

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

**IN THE MATTER OF THE  
LEGAL PROFESSION ACT 1971**

**COMPLAINT NO. 86/2023**

**COMPLAINANT: KAREL DONALDSON**

**RESPONDENT ATTORNEY: DEBBY-ANN SAMUELS**

**PANEL: MR. JEROME LEE, MRS ROSE BENNETT-COOPER, AND MISS  
ANNALIESA LINDSAY**

**HEARD: FEBRUARY 8, 2024; AND APRIL 15, 2024**

**The Complainant appeared on her own behalf and similarly the  
Respondent appeared on her own behalf.**

**JUDGMENT: September 26, 2024**

1. In this matter, by way of Complaint the Complainant, Ms. Karel Donaldson has sought to say that the Respondent, Ms. Debby-Ann Samuels is guilty of professional misconduct. The grounds of the Complainant's complaint emanate from the Complainant retaining the Respondent to have her name added to the title to property that was registered in her cousin's name. The particulars of the Complainant's complaint can be divided into five aspects; these are as follows:
  - a. That the Respondent did not deal with her business with due expedition.
  - b. That the Respondent acted with inexcusable and deplorable negligence in the performance of her duties;
  - c. That the Respondent gave a professional undertaking that she cannot fulfil and shall fulfil every such undertaking that she gives;
  - d. That the Respondent and failed to obtain her specific approval after giving full disclosure and acted in a manner in which her professional duties and her personal interests conflict or are likely to conflict; and
  - e. As a result of the foregoing, the Respondent is in breach of Canon 1(b) wherein she has failed to maintain the honour and dignity of the profession.

2. The Complainant asserted that she retained the services of Debby-Ann Samuels in 2017 for the sole purpose of having her name added to the title to property owned by her cousin. In addition, it was the Complainant's evidence that when she retained the Respondent, the fees to add her name to the tile was agreed at \$80,000.00.
3. The Complainant indicated that she needed the services of an attorney to get her name on the title because her cousin got the property through the NHT and that to add her name, she needed the services of an Attorney, hence her retaining the Respondent to assist this process. When she had her initial meeting with the Respondent, the fee was \$5,000.00 and she paid that sum to the Respondent, for which she got a receipt. The Complainant gave evidence that it was at this initial meeting that the Respondent told her that the cost for what she wanted was \$80,000.00.
4. The Complainant enquired as to how she was to pay the Respondent and was told by the Respondent that she was to pay half and after she received the title, she could pay the other half. The Complainant said that she paid the Respondent the sum of \$25,000.00 sometime in 2017 and she received a receipt for that.
5. The Complainant remembers signing a document with her cousin that they received from the NHT, which she understood was needed to start the process. She said this document was signed before they both went to the Respondent's office. She recognised the NHT document, which was dated October 5, 2015, and it was admitted into evidence as Exhibit 1.
6. After the NHT document, the Complainant gave evidence that the first document that she received from the Respondent, after the Respondent took her case was in 2019. The Complainant mentioned her List of documents, which was identified and admitted into evidence as Exhibit 2 (this list contained 20 items).
7. The Complainant stated that she made several payments to the Respondent and remembered that the last payment she made to the Respondent was for the registration of the title and that amount was \$79,300.00. The Complainant went on to say that in total, she ended up paying the Respondent more than the \$80,000.00 that was agreed. She could not remember the total amount, but stated that when she checked her receipts, the sum was more than \$80,000.00. Each time she paid the

Respondent, she received receipts. The total receipts provided show that the total sum paid to the Respondent was \$104,000.00 + \$79,300.00, which together totalled \$183,300.00. The total of these receipts were not disputed by the Respondent.

8. Notwithstanding that she had made the payments, the Complainant stated that she met the Respondent several times at her office to ask about her matter. The Complainant said that the Respondent's constant answer to her was that she was working on it.
9. The Complainant confirmed she signed Letters of Authority, which was signed on March 15, 2019, and she recognized a Consent of Mortgagee, which was signed on May 7, 2019. She confirmed that the title on which her name was to be added was at the NHT.
10. The Complainant gave evidence that when she asked the Respondent how long it would take for her name to be added to the title, the Respondent told her that she was to give her 6 months. However, she has not received the title over 3, 4 or 5 years. The Complainant also complained that when she calls the Respondent, the Respondent does not want to talk or does not return her calls. She, the Complainant is the one that has to call the Respondent.
11. The Complainant said she had not received any letters from the Respondent updating her on what was happening, and she only received one email last year. The Complainant said she received a Transfer Instrument on September or October 2023, but there were errors on it and she only received the amended document in January 2024. This document had not yet been signed by her and her cousin in front of a JP.
12. In addition to the evidence outlined above, the Complainant's evidence in chief of this narrative and others was contained the following exhibits:
  - a. The Form of Application dated April 18, 2023, admitted as Exhibit 3
  - b. Form of Affidavit sworn on April 18, 2023, admitted as Exhibit 4.
13. The Complainant was cross-examined by the Respondent. The thrust of the cross-examination represented an attempt to solicit evidence from the Complainant that she had not completed making her payments to the Respondent. However, the Complainant was adamant that the agreement was for her to pay half upfront and the balance when the title was ready.

The Respondent also sought to have the Complainant agree that the Respondent had to prepare several other documents in the matter. The Complainant responded that everything that she was given to sign, she did.

14. The Complainant went on to say that the Respondent had gotten all of her money, including extra and her name was still not on the title. The Complainant also said that she was promised copies of all documents, but she had not received any documents from the Respondent's office.
15. The Respondent showed the Complainant a document and asked whether she recognized her cousin's signature, which she said she recognized. It was suggested to the Complainant that she came to the Respondent's office with her cousin when that document was signed; but the Complainant said that she did not remember that.
16. The Respondent challenged the Complainant on the fact that additional documents had to be prepared and therefore, she had to pay more money. The Complainant maintained her position that the Respondent had set her price, to which she, the Complainant, agreed. The Complainant was adamant that she had not set the price. The Respondent told her the charge and that was the money she worked towards paying.
17. When challenged that she took several years to pay, and that her last payment was made in 2021, the Complainant said that the Respondent had said that the last payment was due when her name was on the title, which would take six weeks. When challenged that the matter was delayed because the Complainant took long to pay, the Complainant responded that she was told to pay half and then the other half when her name was on the title, but over the years she had paid more than what was agreed, and the case is not finished. The Complainant maintained that she had paid all the money and she had still not received the title.
18. The Complainant complained that after 5 years, the Respondent wanted her to pay more after she had overpaid her.
19. The Respondent then challenged the Complainant on the fact that she had made small payments throughout the years. The Complainant responded that she had paid everything and still had not received the title. More than

a year after she had paid everything, she still had not received anything to show for it.

20. Having heard the evidence of the Complainant in this matter, the Respondent elected to give evidence. We note that the Respondent had not filed an Affidavit in Response to the Complaint either within the time allowed by the Regulations or within the time permitted by the Panel. The Respondent did not file a List of Documents either, as ordered by the Panel. It is for this reason why we have taken the time to outline as much of the evidence led before us to be fair to both parties.
21. The essence of the Respondent's evidence in chief was that she acknowledged that she was retained by the Complainant to have her name placed on her cousin's title. A mortgage was on the title from the NHT, with sums outstanding, so that the Complainant's name was to be added by way of a transfer by way of gift. She agreed a fee of \$80,000.00 as a result of her kindness to the Complainant.
22. It was the Respondent's evidence that after 5 years, the Complainant had not paid the \$80,000.00, but she the Respondent had done some work, including writing to the NHT; and prepared documents she did not know were needed originally. The Respondent also said she prepared documents to protect the Complainant's pocket which was a statutory declaration. She also prepared the Consent of Mortgagee, although she was of the opinion that this was the duty of the mortgage company.
23. The Respondent confirmed that she had solicited additional payments from the Complainant because of the additional works that she had to do, but the Complainant told her she would not pay. She told the Complainant that other attorneys charged 3 or 4 times more than she did, but she, the Respondent made her legal fees affordable for the poor. However, the Complainant did not complete her payments or pay the additional amounts, although the Respondent was assisting her. The Respondent was adamant that the Complainant was a poor person, and she should be grateful for the fees that she charged her.
24. The Respondent emphasized that despite the fact that the Complainant did not pay what she should, she the Respondent still assisted her, despite the low fee.

25. It was the Respondent's evidence that her secretary went to the Stamp Office every day to check on the Consent of Mortgagee. Further, she gave evidence that the documents were at the Titles Office, but there was an error on the Transfer Tax Certificate which is different from the name on the TRN. She also gave evidence that the Stamp Office is prepared to amend the Transfer Tax Certificate on the presentation of the Consent of Mortgagee from the NHT.
26. The Respondent gave evidence that she has been busy protecting the Complainant to get her matter to go through despite not being paid. She was on the cusp of receiving her title, despite not being paid and the Complainant blatantly refusing to pay additional fees. She maintained that the fees charged to the Complainant were extremely meagre.
27. The Respondent indicated that the Complainant ought to pay an additional \$50,000.00 or so which she thinks is reasonable although still low to complete the matter.
28. In cross-examining the Respondent, the Complainant challenged her to say why she wanted her to pay additional money if she was so poor? The Respondent responded to say that it was her belief that the Complainant can pay because she travels to work and earns US dollars, and she, the Respondent, has done the work.
29. The Complainant also sought to solicit the Respondent's agreement that the agreement was \$80,000.00 which was to be paid in half first, and the balance when the title was in her name. The Respondent responded that because the fee was so small, she would not have agreed to be paid after obtaining the title.
30. The Complainant also challenged the Respondent on only wanting more money, whether that was the reason why she was taking long to finish the work. The Respondent responded that that was a part of it. The Respondent stated that she paced the work according to the payments.
31. In response to questions from the Panel, the Respondent agreed that the last payment she received from the Complainant was in February 2021. The Respondent confirmed receipt of the sum of \$79,300.00 on November 5, 2020, for the taxes payable. When asked what was being done between

that date and today, the Respondent stated that she was awaiting further payments; the pandemic happened; and the further payments requested were never paid.

32. The Respondent indicated that the documents were lodged at the Titles Office because she was being kind.
33. At the end of the evidence on April 15, 2024, the Parties were advised that they were permitted to make written submission to the GLC on or before April 18, 2024, at 4pm. No written submissions were provided by either party.

### **THE STANDARD AND BURDEN OF PROOF**

34. The Panel recognizes that the standard of proof is beyond a reasonable doubt and the burden of proof is on the Complainant. That burden never shifts.

### **THE LAW**

35. The Supreme Court of Canada stated in the case of **Central Trust Co. v Refuse (1987) 31 DLR (4<sup>th</sup>) 481**, that a solicitor “must have sufficient knowledge of the fundamental issues or principles of law applicable to the particular work he has undertaken to enable him to perceive the need to ascertain the law on the relevant points”. Following on this, there are a series of cases decided in the House of Lords in which they placed great importance on the concept of the assumption of responsibility. These are the cases of **Henderson v Merrett Syndicates Ltd (No. 1) [1995] 2 AC 145**; **White v Jones [1995] 2 AC 207** and **Williams v Natural Life Health Foods Ltd [1998] 1 WLR 830**. In **White v Jones**, Lord Browne-Wilkinson said at page 274 that:

“The special relationship is created by the defendant voluntarily assuming to act in the matter by involving himself in the plaintiff’s affairs or by choosing to speak. If he does so assume to act or to speak he is said to have assumed responsibility for carrying through the matter he has entered upon”.

36. Later on in **Williams v Natural Life Health Foods Ltd**, Lord Steyn said at page 834:
- “First, in Henderson’s case it was settled that the assumption of responsibility principle enunciated in **Hedley Bryne & Co Ltd v Heller & Partners Ltd [1964] AC 465** is not confined to statements but may apply to any assumption of responsibility for the provision of services”.
37. Then at page 835, Lord Steyn went on to state that:
- “The touchstone of liability is not the state of mind of the defendant. An objective test means that the primary focus must be on things said or done by the defendant or on his behalf in dealings with the plaintiff. Obviously, the impact of what a defendant says or does must be judged in the light of the relevant contextual scene. Subject to this qualification the primary focus must be on exchanges (in which terms I include statements and conduct) which cross the line between the defendant and the plaintiff”.
38. On a review of these authorities, the learned authors of **Solicitors’ Negligence and Liability (3<sup>rd</sup> Ed)**, concluded at paragraph 1.21 that:
- “The principal issue between the parties is likely to remain whether the defendant assumed responsibility to the claimant and, in particular, whether it was reasonable for the claimant to rely on the defendant (and the claimant did so) and whether either expressly or by conduct the defendant led the claimant to believe that he or she could do so”.
39. The Panel recognizes at this point that there can be no question that the Respondent in this matter, assumed responsibility in acting for the Complainant, which is embodied in our findings of fact set out below.
40. In relation to the standard of care, having assumed responsibility, the Panel takes note of the judgment of Cranston J in **Inventors’ Friend Ltd v Leathes Prior [2011] EWHC 711 (QB)**, where he held that where solicitors undertake work at a specific fee they are, generally speaking, obliged to complete the work to the ordinary standard of care even if it was no longer remunerative. It can therefore be deduced that notwithstanding the agreed fees, the attorney is expected to carry out the work retained to the required standard and to provide the level of service required for the client.

## **FINDINGS OF FACT**

41. Having considered all of the evidence, including, those portions not referred to in this judgment but of which we have taken note of in the notes, and we find as a fact the following:
- a. That the Complainant retained the Respondent sometime in 2017 to have her name added to a title that was already registered in her cousin's name.
  - b. At the time of the retainer, which was not in writing, the parties agreed that the fees to be charged for the services to be provided was \$80,000.00.
  - c. Between the years of 2017 and 2021, the Complainant paid to the Respondent the total sum of \$183,300.00, being \$104,000.00 for fees and \$79,300.00 for the taxes payable on the transaction.
  - d. The sum of \$104,000.00 as fees is an overpayment of the sum agreed for the work to be done.
  - e. The Respondent made attempts to in fact increase the fees payable by the Complainant for the transaction, which attempts were rebuffed by the Complainant. Although rebuffed however, the Complainant did pay to the Respondent, sums over and beyond that which was agreed when she Respondent was retained.
  - f. Although approximately 7 years have elapsed, the Complainant's name has not been registered on the title and the Complainant has not received confirmation of same from the Respondent.
  - g. To the extent that the Respondent did not challenge the Complainant on the 6-month timeline stated for the transaction to be completed, that the Respondent did indicate a timeline of approximately 6 months for the transaction to be completed.
  - h. We find as a fact also that although not obligated to prove anything, the testimony of the Respondent did not provide any information that would create any doubt on the veracity of the Complainant's evidence, and we accept the Complainant as a witness of truth.
  - i. To her credit, the Respondent also confirmed the parameters of the retainer as outlined by the Complainant. The Respondent's only complaint in the matter is that she had to do more work than she originally anticipated, and she wanted to be paid more as a result of this.

- j. However, it was open to the Complainant to agree to an increase in the fees or not. On the evidence, the Complainant agreed to the extent that excess amounts were paid and disagreed when further attempts were made to collect more money from her, which is her right not to agree.
- k. On her own admission, the Respondent deliberately delayed action on the Complainant's transaction because the payments she wanted were not forthcoming, among other factors for example the pandemic.
- l. However, given the stated timeline of 6 months for the completion of the transaction, the period of approximately 7 years is inordinate and inexcusable in the circumstances.
- m. In relation to the complaint of the Respondent not giving a professional undertaking which she cannot fulfill and shall fulfill every such undertaking, we find that no evidence was led in this regard, and therefore the Respondent is not guilty of this complaint.
- n. Similarly, in relation to the complaint that the Respondent failed to obtain the Complainant's specific approval after giving full disclosure and acting in a manner in which her professional duties and her personal interests conflict or are likely to conflict, we find that no evidence was led in this regard, and as such the Respondent is not guilty of this complaint.
- o. However, we find that on the evidence, the Respondent is guilty of professional misconduct in respect of the particulars concerning:
  - i. Not dealing with the Complainant's business with due expedition in breach of Canon IV (r), the services retained having not been completed within the stated timeframe and not having been completed up to the time of the trial herein. The time period between the retainer and current, being approximately seven (7) years as compared to the proposed completion of services of six (6) months as agreed and at the agreed fee.
  - ii. Acted with inexcusable and deplorable negligence in the performance of her duties in breach of Canon IV (s), as evidenced by the Respondent's own evidence that she deliberately delayed action in the Complainant's matter because she wanted to be paid more than what was originally agreed and the protracted time that has resulted therefrom, being seven (7) years and counting; and
  - iii. Therefore, on the totality of the findings made against the Respondent, we also find that the Respondent is in breach of Canon 1(b).

42. The Panel has taken note of the decision in **Owen Clunie vs the GLC** and therefore our mandate is to allow the Respondent an opportunity to provide mitigating arguments on another occasion if she so chooses to do so.

Dated the 26<sup>th</sup> day of

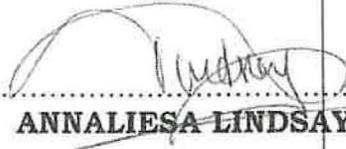
September 2024.



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**ANNALIESA LINDSAY**