Respondent's no case submission made on July 1, 2023.

BACKGROUND

2. The matter arises out of a motor vehicle accident which occurred on the 26th August 2015. The Complainant was a passenger in one of the motor vehicles and sustained injuries to her back and two feet. She was treated at the St. Ann's Bay Hospital, and then sent home. The Respondent called her at her home the day after the accident and offered his services to represent her. She visited his office on the 8th day of December 2015 and signed a retainer agreement/engagement letter thereby retaining the services of the Respondent. In the engagement letter, she agreed to pay the Respondent a consultation fee of $8,000.00 and to pay him 33 1/3 % out of any sums awarded as a Judgment or settlement. This complaint arises out of the Respondent's representation of the Complainant.

EVIDENCE OF COMPLAINANT

3. Having retained the services of the Respondent, the Complainant says she only heard from him on a few occasions. She said that she telephoned the Respondent "many times" to find out about the status of the matter. The *"many times"* later turned out to be *"maybe two times or so"*. She also said she went to the Respondent's office *"many times"* to ask what

was going on with the case. Eventually, in cross-examination, she said it was one time other than the initial visit in December 2015, but she could not remember what year she went there. She received no communication from the Respondent about her case. Over the years she has received two or three telephone calls from the Respondent.

4. According to the Complainant she received no letter from the Respondent to go to the St. Ann's Bay Hospital for them to provide a medical report. She stated that all she got was the retainer agreement which she was told to read and sign and which the Respondent did not explain to her. She said the Respondent never told her to bring in a medical report at any time. After she signed the retainer agreement she said the Respondent just told her to keep going to the doctor so that when they were ready for a medical report, they could get one. The Complaint admitted under cross-examination that she ceased going to the doctor in or around 2016 owing to the doctor removing from the accustomed location and that she never advised the Respondent that she had stopped receiving treatment. She said that she spoke to different people at the Respondent's office, and no one ever told her that she was to get a medical report.

5. She admitted that the retainer agreement required the payment of a consultation fee, but stated that she was not advised of this when she initially spoke to the Respondent. She admitted that she did not pay the fee but said she did not know when the payment was due and generally said she did not understand the agreement and would have wanted the Respondent to explain everything to her.

6. She stated that a representative from the insurance company visited her, though she did not know how the representative got the contact information for her. And that following the visit she went to the Attorney's office to find out what was happening but was told that the Respondent had not heard from the insurance company and she was to continue to go to the doctor. In 2020, the Respondent's office called her and advised that the insurance company had settled all the claims and had no more money to settle her claim. It was at that time that the Complainant states that she was advised that she ought to have brought in a medical report, but she did not do so.

7. The Complainant stated that she did not know what to do. She ceased having any communication with the Respondent's office, but did not terminate his services or seek other legal representation and that this lack of communication and other "advice" led her to contact the Bar Association, which in turn directed her to the General Legal Council and the filing of the complaint.

EVIDENCE OF RESPONDENT

8. The Respondent gave evidence that when he contacted the Complainant to ascertain if she wished legal representation, she said she did not like the courthouse and she was not sure if she wanted to pursue the matter and that she was not from St. Ann. On the day when the Complainant visited his office and signed the retainer agreement, he gave her a letter addressed to the Medical Records Department of the St. Ann's Bay Hospital requesting a medical report and the Complainant told him that once she was in funds, she would get the medical report. He stated that the reason for giving the Complainant the letter was that he was a sole practitioner based in St. Andrew and St. Catherine and did not have resources which extended to St. Ann. He made contact with the investigator from the insurance company and passed on the complainant's contact information to him to assist the investigations. He wrote to the insurance company, and they responded and invited him to send in details of the claim. He telephoned the Complainant on occasion, and she would give the impression that she was trying to find the time and money to travel to St. Ann's Bay Hospital to get the medical report. In 2019, having contacted the insurance company by telephone, they told him that the policy limit was used up to compensate all other persons who had been injured in the accident. The Respondent advised the Complainant of this in 2020 when they spoke on the telephone and the Respondent then placed her file on a desk with other files for clients who had failed to submit medical reports. In March 2022, the Complainant's file was destroyed in a fire at his office in Old Harbour, so he produced no documentary proof to support his evidence such as the letter to the hospital. In any event, he admitted that at no point did he ever write to the Complainant about the matter.

He said he called the Complainant several times but most times she never answered her phone. Only occasionally did she answer the phone. He believes he spoke to her about four to five times over the years.

9. The Respondent said he did not write to the Complainant telling her limitation was approaching in 2021 as in his view limitation does not start to run until 6 months after probate has been granted based on the Law Reform (Miscellaneous Provisions) Act and he made checks at the Court several times to check if an application for grant was made and none was made. These checks however, were spaced out over two year periods and ended in 2020, following the conversation with the Complainant that the insurance sums had been used up.

STANDARD OF PROOF

10. Disciplinary proceedings are neither civil nor criminal. They are "*sui generis*". However, it is well established that the applicable standard of proof is the criminal standard. That has been affirmed in the case of **Campbell v Hamlet [2005] UKPC 19**. Accordingly, where a complaint of professional misconduct is made, the Disciplinary Committee must be satisfied beyond reasonable doubt that the complaint has been established. That means that the panel hearing the complaint must be satisfied on the totality of the evidence adduced that the complaint has been made out. In the instant case, the Complainant must prove beyond reasonable doubt that the Respondent has not provided her with information as to the progress of her business; has not dealt with her business with due expedition; and has acted with inexcusable or deplorable negligence and has failed to maintain the honour and dignity of the profession and behaved in such a manner which may tend to discredit the profession. It is for the Complainant to prove her case, not the Respondent.

DISCUSSION AND ANALYSIS

11. Based on the complaint and the evidence the main issues are:

    a) whether the Respondent failed to provide the Complainant with information as to the progress of her matter.
    b) whether the Respondent dealt with the Complainant's business with due expedition.
    c) was the Respondent negligent in the performance of his duty.
    d) did the Respondent breach Canon 1 (b) which provides that an Attorney shall at all times maintain the honour and dignity of the profession and shall abstain from behaviour which may tend to discredit the profession of which he is a member.

12. Before addressing the evidence in the case at hand it is important to remind oneself that once a client retains a lawyer that lawyer has an obligation to act in the best interest of his client and to represent the client honestly, competently and zealously which includes not doing something or omitting to do something which will prejudice the client's case. In **Witter v Forbes (1989) 26 JLR 129** the Court of Appeal held as regards Canons IV(r) and IV(s) that:

    "As to rule (r) it is not mere delay that constitutes the breach , but the failure to deal with the client's business in a business-like manner. With respect to rule (s) it is not inadvertence or carelessness that is being punishable but culpable non -performance." (Page 131.)
    Later on in the Judgment Wright JA said with respect to, Canon IV(s) that: *"... 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".*

13. It is most unfortunate that the Respondent's file in the present case was burnt in the fire, but he has candidly admitted that apart from the engagement letter and the letter to the St. Ann's Bay Hospital he did not write any letter to the Complainant about the progress of the matter or anything else about her matter. He says he called her several times but was only able to speak to her four or five times over four (4) years and she says they spoke about two or three times.

14. Based on the standard of proof which the Complainant must establish we find that the Complainant has not proved beyond all reasonable doubt that the Respondent did not give her a letter to take to the St Ann's Bay Hospital to get her medical report. In arriving at this finding, we have taken into account the fact that the Complainant was not the most credible witness and at times exaggerated parts of her evidence. For example, she said that she called the Respondent many times and then later in cross examination when pressed said it was 2 or so times which is vastly different from many times. She again gave evidence that she visited the Respondent's office many times which turned out to be one time.

15. Be that as it may, the Respondent's evidence is that he spoke to the Complainant four to five times and he never wrote to her on the matter such as to tell her to bring in the medical report and to impress upon her the importance and the urgency of doing so; nor did he ever write to her and advise that he had received an emailed letter from the insurance company inviting him to give details of her claim. He never wrote to her explaining the limitation periods and the checks that he said he made at the Court for an application for a grant in the estate of the motor vehicle driver who died in the accident.

16. The Respondent's communication with the Complainant related solely to asking her for the medical report. Whilst we accept that a client has a responsibility to show an interest in their matter, it is the Respondent who has the knowledge and expertise in dealing with a legal matter and is expected to appreciate the importance of the matter, invitations by the opposite side to settle claims, timelines and limitation periods to name a few. If the Client/

Complainant was delaying in providing the medical report, so long as the Respondent still represented the Complainant, it was for him to set out the necessity for the medical report and the consequences of the Complainant not providing same but this was not done in the present case. The manner in which the Respondent dealt with the Complainant's case is in our view most unbusinesslike, particularly given the time between when the retainer agreement was signed in December 2015 to when the Respondent heard from the insurance company that they had no further funds to settle anymore claim which was in 2019/2020. The inaction, slow pace and manner in which the Respondent communicated with the Complainant as to what was required for her case (i.e. the medical report) has possibly caused the Complainant to not be able to recover anything for the injuries she sustained in the accident. At the very least she can recover nothing from the insurance company as they have verbally advised the Respondent that all the insurance money have been paid out to settle claims. This is even more tragic given the fact that at some point the insurance company wrote to the Respondent inviting him to send in details of the Complainant's claim. In fact, this would have been the perfect juncture for the Respondent to have written the Complainant enclosing the letter from the insurance company and reminding her to submit the medical report as the matter would not be able to proceed without it and that this was when the medical was needed. The panel must hasten to say that outside of the lack of availability of the insurance funds, there is no evidence that the limitation period has expired.

17. In all the circumstances, we find that the Respondent having been retained and agreeing to represent the Complainant in December 2015, which is over 8 years ago, has really not acted with reasonable urgency and alacrity to move the matter along. We therefore find that the Respondent has breached Canon IV (r) of the Legal Profession Canons of (Professional Ethics) Rules and is thereby guilty of professional misconduct.

18. Given these findings, we will give the Respondent time to let us have submissions on sanction or to present evidence to us in this regard.

Dated the 29th day of July 2023

DANIELLA GENTLES-SILVERA

ANNA GRACIE

ROSE BENNETT-COOPER