

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

COMPLAINT NO. 117/2023

In the Matter of VIVIAN EMANUEL
ROBINSON, ANDIE EMANUEL
ROBINSON and MICHAEL BROWN, an
Attorney-at-Law.

AND

In the Matter of the Legal Profession Act,
1971

Panel: Daniella Gentles-Silvera, KC - Chairman
Ursula Khan
Delrose Campbell

Appearances: The Complainants, Vivian Emanuel Robinson and Andie Emanuel
Robinson, represented by Guarica Makhijani, and Britaney Lee Johnson,
Attorneys-at-Law instructed by Makhijani & Johnson, Attorneys-at-Law.

The Respondent, Michael Brown, appeared in person.

Hearing: 6th April 2024, 21st May 2024 and 18th July 2024, 23 November 2024
2024
2024

COMPLAINT

1. The complaint against the Attorney, Michael Brown, (hereinafter called “the Attorney”) is contained in a Form of Application Against an Attorney dated the 30th May, 2017 and Form of Affidavit by Applicant sworn to on the 29th April 2023 by Andie Robinson. The other Complainant is Vivian Robinson. Both Vivian Robinson and Andie Robinson will hereinafter together be called “the Complainants”. All references to the Canons refers to The Legal Profession (Canons of Professional Ethics) Rules. The complaint is that:

- (a) The Attorney has not provided me with all the information as to the progress of my business with due expedition, although I have reasonably required him to do so in breach of Canon IV (r);
- (b) The Attorney has not dealt with my business with all due expedition in breach of Canon IV (r);
- (c) The Attorney has acted with inexcusable or deplorable negligence in the performance of his duties in breach of Canon IV(s);
- (d) The Attorney is in breach of Canon IV (d) which states that an Attorney shall not give a professional undertaking which he cannot fulfill and shall fulfill every such undertaking which he gives.
- (e) The Attorney is in breach of Canon I(b) of the Canons which states 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”.

BACKGROUND

2. The complaint arises out of the Attorney’s representation of Vivian Robinson (“Vivian”) who was injured in a motor vehicle accident on the 24th March 2014. The Attorney did not file a claim for Vivian Robinson and the claim became statute barred.
3. The evidence of the Complainants was given by both Complainants and Dorothy Robinson, Vivian Robinson’s sister and Andie Robinson’s aunt. The Respondent Attorney alone gave evidence. We have not set out all the evidence given, but we wish to assure both parties and their representatives that we have considered all of the evidence and by omitting to set out all the evidence we mean no disrespect to them.

EVIDENCE

Complainants

4. In summary the evidence of the Complainants was that Vivian was walking on the sidewalk on the 24th March 2014 heading to Petersfield supermarket, Westmoreland when a motorcycle which was being ridden on one wheel in the air collided into him. He was hospitalized and had to undergo four (4) surgeries. Vivian requested Andie Robinson, his

son (“Andie”) to represent his interest. Andie, who resides in the United Kingdom, requested his sister Marsha to go to the Attorney and retain the Attorney’s services to represent Vivian. Marsha met with the Attorney in April 2014 and the Attorney agreed to act for Vivian on the basis of a contingency.

5. Andie says he had four (4) meetings thereafter with the Attorney, in July 2015, twice in 2017 including in December 2017, and in July 2018. At these meetings he was accompanied by Vivian except for the last two meetings in December 2017 and July 2018. At the meeting in July 2015 Vivian instructed the Attorney that Andie was the person who would be the point of contact and would be handling the matter and making the payments. Andie gave the Attorney his email address and telephone number in the United Kingdom. The Attorney was also provided with the telephone numbers of Marsha Robinson and Dorothy Robinson. Dorothy’s number was given to the Attorney’s secretary, Ms. Allen, who wrote it down on a document she had. . Apart from Andie, Vivian, Dorothy, and Marsha all lived in Jamaica. Vivian did not have a mobile telephone until 2020.
6. At the meeting which the Attorney had with Vivian and Andie in July 2015, the Attorney advised them that he had requested a medical report from the Savanna-La-Mar Hospital, but they needed to pay a fee for the report. Andie told the Attorney that he would pay for the report and have it delivered to the Attorney’s office. The medical report dated 9th April 2015 with a stamp from the Savanna-La-Mar Hospital dated 7th August 2015 was delivered to the Attorney on the 7th August 2015 by Andie personally.
7. At the third meeting with the Attorney in 2017, the Attorney advised the Complainants that the medical report from Savanna-La-Mar Hospital needed further information. Accordingly, Vivian went to a private doctor at Living Waters Center upon the recommendation of the Attorney and thereafter he went and was treated at the University Hospital of the West Indies. He received medical reports from both places dated 10th September 2018 and the 23rd November 2017, respectively. Both reports were delivered by hand by Vivian’s sister, Dorothy Robinson, to the Attorney.

8. Andie sought to get updates from the Attorney but heard nothing. In December 2017 he came to Jamaica and, visited the Attorney. The Attorney for the first time told him that the insurance company had made a “50/50 offer” which the Attorney had rejected. The Attorney had before that day never informed the Complainants that he was in communication with the insurance company, nor did he get their instructions before rejecting the offer. After returning to the United Kingdom, Andie said he called the Attorney’s office more frequently for updates but received none. He again visited the Attorney in July 2018.
9. In a telephone conversation with the Attorney in 2018, the Attorney told him that he was waiting on the medical report from Savanna-La-Mar Hospital and Andie reminded him that he had personally hand delivered the report to him in July 2015.
10. The Complainants contend that over the years they heard nothing from the Attorney with respect to updates unless they called him. Andie says he was unable to speak to the Attorney directly, apart from perhaps two or three times over the years. Whenever he called, he would speak to the Attorney’s secretary who advised that the Attorney was either in court or in a meeting. The Attorney failed to respond to Andie’s telephone calls, emails, and WhatsApp messages. This conduct by the Attorney continued throughout the relationship until the relationship was eventually terminated in 2021.
11. In 2021 the Complainants terminated the services of the Attorney, and a request was made for the file. For the first time, the Attorney called Andie and, on the 23rd February 2021, he asked him to give him some time to settle the claim. Andie refused to give the Attorney further time and repeated the request for the file. The Attorney advised that he needed Fifty Thousand Dollars (\$50,000.00) to hand over the file which Andie agreed to pay. Dorothy picked up the file on the 1st March 2021 but was not asked to pay the Fifty Thousand Dollars (\$50,000.00) so they paid nothing.
12. Inside the file which Dorothy collected from the Attorney was the Savanna-La-Mar Hospital medical report and the two other medical reports from UHWI and Dr. Fray of

Living Waters Centre and receipts for expenses incurred by Vivian consequent upon the accident.

13. The Complainant's new Attorney, Nigel Jones & Co., advised Andie that they had six (6) years from the date of the accident to bring a claim and as they had not done so the claim was barred by the limitation period. The Attorney had never before advised the Complainants of the limitation period and the possibility of the claim being statute barred. Nigel Jones & Co nonetheless tried to get the insurance company, British Caribbean Insurance Company ("BCIC") to settle the claim by writing them on the 29th March 2021. Unfortunately, BCIC responded that they had made a proposal to settle the matter on "50/50" contribution basis but it was not accepted, and the claim was now statute barred.
14. In January 2023 Vivian retained the services of Gaurica Makhijani who wrote a letter dated 31st January 2023 to the Attorney inviting him to enter into settlement negotiations. In the said letter a without prejudice claim for Eleven Million Five Hundred and Eighty Five Thousand Six Hundred and Thirty-Six Dollars and Seventy Cents (\$11,585,636.70) was made for general damages and special damages. The Attorney did not provide a written response but in a telephone conversation with Ms. Makhijani he advised that he would be defending any claim brought.

Respondent

15. The evidence of the Attorney is that he never personally met Andie Robinson; he never had a telephone conversation with him, nor did he ever receive an email from Andie. The first time that he ever saw him was on zoom in these proceedings. The only address and contact information he had was for Vivian and belatedly he realised he had Vivian's daughter, Marsha's, contact information as it was at the bottom of the Contingency Agreement dated 8th May 2014. The first time he corresponded with Andie was in 2021 after the claim was statute barred.
16. According to the Attorney, he first met Vivian at his office on the 8th May 2014 and took a partial statement from him. He corresponded with BCIC, the insurer of the third party

motor vehicle, between September 2014 to January 2015. BCIC advised that they were investigating the accident and asked the Attorney to let his client, Vivian, cooperate with the investigator. The Attorney said he could not get in touch with Vivian to arrange an interview with the investigator and when he did get in touch with him, Vivian failed to attend the meetings arranged. He stated that he was unable to get in touch with Vivian for some time. Indeed, this is one of the reasons he proffered as to why he was unable to consider the 50/50 offer made by BCIC in their letter of the 22nd January 2015 to settle the matter, and when he eventually did get in touch with Vivian, the client was adamant that he was not willing to accept a 50/50 basis for settlement. BCIC's 50/50 offer was grounded on their information from their insured that the accident did not take place as suggested by Vivian. The Attorney said he told Vivian in 2015 that he intended to sue but felt the medical report from Savanna-La-Mar Hospital was inadequate. He received a further report from UHWI in 2017 but also felt it was inadequate.

17. The Attorney said he drafted the Claim Form in July 2018 and although he referred to a screenshot of it as being attached to his witness statement dated 19th February 2024 (“Exhibit 7”), no such document was attached. He said that he was unable to complete the Claim Form based on the medical information which he had and when he did get a more detailed report from Dr. Fray on the 10th September 2018, he could not locate Vivian. He heard from no one until 2021 when he received an email from Andie. He could not have signed the Claim Form for Vivian based on rule 3.12 (4) of the Civil Procedure Rules (“CPR”). He said he made several attempts to contact Vivian. He says he personally visited the communities of Petersfield District and Brontie in Westmoreland. The Attorney did not bring any witnesses to confirm that he visited Vivian although he said his preferred method of getting in touch with Vivian involved more personal visits.
18. The Attorney agreed in cross-examination that he had sufficient information required to file a lawsuit in this matter before the expiration of the limitation period but felt initially handicapped by the medical reports as Vivian had defaulted from the Savanna-La-Mar Hospital and the UHWI and therefore the reports did not speak to the main injury being the ulcer.

19. He did not know the connection between Marsha and Vivian so that he could seek her assistance to locate Vivian.
20. He was aware that he could have amended the Claim Form up to the Case Management Conference without the leave of the Court.
25. The Attorney said he did not communicate with Vivian in writing. He never wrote to him about the accident, nor did he write advising that he was trying to contact him; neither did he ever advise Vivian that the limitation period was about to expire.

UNDISPUTED FACTS

21. The following facts are not in dispute:

- (a) Vivian instructed the Attorney to represent him in a claim arising out of a motor vehicle accident on the 24th March 2014 consequent upon which Vivian sustained personal injuries.
- (b) The Attorney was retained by Vivian sometime in April or May 2014.
- (c) The Attorney had at all material times the contact information for Vivian and his daughter Marsha.
- (d) The claim was statute barred on the 24th March 2020.
- (e) The Attorney had in his possession three (3) medical reports before the claim became statute barred on the 24th March 2020:
 - i. Medical report dated 9th April 2015 stamped 7th August 2015 from Savanna-La-Mar Hospital;
 - ii. Medical report from UHWI dated 23rd November 2017;
 - iii. Medical report from Living Waters dated 10th September 2018.
- (f) The Attorney had sufficient information in his possession before the expiration of the limitation period to be able to file suit.
- (g) The Attorney never advised Vivian of the limitation period to file suit.

- (h) The Attorney has never written to Vivian to advise him about his matter in general, including the limitation period and the consequences of not filing the claim within the limitation period.
- (i) The Attorney received an offer from the third party's insurer to settle the claim on the basis of 50/50 contributory negligence.
- (j) The Complainants terminated the services of the Attorney in 2021

DISPUTED FACTS

22. The most significant facts in dispute are as follows:

- a) Whether or not the Attorney ever met Andie in person and in particular whether or not he had four (4) meetings with him in July 2015, twice in 2017, including in December and July 2018;
- b) Did the Attorney and/or his office have the contact information for Andie (email address and telephone numbers) and Dorothy; and
- c) Did the Attorney prepare a Claim Form and Particulars of Claim .

23. Having read the affidavits and exhibits and having heard the evidence of the Complainants and their witnesses and Attorney, the Committee finds the following has been established beyond reasonable doubt which is the standard of proof in disciplinary proceedings **(Winston Campbell v David Hamlet [as Executrix of Simon Alexander] [2005] UKPC 19).**

FINDING OF FACTS

24. The Panel makes the following findings of facts:

- a) The Complainant, Vivian Robinson, was involved in a motor vehicle accident on the 24th March 2014 consequent upon which he sustained personal injury;
- b) The Attorney was retained by Vivian in 2014 after the accident referred to at (a) above;
- c) The claim became statute barred on the 24th March 2020;

- d) The Attorney was in possession of three (3) medical reports before the claim became statute barred on the 24th March 2020;
- e) The Attorney had sufficient information to enable him to file suit before the expiration of the limitation period;
- f) The Attorney at no time advised the Complainant, Vivian Robinson, of the limitation period within which a claim had to be made before it would be statute barred;
- g) The Attorney failed to file suit before the claim of Vivian became statute barred;
- h) Between 2014 to 2021 the family of Vivian sought to get in touch with the Attorney for updates as to progress of Vivian's case, by telephone, email and WhatsApp messages;
- i) The Attorney failed to keep the Complainant, Vivian, up to date on this matter;
- j) The Attorney had the contact details of Vivian's family specifically Andie, Marsha and Dorothy in his possession;
- k) The Attorney did not advise the Complainant or his family members that he received an offer from the insurance company to settle the matter on the basis of contributory negligence on a 50/50 basis.

25. The main issues in this case are:

- a) whether or not the Attorney is guilty of inexcusable and deplorable negligence in failing to file suit before the expiration of the limitation period;
- b) does the Attorney have a justifiable excuse for not filing the claim on behalf of Vivian Robinson within the limitation period.
- c) did the Attorney fail to deal with the Complainant, Vivian's, business with due expedition and fail to provide the Complainants with all information as to the progress of his business with due expedition; and
- d) whether or not, the Attorney failed to maintain the honour and dignity of the profession and failed to abstain from behaviour which may tend to discredit the profession.

26. Based on the evidence of the Attorney and his cross-examination of the Complainants and their witnesses, much of the Attorney's defence to this complaint is that he always worked

on the matter, placing particular reliance on the communications with the insurance company. With the greatest of respect to the Attorney, this focus shows a lack of appreciation of the main factual issue in this complaint, that being, whether he advised the Complainant, Vivian, of the limitation period and whether or not he filed the claim before the limitation period had expired.

LAW

INEXCUSABLE AND DEPLORABLE NEGLIGENCE

27. In **Fletcher and Son v Jubb, Booth and Helliwell [1920] KB 175**, the Court held that an Attorney has a duty to inform a client of the limitation period and the consequences of not filing a claim before the expiration of that date. At page 281 of the Judgement, the Court held that:

"Now it is not the duty of a solicitor to know the contents of every statute of the realm . But there are some statutes which it is his duty to know; and in these days when the defendants in so many actions are public authorities the Public Authorities Protection Act, 1893, is one of those statutes. The appellants instructed the respondents to make a claim and, if necessary, to bring an action against the Bradford Corporation for damage done by one of the tramcars of the corporation. The respondents wrote and for some time continued writing to the corporation. It is well known that public authorities are willing to avoid litigation if they can settle claims upon reasonable terms, and equally well known that they do not admit claims which they regard as unreasonable; and in the correspondence which took place between the corporation and the respondents I cannot find any admission of liability to the claim the appellants were making. What is the duty of a solicitor who is retained to institute an action which will be barred by statute if not commenced in six months? His first duty is to be aware of the statute. His next is to inform his client of the position. The corporation made an offer to settle this claim; the solicitors sent on the offer to their clients, and they made no answer. The time of limitation was running out. The clients did not know this, and they were not warned by the solicitors. One would expect that as the time drew near the solicitors would tell them

that if they did not bring an action their claim would be barred. Instead of that they wrote on March 10, the day on which the time expired, to ask if the claim had been settled and if so upon what terms. I cannot understand how they came to write that letter except on the footing that they were still the legal advisers of the appellants." (Emphasis Added).

28. In **Kitchen v Royal Air Force Association [1958] 1 WLR 563**, the Court said that it is negligent for an attorney to allow the limitation period to run out without filing action or informing the client of the necessity to file.
29. The **Legal Profession (Canons of Professional Ethics) Rules** prescribes a more stringent test of the degree of neglect or negligence that constitutes professional misconduct. (See **Earl Witter v Roy Forbes [1989] 26 JLR 129**). In this case the attorney had been engaged by the client in contracts for the sale of land. In the course of the transactions, an outstanding balance was not paid and the vendor of the property wrote to the client informing him that his deposit would be forfeited if the outstanding balance was not paid by the 10th December 1978. The client sent the letter to his attorney and a settlement was proposed by the vendor whereby the client was required to pay \$13,267.87 on or before the 30th September 1979. This proposal was contained in a letter to the attorney dated 27th January 1979. This letter was not communicated to the client until October 1980, by which time the deadline given by the vendor had expired. The vendor had during this time written to the attorney enquiring whether the proposal was acceptable and intimating that if a response was not given within six weeks the bank would exercise its power of sale under the mortgage. This information was not communicated to the client. During the period the client wrote several letters to the attorney enquiring about the progress of the matter but heard nothing until October 1980, when he visited Jamaica.
30. The client filed a complaint against his attorney. The Disciplinary Committee found that the attorney was guilty of misconduct in a professional respect having failed to inform the client about the proposal with due expedition. The Court of Appeal held that it was justifiable to find inexcusable or deplorable negligence or neglect, where there has been a

consistent failure in attending to the client's business for a significant duration of time, as in this case where the attorney had received a settlement proposal in January 1979 which had a deadline for acceptance by September 1979 and the attorney failed to communicate the proposal to his client until October 1980, well after the deadline had passed. Carey JA stated as follows:

"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 made punishable but culpable non-performance. This is plain from the language used in the rules." (page 131)

"There was ample evidence before the Committee which entitled it to come to the decision that the appellant was guilty of deplorable neglect in the performance of his duties. It seems to me that the appellant was entirely oblivious to the fact that his client could lose his house and the sums he had paid on deposit. What the evidence showed was that he had the means of communicating with his client all the information regarding the client's business but did not. He supplied no reasons for his conduct. Both pejorative adjectives apply to his neglect. It was both "inexcusable" and "deplorable" and in a word, culpable". (page 132)

"Specifically, rule (s) of Canon IV is concerned with professional conduct for Attorneys. 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". (page 133)

ANALYSIS AND FINDINGS

31. It is accepted by all parties that the Attorney was retained between 2014 and 2021 and that he did not advise the Complainant, Vivian, of the limitation period within which suit had to be filed and that further he failed to file the claim within the limitation period and therefore it is statute barred.

32. The Attorney puts forward as the reasons why suit was not filed before the expiration of the limitation period that:

- (a) the medical reports were inadequate; and
- (b) he could not locate Vivian to sign the Claim Form, and he could not sign it based on Rule 3.12 (4) of the CPR.

33. As regards the medical reports, the Attorney received a medical report from Savanna-La-Mar Hospital from July 2015 in which Dr. Toe Toe Aung stated that Vivian had:

- a. Fractured the shaft of the right femur;
- b. Fractured the right fibula; and
- c. He underwent surgery to treat a fractured femur and was discharged from the hospital on the 25th April 2014 having been admitted from the 25th March 2014.

34. Two (2) years later on the 23rd November 2017, the Attorney got a medical report from the UHWI which recited the fractures to Vivian's right lower limb consequent on the motor vehicle accident. The significant findings were:

- i. Longitudinal scar to the lateral right thigh;
- ii. Bilateral leg swelling with associated dark discoloration;
- iii. Normal foot pulses;
- iv. 13x6 cm leg ulcer to posterior right leg.

- v. He was assessed as having a leg ulcer due to chronic venous insufficiency. The hospital stated that it also wanted to rule out bony infection (osteomyelitis)

35. The Doctor who signed the UHWI's medical report stated that due to insufficient information, they could not accurately assess permanent disability. In 2018, the Attorney received a third medical report, this time from Living Waters Medical Centre signed by a Dr. Delroy Fray who referred to Vivian having fractured his right fibula and femur. He assessed the patient as having osteoarthritis of the right hip, right knees and right ankle with chronic wound on the right leg. He opined that Vivian would require skin grafts to the right leg wound at a cost of Three Hundred Thousand Dollars (\$300,000.00) and assessed his permanent whole person disability at 7%.
36. Firstly, the Committee observes that apart from the disability assessment and the prognosis that Vivian would need a skin graft, there was nothing in this third medical report that was not in the first two (2) medical reports.
37. Further and in any event, the Attorney could have filed suit based on the two (2) earlier medical reports and subsequently sought an amendment to rely on any "new" facts contained in the third 2018 report if needs be. Vivian would not have been limited to the reports from the Savanna-La-Mar Hospital and UHWI. Indeed, the Attorney admitted that he was aware that he could amend the claim up to the Case Management Conference without the leave of the Court.
38. Finally, on the point of the medical reports being inadequate, the Attorney had all three medical reports by September 2018 and therefore had time, (approximately two years) to file the claim before the matter became statute barred.
39. According to the Attorney he did draft the Claim Form in 2018 but thereafter he could not locate the Complainant, Vivian, to sign same. We note that the Attorney purported to attach to his witness statement a screenshot of his computer with the incomplete Claim Form, but

none was attached and he never sought to remedy this omission throughout the entire proceedings which leads the Committee to wonder if indeed he ever really drafted the Claim Form.

40. The Attorney in his witness statement says that he made “numerous” attempts to locate Vivian to sign the Claim Form although, in cross-examination, he said he made four (4) visits to the addresses he had for Vivian at Brontie and Petersfield which cannot fall within the description of “numerous”. Interestingly, the Attorney brought no supporting evidence to corroborate the attempts he made to visit Vivian. He said he asked a client to get in touch with Vivian, yet he never called the client to give evidence on his behalf. If he indeed sought to visit Vivian as he said that was his preferred method, four (4) times over two (2) years, in our view is wholly inadequate especially as the limitation period was about to expire.
41. Having not been able to locate Vivian, the Attorney did not write to Vivian or any of his family members by letter, email, or by WhatsApp stating that he needed to see Vivian for him to sign the Claim Form; explaining that if suit was not filed within a prescribed time, the claim would be statute barred. Neither did the Attorney try to locate Vivian through Vivian’s relatives. According to the Attorney this was because he did not have their contact details. On this bit of evidence, we prefer the evidence of Andie, whom we found to be credible when he said that the Attorney had his telephone number and email address. Further, the Attorney had to accept that he had Vivian’s daughter’s, Marsha’s, contact information on his file as it was on the contingency agreement dated 8th May 2014, as New Klorks Darlington P.O Westmoreland, so he had this address from the very first day.
42. The Attorney also sought to place blame on Vivian for the Claim Form not being filed in time as he put to him that he should have followed up on his matter. We cannot take this as a serious point as having retained the services of an attorney it is the Attorney’s duty to advise his client about the limitation period and the fact that he needed to sign court documents for suit to be filed before the expiration of the period and the consequences of not doing so. There is no evidence that this Attorney did anything of the sort.

43. The Attorney contends that he could not sign the Claim Form based on the rules. Rule 3.12 of the CPR provides that:

“3.12 (1) Every statement of case must be verified by a certificate of truth.

(2) The general rule is that the certificate of truth must be signed by the lay party personally.

(3) Where it is impracticable for the lay party personally to sign the certificate required by paragraph (1) it may be given by that person’s attorney-at-law.

(4) A certificate of truth given by the attorney-at-law must also certify-

(a) the reasons why it is impractical for the lay party to give the certificate; and

(b) that the certificate is given on the lay party’s instructions.”

44. This procedural rule which governs the circumstances in which an attorney can sign a Claim Form for a client is no doubt a recognition of the general rule that an attorney must get written authority from his client before he institutes suit; however, the courts have recognised that if the circumstances are urgent, the attorney can later obtain the authority and should do so as soon as possible thereafter and have the client ratify same (See **Allen v Bone (1841) 3 Beav 493** and **Danish Mercantile Co. Ltd v Others v Beaumont and Another [1951] 1 ALL ER 925**).

45. Given the consequences of not filing suit within the requisite period, that being that the Complainant, Vivian, would lose his rights, it is our view that the Attorney should and could have certified the Claim Form and Particulars of Claim and state the reason it was impractical for Vivian to sign same, that being that he could not find him and then file, and serve the documents and thereafter seek to have Vivian ratify same. In fact, although Vivian could not be found to sign the Claim Form, the Attorney says that when he received the third medical report in 2018, he told Vivian that he intended to file suit and Vivian did not object to him doing so from which the reasonable inference is that the Attorney had the authority of this client to file suit on his behalf. This is further supported by the fact that the contingency agreement signed by Vivian refers to the Attorney acting on his behalf to

recover damages in respect of personal injury and damages. It is more likely than not that Vivian could have and would have ratified the claim filed if the Attorney went ahead and filed the claim. We appreciate that it is obviously better for a client to certify the Claim Form; however, in circumstances where the claim is about to be statute barred, we believe and so find that the Attorney ought to have signed same. He should have signed the appropriate certification under Rule 3.12 of the CPR, that being that it was impractical for Vivian to sign same as he could not be located and indicated that the certification was given on Vivian's instructions.

46. We find that the Attorney did not have a legitimate reason for not filing the claim before it was statute barred. It is remarkable that having agreed to represent Vivian within two (2) months of the accident in 2014, that nearly seven years later in 2021 when the Attorney's services was terminated, suit had still not been filed, during which time the Attorney had received three (3) medical reports dated 19th April 2015, 23rd November 2017 and the 10th September 2018 all within the six (6) year limitation period. He also had all the receipts to claim special damages which is clear from his letter to BCIC on the 25th October 2018 (Exhibit 16) when he wrote claiming Seven Million Nine Hundred and Eighty Eight Million Dollars (\$7,988,000.000) for general damages and special damages and enclosed documents in support of the claim. Further, he at no time advised the Complainants of the limitation period, the necessity to file suit within the limitation period and the consequences of not filing suit within the limitation period.
47. The failure of the Attorney to file the claim within the limitation period and to advise the Complainant, Vivian, of the limitation period and that the claim would be statute barred if it was not filed within the limitation period has led to this Complainant losing his right to pursue a claim for damages for personal injury and special damages. This is inexcusable and deplorable negligence.
48. Additionally, it is clear that between September 2014 to January 2015 the Attorney was in communication with the third party insurance company. We accept the evidence of Andie,

that the Attorney never advised Vivian nor the family, that the insurance company had made an offer to settle the matter on a 50/50 basis or at.

49. Interestingly, the Attorney put to Andie in cross-examination that he had sent letters to BCIC, but Andie said he would not know, and it was never put to him that he knew. No foundation was laid to show how Andie knew and when the objection was made by Ms. Makhijani on the basis that no foundation had been laid, the Committee notes that the Attorney's response was not to lay the foundation by, for example, showing the copy letter sent to Vivian or Andie, rather his response to the Committee was that:

"He puts himself in a position to say he knows everything about the matter when someone comes and say that nothing was done. They put themselves in a position that it can be put to them that something was done"

50. We accept Andie's evidence that the letters to BCIC would not have come to the knowledge of the Complainants until 2021 when they got the file, which was after the expiration of the claim. The Attorney's failure to advise the Complainant of a settlement offer until it was too late as in **Earl Witter's** case is also inexcusable and deplorable negligence.

51. The Attorney failed to discharge the responsibility owed to his client and what could be reasonably expected of a competent Attorney. His conduct has gone beyond mere neglect or negligence in failing to inform the Complainant of the limitation period within which the claim ought to have been filed and to have filed the claim before the matter became statute barred.

FAILURE TO DEAL WITH CASE WITH DUE EXPEDITION AND TO PROVIDE INFORMATION AS TO THE PROGRESS

52. With regards to the complaint that the Attorney failed to keep the Complainant up to date as to the progress of this matter it is not contested that the Attorney did not provide any written communication on the progress of the matter to the Complainant. He says he saw

Vivian at his office over ten (10) times. Vivian says he only saw him approximately three (3) times. Andie and family said they met with the Attorney five (5) times and sought to contact him over the years to get updates by telephone, email WhatsApp and text messages and that most times they spoke with the secretary who said he was at Court or in a meeting. Andie said over the entire period he probably spoke to the Attorney by telephone directly about three (3) times. The Attorney said he had no contact with Andie which we do not accept when the messages are read. Andie gave credible evidence. His evidence was not shaken in cross-examination and his emails to the Attorney were never contradicted by the Attorney or put to Andie as being not true (Exhibits AR 8-AR15)

53. On 30th January 2021, Andie sent a WhatsApp to the Attorney in which he said:

"I give you all the documents in December 2015 to make a single claim. You tell me where on earth a claim take seven (7) years to sort out or are you there sitting on the paper work waiting for them to contact you? Your job is to make things happen. Please let us know your position so I can seek an alternative. I do not want you to tell us anymore stories. I want to see proof of work being done. Thanks"

54. On the 7th February 2021 Andie again wrote;

"Evening I email you I text you I seem you online, but you choose not to answer. You are very disrespectful and unprofessional. I give you until September 1th 2021 to either reach a 100% settlement or give us a court date in regards to Vivian Robinson matter. If it doesn't happen by then please provide me on invoice I will paid you for the little much you has done so for.

"Since Mr. Robinson instruct you to act on his behalf you has fail to reach a settlement or even negotiate a satisfactory settlement, you has failed to update us on any progress. So for we fine you not competent in delivering anything after 7 years, therefore will be instructing tiffany barrett from Jones and Company solicitor to act on our behalf she will be in touch with you shortly to retrieve the case file" (Emphasis)

55. The only response by the Attorney in evidence was not to deny what Andie had said but merely to state that he was in a mediation and would speak to him after. Based on the evidence of Andie, the Attorney after these messages called him for the first time and asked him to give him some time to settle the matter.

56. On the 1st March 2021 Andie again wrote to the Attorney and said:

“Mr. Brown you knows you got 6 years to persuade a accident claim in the court of law if the insurance refused the claim. I’m going to take legal action against your law firm. You sit there over 7 years with his file and done nothing, it is a shame of you’.

57. It is worth repeating that the Attorney never provided any evidence refuting what Andie said in these emails/WhatsApp messages about his failure to update them on the progress of the matter; or to say for example he had not received the email or to give an explanation as to the status of the matter after seven (7) years or to say he had been trying to find Vivian but could not find Vivian and had no contact information for Vivian’s relatives.

58. Once an Attorney has been retained to act on behalf of a client, he is duty-bound to keep his client abreast of the developments in the case and to deal with the matter with due expedition. The Attorney failed to do either of these, having had the case for seven (7) years between 2014 to 2021. The Attorney failed to keep the Complainants up to date as to the progress of the matter and to deal with the business with due expedition.

FAILURE TO MAINTAIN HONOUR AND DIGNITY OF THE PROFESSION

59. In examining Canon 1(b) of the Canons the Court of Appeal in the case of **Gresford Jones v The General Legal Council exp Owen Ferron (Misc Appeal No. 22/2022 and 27/2002)** delivered on the 18th March 2005 said:

“The governing words of Canon I are:

"An attorney shall assist in maintaining the dignity and integrity of the Legal Profession and shall avoid even the appearance of Professional impropriety." This standard of conduct required to be maintained by members of the legal profession is easily understood and perceived as basic good, upright and acceptable behaviour. Any deviation from this legal code is subject to scrutiny as it relates to the requirement of a particular canon. Consequently, "the honour and dignity of the profession ..." may be besmirched by a breach of a particular canon or "the behaviour (of an attorney) may tend to discredit the profession.... and be a breach of a specific canon. Either conduct would not fail to contravene the requirements of the proper conduct demanded by Canon I (b). It is my view that the Canon is specifically widely drafted, in order to emphasize the ever-prevailing high standard of conduct demanded by the profession and re-enforced by all the Canons in the Rules. The Committee was accordingly not in error to find that Canon I (b) relates to the conduct of an attorney "in relation to the Court, the regulatory body governing the profession, the law practice, the client, colleagues and certain other persons" and to find that the appellant was in breach thereof. The Canon may also be construed in light of the cumulative effect of the overall conduct of the appellant towards Ferron and the other beneficiaries from 1988 up to the filing of the complaint in 1996." (Emphasis Added)

60. The Attorney's handling of the Complainant's, Vivian, matter, particularly in not filing a claim having had the matter for seven (7) years and never advising the Complainants of the limitation period and the consequences of not filing a claim within the relevant limitation period is not conduct that should be expected from an attorney whom a client has placed his business and trust and confidence. His behaviour throughout the matter has been inexcusable and unacceptable. Vivian sustained serious injuries consequent upon a motor vehicle accident for which he has lost the opportunity to be compensated due to the acts and omissions of the Attorney.

CANONS

61. In all these circumstances we find that the Attorney has committed the following acts of professional misconduct as per **Canon VII of the Canons.**

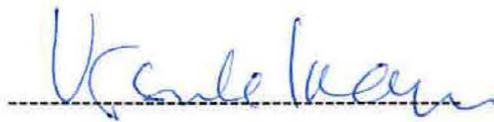
- a) In breach of Canon IV (s) the attorney has *“In the performance of his duties as an Attorney for the complainant acted with inexcusable or deplorable negligence or neglect.”*
- b) In breach of Canon IV (r), the Attorney has not dealt with his client’s business with due expedition and has failed to provide the complainant with all the information as to the progress of his business with due expedition when reasonably required to do so.
- c) In breach of Canon I(b) of **the Legal Profession (Canons of Professional Ethics) Rules**, has failed to *“maintain the honour and dignity of the profession and has not abstained from behaviour which may tend to discredit the profession of which she is a member.”*

62. Given our findings we will permit the parties to address us on sanction before handing down same.

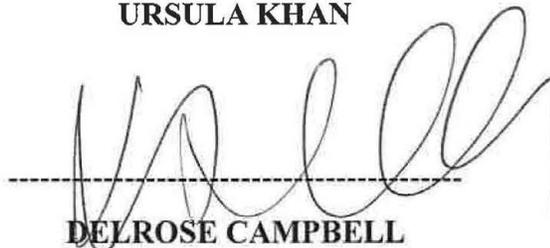
Dated the **23rd** day of November, 2024



DANIELLA GENTLES-SILVERA, KC



URSULA KHAN



DELROSE CAMPBELL