DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL

Complaint No. 106/2008

IN THE MATTER of a complaint by PROSPOREX LIMITED INC. against MR. OSWALD JAMES, an Attorney-at-Law

AND

IN THE MATTER of the Legal Profession Act

Panel: Pamela Benka-Coker, Q.C.
David Batts, Q.C.
Charles Piper

1. This complaint is dated the 3rd September, 2008. The Affidavit in Support is sworn to by Mr. Carl Lewis on the same date. The complaint against the attorney is that:

"(a) He has not dealt with my business with due expedition.

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

(c) He has not accounted to me for all moneys in his hands for my account or credit although I have reasonably required him to do so."

2. This matter came on for hearing on the 13th November, 2010. Mr. Oswald James, the attorney against whom the complaint was made (hereinafter referred to as the attorney) was absent. The Committee satisfied itself that he had been duly served with Notice of the Hearing pursuant to regulations 5 and 21 of the Legal Profession (Disciplinary Proceedings) Rules.

3. Mr. Carl Lewis, the representative of the Complainant, stated he had come from overseas for the hearing. Present with him were his intended witnesses Sean Decarish and Christopher McCalla. The Committee decided to commence the hearing and did so at 12:05 p.m. on the 13th November, 2010.

4. Mr. Carl Lewis gave evidence. He expressed a wish to affirm as he did not "like the wording swear by almighty God." The panel allowed him to affirm.

The Evidence of Carlton Lewis

5. He stated that his name was Carlton Lewis and he lived at 65 Skymark Drive, Suite 1404, Toronto M283N9, Ontario, Canada. He is a director of Prosporex Limited Inc. and he is a consultant financial adviser.

6. He knew the attorney. He met him first in the 1980's in Toronto. The attorney was not then a lawyer but they attended the University of Toronto and as alumni members they met from time to time. He knew when the attorney entered York University Law School. Prior to that he said the attorney had been a mortgage

broker and financial analyst and they referred business to each other. He said that he did not think the attorney ever practiced law in Canada but that he got involved with the Jamaica Labour Party and came to work in Jamaica with Mr. Seaga. He is aware that the attorney practiced law in Jamaica.

7. In late 2007 an Office was opened for Prosporex here in Jamaica. Customer Care Centres he said were opened so that if a client called a number in Canada it would be answered here in Jamaica. They operated in the free zone. Mr. Harold Brady was the lawyer who set up the Free Zone in New Kingston. It operated so they did not have to pay taxes.

8. It was after Mr. Lewis' return to Jamaica that he said a mutual friend Mr. Courtney Lewis advised him that the attorney was living in Jamaica and a meeting was arranged. In January 2008 he got together with the attorney at the Quad night club. They had drinks and the attorney told him he was available to provide legal services. He told him that Mr. Brady and Mr. Soutar were his attorneys but if there was any new work he would pass it to him. He said the attorney mentioned other things to him including a development project called Queen Hill but he did not get involved.

9. Mr. Lewis further stated that his real estate agent Ingrid Green informed him of a property called Villa Maria in Seymour Avenue. After contacting his partners who were directors of Prosporex, Mark Scott and Cedric Hill, an offer was made.

The attorney was contacted and he agreed to act. U$300,000.00 was wired to the attorney. This was in February 2008. He also gave him U$37,500.00 locally in the form of a Manager's cheque from his personal account. The total amount of the offer was U$2.5 Million.

10. Mr. Lewis stated that the attorney "killed" the transaction. He said they went to see a nun who was acting for the Vendor at a place on Half Way Tree Road. The nun wanted to be satisfied that the premises would be developed in accordance with the environment. She was impressed, shook hands and instructed the attorney to contact her attorney Ms. Andrea Rattray.

11. Mr. Lewis stated that the attorney met with Ms. Rattray. He then called to say he had bad news as the vendors had decided to sell to Life of Jamaica Limited (LOJ). The attorney then stated that when one door closed another opened and tried to encourage him to invest in the Queen Hill property. Mr. Lewis said that he said no, he just wanted his money back. That is the U$337,500.00. The attorney told him the money is in his trust account and it is safe there. Mr. Lewis said he believed him initially because where he is from he knows trust accounts are sacred. "You touch that and you are done as a lawyer" he said.

12. Mr. Lewis said that he noticed the attorney spending a lot of money. He rented an entire 8th floor approximately 7,000 sq. feet in New Kingston. The attorney told him he had prepaid one (1) year's rent of U$100,000.00. They also did massive

renovation in the office. The attorney's house in Long Mountain was also being renovated. As a result Mr. Lewis said he got nervous and asked for the money back. He says the attorney told him it would take about a week to get the money back. The week came and went and he did not get it back. He then said all of a sudden he could not reach the attorney. He tried his cell phone and could not get him on the weekend.

13. He asked Ms. Jasmine Puranda who was a consultant for himself and the attorney. She managed to collect U$100,000.00 from the attorney. This was in about March 2008. Mr. Lewis then referred to his complaint and that document and the Affidavit sworn in support were admitted into evidence as **Exhibits 1** and **1A** respectively. Having looked at them he recalled that it was in April 2008 that he got U$100,000.00 from the attorney.

14. **Exhibit 2** is a letter dated 15 April, 2008 to the attorney from Prosporex Ltd. It reads as follows:

"Dear Mr. James:

After various telephone calls and enquires, I am still not able to comprehend what is holding up the return of the funds for Prosporex Ltd. inc. that should be in your trust account.

I am requesting that you transfer the total amount of money that was deposited in your account in the month of February by Prosporex Ltd Inc. The total amount in question is Three Hundred and Thirty Seven Thousand Five Hundred US dollars (US$337,500).

It would be greatly appreciated if these funds could be returned to Prosporex Ltd Inc. as soon as possible, as we have pressing needs for its use.

We are looking forward to your immediate cooperation in this matter.

Sincerely,

Carl Lewis
Managing Director"

15. Admitted as **Exhibit 2A** was a letter dated 28 April, 2008 "from Prosporex Ltd. to the attorney acknowledging receipt of U$100,000.00 and demanding payment of the balance. Mr. Lewis stated that he has still not yet received the balance. He told the Committee that the attorney had rented office space and intended to open a Collection Agency with Mr. Decarish.

16. **Exhibit 3** is a letter dated 20 May, 2008 from Prosporex Ltd. to the attorney. That letter reads:

"Dear Mr. James

Re: Funds owing to Prosporex Ltd that was used from your trust account

After various attempts to arrange a meeting with you and Mr. Decarish in order to find a resolution to the matter. It becomes abundantly clear that you have no intention of making any effort to such meeting.

The letter that was delivered to Tamara Joyles on May 20, 2008 does not sufficiently represent a serious legal undertaking. The only undertaking that I will consider at this time, is the assignment of some tangible collateral which holds a value of at least the amount of money owing to Prosporex Ltd Inc. This amounts to Two Hundred and Thirty Seven Thousand Five Hundred United States Dollars (US$237,500.00).

This undertaking should also include calculation of interest amounting to 10% monthly. Failure to address this matter expeditiously will leave me no option but to proceed with serious legal actions.

Govern yourself accordingly.

Sincerely,

Carl Lewis"

17. Mr. Lewis said he got a letter dated 13 May, 2008 from the attorney. A copy was admitted as **Exhibit 4.** It reads:

"Dear Sirs:

The undersigned refers to our meeting of even date (Carl Lewis/Oswald James/Sedwick Hill/Jasmine Puranda) in your offices.

It was acknowledged that there is a balance owing to Prosporex Investment Club Inc. of 1513 Lawrence Avenue East, Toronto, Canada in the amount of Two Hundred and Thirty Seven Thousand United States Dollars (US$237,000.00).

Oswald James and James & Company (A Firm) hereby gives his/its professional undertaking to return the said balance on or before July 30, 2008.

Yours faithfully,
JAMES & COMPANY

OSWALD P. JAMES

18. Mr. Lewis said he responded to that letter on the 20 May, 2008 **(Exhibit 3)** as the undertaking proffered had been vague. He wanted tangible assets to the value at least of the amount owing.

<u>The Evidence of Sean Decarish:</u>

19. The Complainant's next witness was Mr. Sean Decarish. He was sworn. He stated that he lived at 3 Airdrie Mews, Kingston 8. He was a business man not a lawyer. Himself and his former partner Mark Jones from IAS Limited were

buying property in Queen Hill. This was in July 2007. They asked the attorney if they could use him as a nominee until a company was formed. They formed a company in St. Lucia. The witness stated he was in partnership with the attorney. They opened a debt collection company. They were 50/50 partners. That company was incorporated in 2008. Offices were set up in the Citibank Building on the 8th floor, 67 Knutsford Boulevard. The square footage was 6,700 sq. ft. and it was rented from Sagicor Limited. The advance payment of U$100,000.00 was paid by the attorney. The renovation work cost approximately J$5.8 million. It was 80% completed but the business never started. Deposits were made on furniture, UPS and PBX services. He said the attorney's explanation of the funding was that he had clients who had money they were not using and who were prepared to invest. They would get 40% of the business.

20. The witness said Mr. Lewis was introduced to him by the attorney as a friend from Canada. This was in 2008. The attorney told him Mr. Lewis was buying a property known as Villa Maria. The attorney asked how to contact the nuns and the witness obtained the information and gave it to the attorney.

21. Mr. Decarish further stated that the business did not get off the ground because the lawyer for the vendor of the Queen Hill property was having difficulties. He asked the attorney to take over but "he tried to knife me in the back and I came out of the business".

22. In response to questions put to him by Mr. Lewis Mr. Decarish stated he recalled the attorney was in possession of a cheque for U$304,000.00 and it was his (the witness's) girlfriend's cheque. They were buying a townhouse on Ferandon Drive and asked the attorney to act on their behalf. The original amount was U$300,000.00 but when refunded U$4,000.00 was added as interest for holding the funds for six (6) months. That was the evidence in Chief of Mr. Decarish.

Further Evidence of Carl Lewis

23. Mr. Lewis then indicated he wished to give further evidence. He was then recalled. He stated that at one point the attorney brought in a mediator after he threatened to call the police. The mediator was a mutual friend. The attorney brought out a cheque for U$304,000.00 payable to James & Co. and said Prosporex's money was in that cheque and that he could pay back the balance if his ex-partner would endorse the cheque. He thinks the cheque was made out to James & Co. and Mr. Decarish. Mr. Lewis said he contacted Mr. Decarish who became annoyed and said it was his wife's money and was a real estate deal that fell through.

24. At this juncture in the hearing on the 13 November 2010 Mr. Brian Barnes, Attorney-at-Law, arrived and informed the panel that he appeared on behalf of the attorney. He stated that he was unaware of the hearing date and that prior to this date his client had always attended. He said further that as criminal proceedings

were ongoing it was his intention to apply to adjourn these proceedings. The matter was adjourned to the 15 November, 2010.

25. On the 15 November, 2010 the attorney and Mr. Brian Barnes, his legal representative were in attendance. Mr. Barnes commenced his cross examination of the Complainant. Mr. Barnes suggested to the Complainant that he was not being truthful when he said that the Villa Maria transaction was the only real estate transaction. The Complainant admitted that on the 7 December, 2007 he made an offer to purchase premises at 82 Knutsford Boulevard, New Kingston. He retained the attorney in that transaction which was on 7 December, 2007. The 82 Knutsford Boulevard transaction was prior to the Villa Maria one and the attorney sent him a draft agreement. The Complainant said it was after the Knutsford Boulevard transaction did not go through that Miss Green at Caldwell Bankers showed him Villa Maria. He stated Prosporex was registered in Canada. He admitted he is one of three (3) directors of a company named Prosporex registered in Jamaica. He is also a shareholder. It was suggested to him that it was Prosporex Investment Club which wired the U$300,000.00. The Complainant disagreed.

26. It was suggested to the Complainant that he instructed the attorney to make a counter offer for $2.6 million and this was denied. Further that 120 days to complete on a cash basis was offered. The Complainant denied it. The Complainant was referred to page 14D of the bundle of documents. The

Complainant denied knowing the letter as no-one was authorized to sign on his behalf. He was unaware of an offer of $2.8 million. He was unaware that on the 27 February, 2008 an offer of $2.6 million was made by James & Co. Neither was he aware that on the 25 February, 2008 the vendors rejected the offer made through Caldwell Bankers of $2.5 million. A letter dated 13 February, 2008 from Caldwell Bankers was admitted in evidence as **Exhibit 5**. The witness stated that the attorney told him his offer from Caldwell Bankers had been rejected by the vendors.

27. The witness said he did not recall being written to by the attorney and told that the offer had been rejected. He was shown document number 16 in the bundle but said he did not recall it being discussed with him.

28. The witness admitted that after the Villa Maria transaction failed he expressed an interest in another property owned by Mr. Dabdoub in the Golden Triangle. He admitted that the attorney discussed that with him.

29. He said the attorney discussed the Queen Hill property with him before and after. He had no interest in it before or after. He said it was the attorney's own development. He said long before the Villa Maria transaction the attorney and Mr. Decarish drove him up to Queen Hill and told him about the development. He said the attorney said one door is closed another is open. They introduced him

to Christopher McCalla. He met him in Ms. Grange's office in New Kingston. He looked at it and told the attorney he was not interested.

30. It was suggested that he instructed the attorney to buy out one of the partners in the Queen Hill property. This was denied. The witness said,

> **"That is Mr. James' idea. What really turned me off was that Mr. James was trying to use my money to pay me back. I ask what was in the deal for you. He said Mr. Christopher McCalla was to pay him U$100,000.00 to put the deal together".**

31. The witness was asked whether he signed an agreement in the course of discussion to purchase the Queen Hill property. He denied it. The witness was asked to look at page 43-44 of the bundle. The witness said "the signature appears to be my signature but I did not sign that document". He identified the stamp on the original as his company stamp. The document was admitted as **Exhibit 6** a Sale Agreement.

32. The witness said he did not recall signing an agreement to purchase sale plans for Queen Hill developments. He was shown a document and said it looked like his signature but when asked whether he signed that document stated,

> **"not to my knowledge".**

Exhibit 7 was admitted being a Sale of Plan.

33. It was suggested to the witness that sometime in April 2008 he instructed the attorney to pay $237,500.00 to Mr. McCalla. His answer was, **"Definitely not".**

34. He admitted that he had given the attorney no instructions in writing in relation to Knutsford Boulevard or Villa Maria. He did not send the attorney a letter with the U$37,500.00. Nor was there a letter when the U$300,000.00 was wired. He could not recall sending a letter to the attorney between February 2008 (when the Villa Maria sale failed) and 15 April, 2008.

35. It was suggested that he had a disagreement with Mr. Mark Scott in February 2008 regarding the Queen Hill development. This was denied. Mark Scott it was suggested wanted Prosporex Investment Club to be purchaser and he wanted Prosporex Jamaica Limited. This was denied. Also denied was that there was any meeting to discuss such a dispute.

36. It was suggested that after he wrote the letter of the 15 April, 2008 there was a meeting between himself and the attorney to discuss the latter. The response was,

> **"I don't recall that specific meeting. There were many meetings with Mr. James. Meetings to pay back the money".**

37. It was suggested to the witness that the money returned to him was U$37,500.00 plus U$62,500.00 which Hill and Scott suggested be paid to him. This was denied. It was suggested that,

> **"it was out of the said meeting with Lewis, James, Hill and Puranda in your office that Mr. James agreed to send an undertaking to you that the money will be returned to the Canadian Company".**

The Complainant totally disagreed. The matter was further adjourned part heard to the 19 November, 2010.

38. On the 19 November, 2010 Mr. Carl Lewis' cross examination resumed. He admitted that the offer from Caldwell Bankers was made on the 14th or 13th February, 2008. The offer would have been signed by him before sending it to the attorney. He was asked if he was in the habit of giving over money without a letter and he said it was his attorney and he trusted him. He was unaware when the U$300,000.00 was credited to Mr. James' account. He admitted that he provided the attorney with a printout of Prosporex account in Canada and he did so because the attorney requested it as it was a good idea to provide proof that they had the money to finance the Villa Maria purchase.

39. It was suggested to the witness that on the 26 February 2008 he gave the attorney verbal instructions to invest in Queen Hill. This was denied. It was suggested that to his knowledge the attorney from the 26 February, 2008 paid U$198,600.00 to Mr. McCalla with regard to Queen Hill Development. This was denied. It was suggested that he was aware that additional payments were made to Queen Hill being U$237,500.00. This was denied. It was suggested further that this investment was his 50% share of Queen Hill. It was denied. The witness denied having any interest in Queen Hill.

40. It was suggested that the payment for a 50% interest in Queen Hill was the reason there was no demand for the money between 26 February, 2008 and 15 April, 2008. The witness responded that he made demands verbally.

41. He admitted that he normally discussed investments with his partners this included Mark Scott. He was however unaware of discussions between Robert Fuller and Mark Scott concerning Queen Hill. It was suggested that he had discussions with Mark Scott about Queen Hill and agreed to take over the entire development. This was denied.

42. It was suggested that on 15 April, 2008 he discovered that the original agreement for sale for Queen Hill was in the attorney's name as purchaser. The witness denied saying he did not care. The question was asked whether this is why he said the attorney was using his own money to pay him back. The witness responded as follows:

> **"Mr. James took me and Mr. McCalla to Minister Grange's office. He was discussing the deal. Based on the fact that he would invest in the Queen Hill property. I spoke to Mr. McCalla for the first time on Mr. James' instructions. The price he wanted for it he suggested that, that price was a good price and I asked him what was in it for you he said he was making U$100,000.00 commission. At this time I said you were using my money to pay me back. I said I was not interested.**

43. It was suggested that he was upset because he signed an agreement for U$1 Million and the agreement had in it J$45 million and that upset him. This was denied. This it was suggested is when he wrote the letter of 15 April and got turned off Queen Hill deal. The suggestions were denied.

44. It was suggested to the witness that it was agreed that the money invested in Queen Hill should remain. This was denied. It was suggested that it was agreed that his partners would get a $10 million loan by July 2008 to finish the Queen

Hill project. This was denied. Further, that out of this the U$237,500.00 would be returned to Canada. This was denied.

45. This, it was suggested, explained the attorney writing the letter of the 13 May, 2008. This suggestion was denied.

46. The witness was then asked whether he had had problems with the Bank of Nova Scotia (BNS). He said yes. It was suggested that it was when this problem started he turned to the attorney for the U$237,500.00. This was denied.

47. A letter dated 6 June, 2008 to BNS was shown to the witness and he identified his signature, it was admitted as **Exhibit 8.**

Cross Examination of Sean Decarish

48. The cross examination of the Complainant ended. Mr. Decarish was then sworn and cross examined. He stated that it was the attorney who introduced him to the Complainant. He was asked whether the introduction was in relation to Queen Hill and he said,

> **"No two things. Mr. Lewis was trying to seal a business venture in Jamaica and a quick loan facility and he was interested in opening a business facility. I told him there was space on the 10th floor."**

49. He said Mr. Lewis opened the business and was in the business of loaning money to people. The witness was asked whether at some stage Mr. Lewis was presented

to him as a prospective partner in Queen Hill, the witness answered **"absolutely not".**

50. The witness admitted knowing Robert Fuller and Mark Scott. He said he had discussions with Mr. Fuller and Mark Scott about Queen Hill. Fuller was the architectural designer for Queen Hill. The following exchange occurred:

"Q: How you come to have discussions with Mark Scott?
A: I was trying to get funding and he asked what else was going on. He wanted to know what was going on with the project so I drove up there. Jasmine Puranda and myself.
Q: Other than driving Mark Scott to show him what you were doing did you have any other discussions?
A: No, other things were in Canada."

51. The witness was asked his email address. Various questions were asked about emails sent to him. A letter dated 28 March, 2008 was **marked 9** for identification. An email was **marked 10** for identification.

52. The witness admitted that he held title for Queen Hill. This was the property Mark James and himself purchased. He was asked whether there was a dispute between Mr. McCalla and Mr. James. The witness stated his dispute was with Mr. James who created a dispute between Mr. McCalla and himself. The witness denied knowing of any involvement of Mr. Lewis purchasing Queen Hill property.

Re-Examination of Sean Decarish

53. The cross examination of Mr. Decarish ended and the Complainant was allowed to re-examine the witness. In re-examination the witness stated that himself and the attorney were the original purchasers of the Queen Hill property from Mr. McCalla. The witness said the deal was not closed because Mr. McCalla did not get the money due to him based on the purchase agreement. The matter he said was in court.

54. The witness was asked whether other than as nominee the attorney was at any time the purchaser of the property. The answer was no. The witness said the series of cheques totaling U$198,000.00 were paid on his behalf to purchase the Queen Hill property. He explained the law suit as the attorney suing to get back money that he said he paid on the witness Decarish's behalf.

Exhibit 11: Was put in being the Fixed Date Claim Form filed June 16, 2005.

The Evidence of Christopher McCalla

55. The Complainant's next witness was Mr. Christopher McCalla. He was sworn. He described himself as a real estate developer. He stated that he was the owner of property at Queen Hill being purchased by Mr. James and Mr. Decarish. He said the matter was in court now.

56. He met the attorney through Mr. Decarish. Mr. Decarish was purchasing land from him. He received some payments and then Mr. Decarish changed lawyers

from one Carol Powell to the attorney. The witness was asked why the deal went bad and stated,

"Mr. James and Mr. Decarish had a fall out and there was a mix up so the deal with me and Mr. Decarish got shaky so Mr. James wanted a new buyer and took me to this man Mr. Lewis but in the middle of our making a deal I found out that Mr. James owed Mr. Lewis money. So me and Mr. James and Mr. Lewis was outside of Ms. Babsy Grange's office. Mr, Lewis .....,that if he was to buy the property from me I would give Mr. James U$100,000.00 from the deal."

The following exchange occurred:

"Panel: **Why would you give Mr. James U$100,000.00.**
McCalla: **The deal we had before Mr. Decarish and $500,000.00 and something US – he took me to this gentleman so he would take back $100,000.00.**
Panel: **So you were paying him compensation.**
McCalla: **Yes, so Mr. Lewis got mad and bad word curse too. Mr. Lewis said you not going to take my money and pay him back. Mr. James got mad, Mr. James was my friend and Mr. James took up his briefcase and left. Mr. James and I went to a coffee bar and had something to drink."**

57. The witness was asked whether he received U$198,000.00 from Mr. James on behalf of the Complainant. He said no. He also denied receiving money from Prosporex, or from Mark Scott.

58. The witness was then cross examined. He stated that Sean Decarish was introduced as a prospective purchaser for land in Queen Hill. He admitted signing an agreement for sale. The price was J$45 million. Conrad Powell he said, was the lawyer for both himself and Decarish.

Exhibit 12 was tendered through this witness as an agreement for sale of the Queen Hill property.

59. There was a first agreement for 1 acre, $1 million for 1 acre. The first agreement was admitted as **Exhibit 13.** This he said was promised by Conrad Powell. This was in 2007 and Mr. James was not involved. The witness said the first time he saw the **Exhibit 13** was when he met with Mr. Conrad Powell and Mr. Decarish sometime last year. The matter adjourned to the 20 November, 2010.

60. On the 20 November, 2010 the cross examination of Mr. McCalla continued. The witness admitted that the purchase price in both agreements was J$45 million. Prior to the attorney being involved he had received J$24 million. His introduction to Mr. Lewis was after the first deal fell apart. He said Mr. Lewis was not introduced to him as a prospective purchaser. He recalled being interviewed by a police officer. He was shown a statement and having looked at it admitted that he did tell Miss Dodd, a police officer that Mr. Lewis was introduced to him as a prospective purchaser. He was asked which of his statements is true and said it was the one given to Ms. Dodd.

61. He admitted he was not privy to arrangements between James and Decarish. In addition to J$24 million he received a series of other payments from both the attorney and Mr. Decarish. He did not give receipts but the attorney had a signing book. He admitted getting U$30,000.00 on the 24 December 2007.

Exhibit 14 – was a cash receipt dated 24 December, 2007

Exhibit 15 - cheque and receipt

Exhibit 17 – receipt for U$20,000.00

Exhibit 18 - receipt for U$18,600.00

62. The witness was asked whether in discussion with Mr. Lewis they reached a price. He said the price was discussed but they did not reach an agreement. He said the attorney drafted an agreement for sale. He did not sign an agreement. He said Mr. Lewis never paid him money towards the purchase of Queen Hill.

63. The witness was re-examined by the Complainant. He was asked whether at any time he agreed a price which he would accept for Queen Hill property and answered in the negative. He said the attorney did not tell him whether the money he was paying came from Mr. Lewis or his company.

Evidence of the Attorney

64. The Complainant closed its case. The attorney was sworn and gave evidence. He was asked whether he had responded to the complaint. He said he had not as the matter was reported to the police. He was asked to say exactly what happened and stated that Mr. Lewis telephoned him from Canada to say he had a real estate transaction and wanted him to act in a transaction. The transaction was in relation to 2 Knutsford Boulevard. He indicated how instructions were received and that the transaction in relation to Knutsford Boulevard did not go through.

65. He indicated that he received instructions in relation to Villa Maria. He received a fax from Caldwell Bankers. He received it in February 14, 2008 and verified it

with Mr. Lewis. He met with the vendor, sister Gourety. He received U$37,500 from Mr. Lewis or his company. This was the 14 or 15 February 2008. He received no written instructions. He also stated that he received U$300,000 which was transferred by wire from Prosporex Investment Company, Toronto, Canada. He received this on the 24 or 25 February 2008.

66. **Exhibit 20** was admitted being transfer dated 15 February 2008. The attorney explained that he received the money on the 24th or 25th because that is when the bank released it. He had to attend the bank with Mr. Lewis to explain the source of funds.

67. The attorney stated he is not denying receiving U$337,500.00 from Mr. Lewis and his company. No payment was made in relation to the Villa Maria transaction. He indicated that the vendors were concerned about the prospective purchaser's ability to conclude the purchase and their attorney, Ms. Andrea Rattray wanted to know who they were. The attorney said he asked Mr. Lewis to provide a profile on the company and to provide bank confirmation of balance of purchase money. The information was provided and sent. **Exhibit 22** is a letter dated 25 February, 2008 from James & Co. to Rattray Patterson Rattray, Attorneys-at-Law.

68. The attorney said he received instructions in writing to increase the offer. **Exhibit 23** letter dated 22 February, 2008 was admitted. He noted that the letter was

signed for Mr. Lewis by Kena Jones the manager from Mr. Lewis' office. He recognized her signature.

69. **Exhibit 24** is a letter dated 22 February 2008 to Ms. Andrea Rattray from James & Co. **Exhibit 25** was the response from Ms. Andrea Rattray. The attorney stated that he discussed that letter with the Complainant. He sent the letter to him and discussed it over the phone. He said that after the transaction was over there was no request for the U$337,500.00.

70. The following exchange occurred:

"Q: What did you do with the $337,500.00.
A: $100,000.00 was delivered to Prosporex Limited. The balance was paid over in respect of the purchase of the Queen Hill property.
Q: By who?
A: James & Co.
Panel: To who?
A: Christopher McCalla received it on behalf of Crisjam.
Panel: Was there any signed agreement for sale between Prosporex and Christopher McCalla of the Queen Hill property.
A: No."

71. The attorney further deponed that Mr. Lewis had directed him to make the payment. The instructions were verbal. He averred that he advised Mr. Lewis he was a nominee in a development in Queen Hill, that there was discord among the partners and that they needed a replacement for the partner named Mark Jones. He told the Complainant that for that small investment he could replace Jones by paying back Jones' portion. He said only the two of them were at the meeting with the Complainant at which these instructions were obtained

72. The document marked 16 for identification was tendered in evidence as **Exhibit 16** it was a bank draft purchased by James & Co. He delivered the draft to Mr. McCalla but did not disclose who he was nominee for. He stated that his reason for introducing Mr. McCalla to Mr. Lewis was for him to meet the vendor.

73. The attorney further stated that after the purchase of Mr. Mark Jones' share Prosporex would have 50% of the property. The attorney related that on March 8 he was in his office when Mark Jones called to say he had lodged a caveat. He said McCalla asked him to get the Complainant to take over the development. The attorney stated that he related the conversation to the Complainant. After a while he said the Complainant and McCalla were negotiating among themselves. Decarish turned over the duplicate certificate of title to the Complainant. Before the meeting was over Mr. Lewis pushed the title to Mr. McCalla.

74. The attorney was shown **Exhibit 6.** He was asked to explain it and said,

> **"This is the document I prepared and it was intended to be a contract of sale between Chris McCalla, the intended purchaser. It was prepared in the circumstances where Prosporex would take over the entire project. Jones and Decarish would be out of it. It was intended to be straight forward purchase between Christopher and Prosporex."**

75. The attorney said the document was prepared after the U$237,500.00 was paid. He identified the signature of the Complainant in the document.

76. **Exhibit 7** was shown to him. He identified it as related to plans prepared on behalf of the vendor. It was signed at the same time the agreement was signed by the Complainant. This very important bit of evidence was then elicited:

"Panel: **Were you present at these discussions?**
A: **Yes. Mr. Lewis discussed with Mr. McCalla. Mr. Lewis was concerned about difference in prices particular in which I was nominee the said $45 million. He said this agreement I prepared said $1 million. Mr. McCalla was saying he was not selling land for $45 million. He was selling it for U$1 million. He then explained that I was standing in for other people and so if I assisted him in getting the property sold he would give me a commission of U$100,000.00 and that is when Mr. Lewis became incensed, used expletives and so I walked out.**
Panel: **Did Mr. Lewis explain what upset him?**
A: **He was indicating that his money of U$237,500.00 had carried the deal this far and it looked like what I wanted to do was to take his own money and pay him back."**

77. The attorney was shown **Exhibit 2 and 2a** letters dated 15 April and 28 April 2008 and said that it was signed by Carl Lewis. He said the first time he saw it was at the Fraud Squad. He did not get it from Mr. Lewis.

78. As regards **Exhibit 28** drawn on First Global Bank the attorney explained that the Complainant had some difficulty with the Bank of Nova Scotia. The money was an advance to the local company from Prosporex Investment incorporated from Canada. He denied that the payment of U$100,000.00 had anything to do with the letter of April 15 **Exhibit 2.**

79. The attorney said he did not recall receiving the letter dated 28 April 2008. He did recall writing and signing a letter dated 13 May, 2008. The meeting took

place on the same date. He said Mr. Lewis (the Complainant) had not made a demand for payment prior to that date. There then follows this interesting bit of evidence:

"Q:	**Look at Exhibit 4. Please explain under what circumstances you acknowledge that there is a balance owing and you undertake to pay**
James:	**Mr. Hill was ostensibly there to represent himself and Mark Scott. By the time this meeting had taken place there was a very acrimonious disagreement with Mark Scott and Mr. Lewis about the direction of investment of Queen Hill and proceeded at the centre of it was a loan application for U$10 million. Mark Scott had a particular view. Cedric Hill stated on behalf of Mark Scott about how to proceed and was there to lay down views in relation to the acquisition of Queen Hill and the development. How they wanted to proceed. They wanted to proceed post haste to buy the land from the Vendor and starting the development.**
Panel:	**With whom?**
James:	**Mark Scott and Cedric Hill. They were not perturbed of the purchase price or that I would be getting a commission. Cedric Hill said they are going to proceed with the transaction. Carl Lewis said if they proceed he would have Mark Scott arrested because Mark Scott is planning to use money from a trading account and he Carl Lewis would not allow it. Cedric Hill said the money is to come from the 10m loan. When the finance is in place the moneys advanced by Prosporex should be returned to Prosporex Canada. His assurances were that the loan would come through before the end of June.**
Panel:	**How does that connect with your undertaking to return the money?**
James:	**I was to have carriage of sale. The money would return to me. I would pay Christopher McCalla. CrisJam and the initial investment would be sent to Canada.**
Panel:	**You give him that undertaking?**
James:	**That was spelt out because of the discord between Lewis and his partner."**

80. Mr. Lewis complained of feeling ill and the hearing was adjourned to the 29 January, 2011 for continuation.

81. The hearing resumed on the 12 March 2011. The attorney continued giving evidence in Chief. He now stated that he recalled getting the letter of the 28 April 2008 **Exhibit 2(a).** He said he got a letter on the 28 April 2008 but it was not that letter. The letter he got from Prosporex was in the same terms as Exhibit 2(a). It was received by fax. It mentioned the letter of the 15 April and he asked for a meeting. The meeting took place at the offices of Prosporex on Knutsford Boulevard.

82. At the meeting were the attorney, the complainant, Mr. Cedric Hill and Jasmine Puranda. He says the money sent by Prosporex Investment Club was discussed. He said 100,000 was paid over to Prosporex for investment in a music show in Portmore. The balance to be returned to Canada Prosporex Inc. The Queen Hill project was to be financed by a loan for $10 million which was being sought. Once Queen Hill was done the money would be returned to Prosporex Limited, Canada.

83. The attorney stated there was disagreement between Scott and the Complainant. He wrote a letter dated 13 May, 2008 **Exhibit 4,** after making some enquiries and being told certain things about Prosporex. He said the U$237,500.00 had already been paid to Mr. Christopher McCalla when that letter was written. He said he stated the money would be returned on or before 30 July 2008 because it was expected by Scott and Hill that the $10 million loan would be finalized by the end of June. He denied using any of the U$237,500.00 for his personal benefit. The

$10 million transaction failed and that was why it was not repaid. Efforts to sell the Queen Hill property to other interests also failed. He says McCalla also failed to return the money when agreement was rescinded. He finally commenced a law suit for specific performance and to recover the money.

84. **Exhibit 29** was admitted being the fax copy of letter dated 20 May, 2008 from Prosporex Limited. The original which he never received was admitted as **Exhibit 30.** He said after he got the letter he spoke with the Complainant who says he did not authorize his secretary to issue it. The attorney referred to documents he had seen when he did enquiries about Prosporex and **Exhibit 31** contained documents searched for Ontario FSC which were documents he had seen when he wrote his letter of 20 May 2008.

85. **Exhibit 32** was admitted being a letter dated 3rd March 2008 from DunnCox to the attorney and **Exhibit 32(a)** was the enclosed cheque.

86. The attorney was then cross examined by the Complainant. The cross examination commenced by rehashing the circumstances of their meeting and the first transactions and the fact that they did not go through. Questions were asked about his discussions with Mark Scott and Cedric Hill. He denied that at all times he took instructions from the Complainant in relation to Prosporex.

87. In answer to a question why he would take verbal instructions from Mark Scott and Cedric Hill the attorney gave a long answer saying firstly because it was clear there was discord, secondly that Mr. Lewis invested money in Jamaica while Scott and Hill wanted it returned to Canada, thirdly in May 2008 before BNS closed the account from Prosporex Jamaica he had reason to believe it was due to suspected money laundering. In his discussions with First Global he gave an assurance that if funds were not invested in real estate they would be returned to Canada.

88. The panel asked the attorney whether or not in those circumstances it was all the more important to get written instructions. He responded as follows:

> **"Not for want of trying. I never wrote requesting written instructions. I never got instructions in writing from Canadian partners."**

89. The matter adjourned to 15 March 2011. On the 19 March, 2011 the sitting resumed but Mr. Carl Lewis was reportedly at the doctor.

90. On the 31 March 2012 the hearing resumed. The attorney made an application to dismiss for Want of Prosecution due to the absence of the Complainant. The Panel carefully considered the application as well as the fact that Mr. Carl Lewis had given evidence on behalf of the Complainant and been cross examined and so too his witnesses. There was no prejudice to the attorney who was now presenting his case. The attorney still has opportunity to give evidence and call his witnesses and therefore suffers no prejudice by the Complainant's absence.

The panel relied on regulations 8 of the 4th Schedule to the Legal Profession Act which authorizes it to proceed in the absence of a party. The application to dismiss for Want of Prosecution was therefore dismissed. The matter was adjourned to the 19 May 2012.

91. On that date the attorney indicated that subpoenas had been issued for two (2) witnesses who were not present. The matter was further adjourned to the 22 May 2012.

92. On the 22 May 2012 the attorney was sworn and evidence given while being re-examined by his legal representative. He was asked why did he not put conditions in the letter of the 13 May 2008 **Exhibit 4** since he expected to repay the money from an expected loan. His answer is worthy of a full quotation:

> **"When the letter was written all the parties were agreed as to what is to be done. All parties understood source of money to pay to be Canada. In hindsight the letter should have been more specific. At the time no doubt in my mind that we were all at one that money that come from Canada should be returned and from development loan that was being negotiated."**

93. The attorney explained that he had not paid the money as promised in the letter of the 13 May 2008 because the loan was not disbursed and relationship with Prosporex Inc. broke down.

The Evidence of Robert Andre Fuller

94. The attorney then called a witness Mr. Robert Andre Fuller. He was sworn. He is an architect and lecturer at the School of Architecture, University of Technology (Utech). In 2008 he had a registered company, Design Jamaica Architects. He knew the Complainant and did work on some projects. He was aware of the Queen Hill Development. He had been asked to look at the sub-division and prepare a plan. He was approached by Mr. James who acted for another. His firm did the design plans. He said he knew Mark Scott. Mr. Scott came from Canada. He reviewed the plans and they exchanged email addresses. He said Mr. Scott expressed an interest in seeing the project to completion. He liked what he saw. He saw Mr. Scott on one other occasion. This was at a meeting at the Hylton hotel where he again presented the plans. Mr. Lewis and Mr. Hill were the other gentlemen at the meeting. He did not know them before. They said they were from Canada. Up to that date he had not been paid for his services. This meeting was in about April 2008.

95. He was asked if financing was discussed at the meeting and said no. He said the mood of meeting was not sour but that he **"dashed expectations when I stated what and where project was".** The witness was shown document marked 9 for identity and said it was an email prepared by his company and it was his email. It was admitted as **Exhibit 9** –email dated 29 March 2008.

96. The witness also put in **Exhibit 9(a)** two (2) emails dated 28 March 2008 and forwarded 15 June 2009. **Exhibit 9(b)** was email dated 29 March 2008.

97. In answer to the panel the witness said no action has been taken on the project as it has to be subdivided. He said he has still not been paid. He handled no money in relation to the project neither paid out or collected.

The Evidence of Michael Lorne

98. The next witness for the attorney was Mr. Michael Lorne, Attorney-at-Law. This witness affirmed. He stated he was an attorney-at-law and owned a bookshop and publishing company. He said he knew Carlton Lewis and met him some time ago in Canada. This was about 4 or 5 years ago. The circumstance of their meeting was casual. He was at a function at a place named Barry in Canada. Some family and friends had a function. He attended and while there met Mr. Lewis who came to the table at which the witness was seated and told him of his numerous ventures, land and apartments. Investments in Jamaica and Canada. He mentioned land at Queen Hill and other places he planned to build gated communities. He mentioned Mr. Oswald James and that they invested in land in Queen Hill.

99. The witness stated that Mr. Lewis wanted him to get involved. He wanted him to get legally involved. The witness said, **"He gave me the impression he was**

having some problems with Mr. James and I did not want to go too deep into all of that."

100. He said that Mr. Lewis said money had passed to Mr. James and money used to buy land at Queen Hill and other places and plan was to build at Queen Hill and other places. The witness gave Mr. Lewis his card, but never saw him again after that day. He said there was another lawyer at the function Mr. Manley Nicholson so he told Mr. Lewis to speak to him.

101. The panel asked the witness what had caused him to recollect the communication. He said when he saw Mr. James' name in the newspaper being charged for fraud. It was early last year or 2010 and was the first time he had had to reflect on the conversation. The panel asked whether he could recall Mr. Lewis' exact words as it related to the problem with Mr. James. His response was:

"Some land was bought and he wanted Mr. James to sell back the land and he wanted it sold.
Panel: You are not exactly sure?
A: I got feeling that land and money problem. Land was to be sold back."

102. The witness said Mr. Lewis wanted him to be a lawyer in the project to work alongside Mr. James. The witness was asked by the panel whether it was possible that Mr. Lewis was not happy with money being put into that project or to buy the lands and he answered in the affirmative. The witness was asked whether having regard to his conversation with Mr. Lewis whether he was in any doubt of his

involvement in the Queen Hill Development. He answered, **"No, no doubt he was the boss of it and the author of it."**

The matter was adjourned to Thursday 24 May 2012.

103. On that date Mr. Barnes advised the panel that a witness subpoenaed was absent. This witness was Inspector Watson who had taken certain statements. In the course of a discussion with the panel it became apparent that the statement taken by Inspector Watson from Mr. Lewis was among documents filed by the Complainant and which were in the possession of the panel but had not been disclosed to the attorney. The attorney applied for disclosure of these documents. The matter was adjourned to the 29 May 2012. On the 29 May 2012 the panel ruled that all documents filed by the Complainant with the General Legal Council were to be disclosed to the attorney.

104. The hearing resumed on the 14 June 2012. On that date Mr. Barnes applied to have the proceedings dismissed on the ground that the Complainant had not complied with the rules for discovery. That it was unjust and unreasonable and unsafe to continue the hearing. He alleged procedural fairness and natural justice had been breached. He relied on certain skeletal submissions and authorities. The panel asked Mr. Barnes to specify the prejudice to the attorney given that the documents had now been disclosed and he had not yet closed his case. He was also asked to produce an authority which stated that failure to disclose or want of discovery can never be cured. The matter was adjourned to the 18 June 2012.

105. On the 18 June 2012 Mr. Barnes frankly indicated that he could find no further authorities and he had no further submissions to make. The panel dismissed the application and put its reasons in writing. These reasons are incorporated as part of this Decision and for convenience are attached hereto.

106. The hearing resumed on the 20 June 2012 . On that date we were advised that other subpoenas had been sent. One of the intended witnesses Sister Goretti was represented by Sister Beverly Haughton who came with a medical certificate stating that Sister Goretti had Alzheimer's and was suffering from severe long term and short term memory. The matter was adjourned to the 2 July 2012 and then further adjourned to the 9 July 2012 as another witness who had been subpoenaed did not attend.

The Evidence of Marie Hunt

107. On the 9 July 2012 the witness Marie Hunt attended and gave evidence. After being sworn she said she was a banker employed to First Global Bank. In 2008 she was vice-president operations. She knew Oswald James who was a customer of the bank. She knew he was in the legal profession. She also met Carl Lewis. She met him in relation to an incoming wire transfer. It was incoming to the account of James & Co. They had a meeting to clarify the source of funds for the wire transfer. It was for U$300,000.00. The date of the wire transfer was 19 February 2008. The funds were released on the 25 February 2008. Mr. Carl Lewis was the one who satisfied their concerns about the source of funds. She is

unable to say what happened to the funds after its release to James & Co. The matter was further adjourned to the 17 July 2012.

108. On that date Mr. Barnes indicated that the attorney would be calling no other witnesses. He then made his closing submissions. We thereafter adjourned to consider our decision in this matter.

109. This Committee wishes to express its gratitude to Mr. Brian Barnes for his very thorough and professional approach to the conduct of this matter and to the defence of his client. If we do not refer in detail to the submissions made it is more from a desire to keep the length of this decision manageable rather than a reflection on the quality of the submission. In summary Mr. Barnes urged us to accept the attorney's evidence that he obtained the instructions of the Complainant to invest the money in the Queen Hill project. Great emphasis was placed on the signed document agreeing to purchase land and plans in relation to the Queen Hill development, **Exhibits 6 and 7.**

110. In considering this matter this Committee bears in mind that the burden of proof rests throughout on the Complainant. He must satisfy us beyond a reasonable doubt that is, so that we are sure. In *re A Solicitor [1992] 2 All ER 335* and *Campbell v Hamlet [2005] UK PC 19.*.

111. We note that although there has been much viva voce evidence with several witnesses for either side as well as voluminous documentation (in excess of 30 exhibits were tendered), the factual issue is really a narrow one. The question turns on whether the attorney has failed to account for money held in his hands for a client and/or whether he has been inexcusably or deplorably negligent.

112. In that regard the attorney has admitted receiving the U$337,000.00. He admits also that its receipt related to the purchase of property at Villa Maria Limited. He maintains that he received the Complainant's instructions by way of oral communication from Mr. Carl Lewis, to invest the money in the Queen Hill Development. In support he relies on documents signed by the Complainant for the purchase of land and plans for Queen Hill. Neither of those is signed by the vendor. Further, the attorney admitted in evidence that these documents were prepared after the money was paid over to the vendor. There is also the question of why refund U$100,000.00? The total price for the Queen Hill was US$1 million. If the Complainant decided to invest in that instead of Villa Maria why was not U$337,000.00 so invested? This question is relevant because the attorney returned U$100,000 to the Complainant. The panel is puzzled at the conduct of the Attorney and finds it impossible to reconcile it with the instructions he says he received from the client. Having received oral instructions from his client to invest the sum he received in the Queen Hill project, in response to a written demand for the return of the funds, and subsequent to a meeting to discuss it, the Attorney then pens a letter undertaking to pay the Complainant by the 30th July

2008 the full balance due in the amount of U$237,500.00. There has been no document produced by the Attorney, no Title, no security, no mortgage or any other instrument demonstrating how the sum of U$337,500.00 was utilized by him.

113. This panel considers that an attorney who has his client's instructions to invest money in a certain way, when faced with a letter of demand, would have first and foremost responded to remind the client of the instructions received. If, as the attorney states, repayment was contingent on receipt of loan funds, then the response to the client would certainly be expected to state clearly that such is the position. This panel considers that the conduct of the attorney and the correspondence in this matter is not consistent with the attorney's account of events.

114. We have carefully observed the demeanour of the Complainant's witnesses, we find them to be witnesses of truth. We note that Mr. Lewis was not always accurate with his recall of details but consistently denied approving an investment in the Queen Hill Development. We accept that he gave no such instructions.

115. The attorney on the other hand we found to be less than frank in his account of events. His witnesses however were disinterested persons and we find them to be truthful. The witness Lorne, however was the only one relevant to the central issue we had to decide. In this regard we do not think that much can be concluded

from his account of a conversation several years ago at a social function. Mr. Lorne clearly did not pay great attention and was disinclined to get involved. He formed two clear impressions, one was that that Mr. Lewis was unhappy with Mr. James and this related to money and land, secondly that Mr. Lewis was in charge of the project. Note that these were impressions and it may well be that Mr. Lewis at that stage was concerned to liquidate the land and so recover Prosporex's money from the attorney. His unhappiness with the attorney would of course be consistent with the money having been put into the venture without his knowledge. The evidence of Mr. Lorne even if accepted in its entirely does not negate or detract from our view of Mr. Lewis and the other witnesses.

Findings

116. When therefore one considers the totality of the evidence we make the following findings of fact:

(a) The Complainant, Prosporex Limited through its director Mr. Carl Lewis retained Mr. Oswald James, the attorney.

(b) The retainer related to the acquisition of property Villa Maria and in relation to the purchase of which U$337,500 was sent to the attorney.

(c) The attorney lodged that money to his account at First Global Bank.

(d) Mr. Carl Lewis asked for a return of the said amount of U$337,500.00 and the attorney was unable to refund the same.

(e) The attorney tried to persuade Mr. Lewis to have Prosporex purchase or take over the entire Queen Hill Development but Mr. Lewis decided against it.

(f) Mr. Lewis was upset that the attorney stood to benefit by a commission on the sale of Queen Hill which commission would approximate to the amount owed to the Complainant, hence the observation that he intended to "use his own money to pay him back".

(g) The attorney wrote a letter to the Complainant undertaking to refund the balance of money on or before the 30th July, 2008.

(h) The attorney failed to honour his undertaking.

(i) The attorney repaid only U$100,000.00 of the U$337,500.00 held to the Complainant's account.

117. The panel therefore finds that the attorney is in breach of Canon VII (b) (ii) in that he has failed to account to his client for money held for its account or credit.

118. The Committee notes further that even had it been minded, which it was not, to accept that the money was invested in Queen Hill on the instructions of Mr. Carl Lewis then it would have been manifest that such investment was done with inexcusable or deplorable negligence or neglect. This is because the attorney will have invested his client's money without any form of security for the money or acceptable documentation. There was no agreement for sale, caveat, no title and no security documentation whatsoever in the name of the client. It is in any event

incredible to accept that an attorney would have done that with sums of this magnitude.

119. It is apparent on these findings that the attorney has committed an egregious breach of the Canons of Professional Ethics and that such conduct can only serve to bring the profession into disrepute. The fact that the money has still to date not been refunded is also worthy of mention. We bear in mind the words of Lord Bingham in *Bolton v Law Society [1994] 2 AER 486 @ 492:*

> **"It is important that there should be a full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is in some of these orders a punitive element.....In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension, plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period and quite possibly indefinitely by an order of striking off. The second purpose is the most fundamental of all to maintain the reputation of the solicitors profession as one in which every member of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not and never has been seriously in question. Otherwise, the whole profession and the public as a whole is injured. A profession's most valuable asset is its collective reputation and the confidence which it inspires."**

120. In the result this Committee has no alternative but to order:

(i) that the attorney be struck from the Roll of Attorneys entitled to practice.

(ii) that the attorney grant restitution to the Complainant in the sum of U$237,500.00 with interest thereon at the rate of 3% per annum from the 15th April, 2008 until payment.

(iii) that the attorney is ordered to pay costs to the Complainant of $100,000.00.

Dated the 11th day of SEPTEMBER, 2012

Pamela Benka-Coker, Q.C.

David Batts, Q.C.

Charles Piper

Disciplinary Committee Ruling

June18, 2012

Panel:

Pamela Benka-Coker Q.C.
David Batts Q.C.
Charles Piper

Complaint No. 166 of 2008
Prosporex Limited Inc v Oswald James

Present: Mr. Brian Barnes, Attorney-at-Law representing Mr. Oswald James.

1. This is an application by the Respondent Attorney-at-Law which has arisen as a consequence of documents disclosed by this panel to the Attorney on the 29th May, 2012 and which documents were delivered and signed for by Mr. Barnes the Attorney-at-Law for the Respondent Attorney on the 30th May, 2012.

2. The documents delivered to Mr. Barnes had been submitted to the Secretariat of the Disciplinary Committee by way of Cover Note dated 5th November, 2010 signed by Carlton Lewis. These documents had not been disclosed to the Respondent Attorney and the panel, after due consideration, determined that all the documents listed by Mr. Carlton Lewis under cover note dated November 5, 2010 should be disclosed and copies of each document delivered to the Attorney-at-Law representing the Respondent.

3. This disclosure arose as a consequence of an application made by Mr. Barnes on May 24, 2012 during the course of the hearing to permit him to secure the attendance of an Inspector Watson in order to tender a statement of Mr. Carlton Lewis which had been taken by Inspector Watson. During the exchange with the panel, the panel discovered that that particular statement was on the file before them and also discovered that the statement formed part of a bundle of documents submitted by Mr. Carlton Lewis.

4. It is against this background that the panel disclosed the entire bundle to Mr. Barnes and directed that a copy of each of the documents on the bundle be delivered to Mr. Barnes. This was done as intimated earlier and the panel had also given Mr. Barnes the opportunity to consult with his client, the Respondent Attorney, in order to determine the appropriate way in which to deal with the documents. The matter was therefore adjourned to June 14, 2012.

9. As we have stated above for these reasons we dismiss the application and we invite Mr. Barnes to continue with the presentation of the defence of the Attorney.

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