IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. HCV 2465 OF 2004

IN THE MATTER of an Application by OSWALD JAMES for an Order for Certiorari and for an order of Prohibition.

AND

IN THE MATTER of the Disciplinary Committee of the General Legal Council.

AND

IN THE MATTER of the Legal Profession Act.

AND

IN THE MATTER of Complaint No. 53 of 2003 made by Raphael Douglas against Oswald James pursuant to S. 12 of the Legal Profession Act.

BETWEEN	OSWALD JAMES	CLAIMANT
AND	THE DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL (Ex Parte Oswald James)	DEFENDANT

Heard: October 11, and December 1, 2006
Mr. Marcus Goffe instructed by Oswald James & Co. for the Applicant
John Vassell Q.C. instructed by Dunn Cox, for Defendant/Respondent

CORAM: ANDERSON, J.

In this application for Judicial Review, Mr. Oswald James, attorney-at-law, (the "Applicant"), pursuant to his Amended Fixed Date Claim Form seeks, against the Defendant, the following orders:-

(a) An order for Certiorari quashing the decision of the Defendant that the Complainant is a person who fell within the meaning of "any person alleging himself aggrieved by an act of professional misconduct;"

(b) An Order of Certiorari for quashing the decision of the Defendant that the Complainant was "an aggrieved person" within the meaning of section 12 and 14 of the Legal Profession Act;

(c) An Order of Certiorari for quashing the decision of the Defendant that the defendant had jurisdiction to hear the complaint as presented;

(d) An order of Prohibition directed to the Defendant prohibiting the said committee from hearing the complaint Number 53 of 2003 made by Raphael Douglas against the Claimant and for an Order that the said proceedings are nullity

(e) A direction that in respect of the said complaint all proceedings in question be stayed until the determination of the application for the said orders for Certiorari and Prohibition.

The grounds on which the claimant seeks the relief articulated above are as follows:-

(i) That the Defendant erred in law in ruling that the Complainant is an aggrieved party within of Section 12 of the Legal Profession Act as interpreted by the Court of Appeal;

(ii) The Defendant further erred in law ruling that the Complainant, not being a client of Oswald James, nonetheless fell within the meaning of Section 12 of the Legal Profession Act.

(iii) The Defendant further erred in law in ruling that the Complainant Raphael Douglas, not being a client of the Attorney-at-Law Oswald James, has *locus standi* within the meaning of Section 12 of the Legal Profession Act contrary to the interpreted (sic) by the Court of Appeal.

(iv) That the Complainant was never at any time the client of the claimant nor did the claimant owe the Complainant any duty whatsoever as an Attorney-at-Law.

On the 19th of June and 10th July, 2004, a hearing of the Disciplinary Committee of the General Legal Council established under Section 11 of the Legal Profession Act was convened to hear a complaint by one Raphael Douglas against the Applicant herein, Mr. Oswald James Attorney-at-Law. The adjudicating panel consisted of Mrs. Pamela Benka-Coker, Q.C., Mrs. Gloria Langrin and Mr. Charles Piper, all attorneys-at-law. The Complainant and the Applicant herein were both represented by Attorneys-at-Law. At the hearing the Applicant herein, by way of a preliminary point, challenged the jurisdiction of the committee to hear the matter and purported to outline "facts" which he said were "pertinent". However, having heard submissions made in that behalf by the attorney for the Applicant, Mr. Dabdoub, the Committee rejected the preliminary application and ruled that it did have jurisdiction to hear the complaint. Firstly, the preliminary objection based on an argument as to confidentiality and a duty not to disclose privileged information of the attorney's client, depended upon a factual substratum which had not yet been established, and without which the Committee would be unable to determine whether the Complainant had a sufficient interest in bringing the proceedings, or whether there was a proper basis in law for the complaint. Secondly, those issues had to be determined before it would be possible to consider the merits of an application which sought to impugn. A dismissal on the ground urged by Counsel would be a dismissal on the merits without being in possession of having determined the facts The Committee cited **Regina v Inland Revenue Commissioners ExParte Federation of Self-Employed and Small Businessmen [1982] A.C. 617**, and the judgment of Lord Fraser of Tulleybelton. The dicta of the learned law lord made it clear that that before the matter can be disposed on merits, the question of whether the party has a sufficient interest (competency) must have been determined.

The Committee also rejected the second limb of the Applicant's preliminary objection that on a proper interpretation of section 12(1) of the Legal Profession Act, the phrase "any person alleging himself aggrieved by an act of professional misconduct" must only apply to a person who was a client of the attorney in question.

The Applicant now moves this court for an Order of Certiorari to quash the decision of the Committee and a further order of Prohibition preventing the committee from proceeding with the formal hearing of the complaint which was before it.

Given the nature of this hearing, that is, one to consider whether the Disciplinary Committee was right in its ruling on the preliminary objection and therefore the ruling should be upheld, or to overturn that ruling and grant the Orders sought by the Applicant, its determination does not turn upon the establishment of the facts which were being asserted before the Committee. Those "facts" are still in dispute. Indeed, it may be fair to say that unless the facts are so clear and un-contradicted and the ruling of the tribunal so egregiously wrong on its face, this court will proceed on the basis that the facts asserted by the Complainant before the Committee are correct. It is, therefore, not necessary to set those facts out in great detail. However, it is sufficient to say that the Complainant alleges the Applicant, an Attorney-at-Law, provided the Complainant's attorney with "inaccurate and false information with the intention to mislead and that the information provided did in fact mislead the Complainant in relation to the amount of money paid by one Paul Afflick to a merchant bank with the result that some 2.5 million dollars which should have been paid to the Complainant pursuant to an Order of the Supreme Court has been lost". The complaint was supported by an Affidavit sworn to by the Complainant. It alleged that, pursuant to a judgment obtained in the Supreme Court in Suit No. C.L. D020 of 2000 against Mr. Afflick, the Complainant instituted sale of land proceedings in relation to certain property owned by Mr. Afflick as part of the execution process. The attorneys-at-law for Mr. Afflick made application to stay the sale of land proceedings and made application to set aside the judgment. It appears that the sale of land proceedings were stayed for a time. This stay was an extended to September 27, 2001 on condition that within seven days of the completion of the sale of the property the sum of 2.5 million dollars was to be paid to Mr. Afflick's attorneys to be held in an interest bearing account with the Bank of Nova Scotia in the joint names of the attorneys-at-law for the parties. The Applicant attorney-at-law in the instant matter, was the attorney-at-law having carriage of sale and the affidavit alleges that he should have retained the said sum of 2.5 million dollars to satisfy the conditions set out in the order extending the stay of the

Complainant's sale of land proceedings. It further alleges that in response to the attorney's request of him, the Applicant herein delivered two statements of account in respect of the sale. Finally the Complainant's affidavit alleged that by a letter dated November 11, 2001 from Messrs. Hart, Muirhead, Fatta, Attorneys-at-Law for the Merchant Bank, the said attorneys indicated the figure stated in the statement of account provided by the Applicant's firm as the amount paid to discharge the mortgage was inaccurate. The Applicant in these proceedings, re-asserts its view advanced before and rejected the Disciplinary Committee, that the Complainant is not an "a person alleging himself aggrieved" within the meaning of sections 12 and 14 of the Legal Profession Act since he was not a client of the attorney who was before the Disciplinary Committee. That submission was not accepted by the Committee and it is that decision which is the subject of these proceedings.

I agree with the submission of the counsel for the Respondent, Mr. John Vassell, Q.C. that the issue is "whether the expression "person .....aggrieved" in s.12(1) of the Legal Profession Act is limited to persons who are or were "clients" of the attorney-at-law with the consequence that only a client of an attorney-at-law can properly institute disciplinary proceedings against him for professional misconduct"

The Committee in its written ruling held that "on a literal interpretation of the words of this provision of the Act, the right is given:

a) To "any person alleging himself aggrieved",
b) In respect of an act of professional misconduct committed by an attorney,
c) To apply to the Disciplinary Committee,
d) To require the attorney to answer the allegations which must be contained in an affidavit sworn to by the person alleging himself aggrieved,
e) Concerning the identifiable act of misconduct in a professional respect which is said to have been committed by the attorney.

The Committee continued:

> On this literal interpretation we could find nothing in the words of the statute which could lead us to accept the interpretation which was placed upon it by Mr. Dabdoub. On our interpretation of the words of section 12(1) the range of persons who may qualify as "alleging himself

> aggrieved" by an act of professional misconduct committed by an attorney, cannot reasonably be limited to a person who has retained the attorney-at-law against whom the complaint is being brought without there being an unequivocal provision to this effect, expressing the intention of parliament. Neither can we find any basis for concluding from such an interpretation that a complainant "alleging himself aggrieved by an act of professional misconduct by an attorney", must be owed a duty of care by the attorney against whom the complaint is being laid. We are satisfied also that by stating that the affidavit must speak to the act of professional misconduct committed ***"by an attorney"*** it was not the intention of parliament to limit the categories of persons who could bring a complaint to those only who had retained the attorney, otherwise parliament would have used words such as "by his attorney". (Emphasis Supplied)

Mr. Marcus Goffe, attorney-at-law for the Applicant, urged the Court to the view that had been specifically rejected by the Committee at its hearing. At that hearing, the Applicant's then attorney-at-law, Mr. Abe Dabdoub, had submitted that section 12(1) of the Legal Profession Act ought to be restrictively interpreted so as to narrow the application of the provision to a person who is a client of the attorney. The section provides as follows:

> Any person alleging himself aggrieved by an act of professional misconduct (including any default) committed by an attorney may apply to the Committee to require the attorney to answer allegations contained in an affidavit made by such person, and the Registrar or any member of the Council may make a like application to the Committee in respect of allegations concerning any of the following acts committed by an attorney, that is to say –
>
> (a) any misconduct in any professional respect (including conduct which, in pursuance of rules made by the Council under this Part, is to be treated as misconduct in a professional respect).

In his statement of facts and issues for this hearing, the Applicant states the issues as follows:

> The issue in this application is: Does the panel of the Disciplinary Committee of the General Legal Council have jurisdiction to hear a complaint brought on by Mr. Raphael Douglas against the Claimant, Oswald James?

As in the case of the preliminary objection argued before the Committee, so here again counsel for the Applicant, Mr. Goffe, urges this court to hold that the section applies and

must be taken to apply only, to a *client* of the attorney-at-law. He referred the court to the local Court of Appeal decision in **Barrington Frankson v The General Legal Council Ex Parte Basil Whitter (at the instance of Monica Whitter) Civil Appeal No: 52/99.** Applicant's counsel hangs this submission on a single sentence in the judgment of Henderson Downer J.A. where his Lordship said:

> "The wording of section 12 (1) (a) suggests that the professional conduct (including any default) must relate to such person who has retained the attorney".

It was submitted that this was determinative of the issue although there is no basis for the conclusion that this was the learned judge's *reason* for his decision. I am of the view that the learned judge's comment was not, nor was it intended to be, the ratio decidendi of the Court of Appeal's decision. Having read the judgment of his lordship, Henderson Downer J.A., I believe that it would be a great dis-service to his remarkable intellect to posit that this, almost "throwaway line", is to be accorded that elevated interpretation. In any case, it is now a matter of record that the decision of the Court of Appeal was overturned by the Judicial Committee of the Privy Council when the matter went before that august body, although the Privy Council did not comment upon the specific sentence of his Lordship. Indeed, it was submitted both here and before the Disciplinary Committee, and I agree with the submission, that it was clearly obiter.

Counsel for the Applicant also submitted that the Applicant did not act on behalf of the Complainant. Nor was there any contractual relationship established between them. Thus, the latter was owed no duty. Counsel supports this submission on the basis that Mr. James did not act for either party in the suit involving the Complainant and Mr. Paul Afflick, nor did he represent any party in another suit brought by the Complainant against a bank and the attorney. It was not denied that he did act for Afflick in the sale of certain real estate. In light of these facts, counsel stated that no duty was owed. He cited two cases, namely **British Computers International Limited v Registrar of Companies and Anor; [1978] 3 W.L.R. 1134,** and **Al-Kandari v J.R. Brown & Co [1988]2 W.L.R. 671**. It was submitted that the former case is authority for the proposition that "no duty of care is owed by one litigant to another as to the manner in which litigation is conducted". The second case is cited to show a situation where a duty may be owed to a

litigant not represented by an attorney. In that case it was held that "although public policy required that a solicitor should be protected from claims in negligence by his client's opponent, in voluntarily agreeing to hold the passport to the order of the court, the defendants had gone outside of their role as solicitors for their client, that they owed the plaintiff a duty of care of which they were breach in failing to inform her or her solicitors that the embassy had retained the passport". It was accordingly submitted here that in the absence of such duty and in light of an attorney's duty of confidentiality to his own client, the Complainant could have no *locus standi* to pursue a complaint before the Disciplinary Committee. I believe that this submission is misconceived in that what is alleged in the complaint is not that Applicant *did not give information which he had from his client*, but that he *deliberately misled* the attorney for the Complainant in the information which he did give.

In articulating up the basis for the submission that in the absence of the attorney going outside of his duty as attorney to his own client, no duty was owed by Mr. James to the Complainant, Mr. Goffe referred to the judgment of Lord Donaldson M.R. in the **Al-Kandari** case cited above.

> A solicitor in litigation owes a duty of care to his client and to the court but he does not normally owe any duty to his client's opponent. **British Computers International Limited v Registrar of Companies and Anor; [1978] 3 W.L.R. 1134.** That is not to say that if the solicitor is guilty of professional misconduct and someone other than his client is damnified thereby, that person is without a remedy, for the court exercises supervisory jurisdiction over solicitors as officers of the court and, in an appropriate case, will order the solicitor to pay compensation; **(Myers v Elman [1940] A.C. 282).**

I do not believe that it would be too much of a stretch to say that there is in the very passage cited above, an implicit recognition that a sanctionable duty can be found to exist outside of the relationship of attorney and his client. Indeed, in the course of his judgment, the learned Master of the Rolls made it clear that a non-client of an attorney could possibly fall within the definition of "neighbour" as articulated by Lord Atkin in **Donoghue v Stevenson [1932] A.C. 562.** In such a case, clearly a duty could be owed to a non-client. In that regard, the following dicta of the learned Master of the Rolls in **Al-Kadari**, is extremely instructive:

> This is not to say that, if a solicitor is guilty of professional misconduct and someone other than his client is damnified thereby, that person is without remedy, for the court exercises a supervisory jurisdiction over solicitors as officers of the court and, in an appropriate case, will order the solicitor to pay compensation.

The above submissions by counsel about absence of contract and consequent lack of duty of care in these proceedings repeated, in essence, submissions made by then counsel before the Committee. Counsel submitted moreover, that since any information received by the Applicant in acting for Mr. Afflick was confidential and privileged, public policy protected the Applicant. It could not, as a matter of public policy be expected that the Applicant could be required to put himself into a potential conflict situation and in danger of facing disciplinary proceedings by divulging privileged information. It was in this regard that counsel appeared to cite **Rondel v Worsley [1969] A.C. 191.**

Let me say here, that the idea that a duty of care in relation to the provision of professional services is limited to, or exists only, in situations of contract, is long behind us. For it is clear that, as was stated in an article, "**Barristerial Immunity At An End**" by **Susan Watson in Commercial Liability Law Review (2001) at page 149**, the author submits:

> The historical justification for immunity [based on contract] was swept away by a decision for the House of Lords in 1963 in what is increasingly recognised as a seminal decision with wide-ranging ramifications, Hedley Byrne v Heller. The court decided that even without a contract, a person who performs professional or other duties which he or she has undertaken negligently, could be sued in tort.

The Committee was therefore right to reject this submission about lack of duty.

Secondly, in any event the Committee seemed to take the view with which I agree, that, with respect to the issue of confidentiality and privileged information, those related to issues of fact which it would be premature to consider at this point.

As I understood the citing of the **Rondel** case, it was also to support the proposition that, given that there is an obligation on the part of an attorney not to divulge his client's privileged information, public policy underpinned this responsibility and the Applicant

herein could rely on this to support his preliminary objection. With great respect, I believe that the submission is also misconceived. I do not apprehend any protection from that case in the instant matter. In any event, it is now clear that whatever immunities or protection may have been afforded by **Rondel** has been finally and irrevocably removed by **Arthur J. S. Hall & Co (a Firm) v Simons; Barratt v Woolf Seddon (a Firm); Harris v Scholfield Roberts & Hill (a Firm) TLR July 21, 2000 [2000] UKHL 38**, a decision of the House of Lords. As Lord Steyn stated in that case:

> My Lords, one is intensely aware that *Rondel v. Worsley* [1969] 1 A.C. 191 was a carefully reasoned and unanimous decision of the House. On the other hand, it is now clear that when the balance is struck between competing factors it is no longer in the public interest that the immunity in favour of barristers should remain. I am far from saying that *Rondel v. Worsley* was wrongly decided. But on the information now available and developments since *Rondel v. Worsley* I am satisfied that in today's world that decision no longer correctly reflects public policy. The basis of the immunity of barristers has gone. And exactly the same reasoning applies to solicitor advocates. There are differences between the two branches of the profession but not of a character to differentiate materially between them in respect of the issue before the House. I would treat them in the same way.

Further, as Lord Millett said in the same case discussing the question of immunity of attorneys:

> I.....declare that the advocate has no immunity from suit in relation to his conduct of proceedings whether civil or criminal.

En passant, it should be noted that in New Zealand, the final over-ruling of the public policy immunity hitherto accorded to barristers by virtue of **Rondel v Worsley** was accomplished in September 2006 when the Supreme Court of that country upheld a decision of its Court of Appeal in **Chamberlains v Lai SC 19/2005 [2006] NZSC 70** leaving only Australian jurisprudence clinging to that immunity.

In the Lai case, Mr. and Mrs. Lai sued their lawyers for negligence over the firm's conduct of the Lais' case before the High Court. The Lais maintained that the barrister who represented them wrongly made certain concessions which resulted in a judgment being entered against them personally, rather than against their company. The law firm, Chamberlains, denied that it acted negligently and sought to strike out the Lais' claim on

the basis that, in any event, barristerial immunity provided a complete defence to the claim. Mr. and Mrs. Lai argued that, in light of the House of Lords decision (in **Arthur J.S. Hall**) a reconsideration of barristerial immunity in New Zealand law was appropriate. The Court of Appeal agreed. The law firm took its case to the Supreme Court. That Court considered that there was no longer any public policy justification for retaining the immunity, which had attached to court representation and work 'intimately connected' with it.

It said:

> In summary, the immunity must now be reconsidered. The test of connection with litigation is uncertain. The former principal justifications for the immunity no longer persuade, if they ever did. ..... The ends of finality in litigation are adequately addressed by res judicata and issue estoppel, the pleas of autrefois acquit/convict, and the power of the court to strike out proceedings which are an abuse of process. ... Immunity for advocates is not therefore required to meet the public interest in finality of proceedings or the integrity of the judicial process. Other public interests in the integrity of the criminal justice system may not be exhausted by prevention of abusive collateral challenge alone, but are more appropriately addressed in application of the principles governing liability. ... No compelling public policy requires retention of an anomalous immunity for one occupational group.

I would be prepared to hold, if it were necessary for this decision, that any immunity from the principles of that case are now a thing of the past in this jurisdiction; so much for any immunity by virtue of **Rondel v Worsley**.

For the Respondent, Mr. John Vassell Q.C argued that the decision of the Disciplinary Committee was correct and should be upheld. He submitted, that the finding of the Disciplinary Committee that the expression a "person alleging himself to be aggrieved" was clearly not intended to be limited to persons who were the clients of an attorney; that is a person who had retained his services, was clearly correct for the reasons set out in its Ruling. Counsel urged this court to the view that the reasoning of the committee on this account was impeccable and thus there was "no reviewable error of law was made in the

Committee's dismissal of the Claimant's preliminary point" and that certiorari ought not to be granted.

In addition to the reasons given by the Committee which he adopted, he cited the recent Ruling by the Court of Appeal which recently in **Arlene Gaynor v Disciplinary Committee of the General Legal Council SCCA No. 22 of 2004**, upheld a six-month suspension of an attorney for professional misconduct in misleading a colleague in a land transaction, in breach of Canon 1(b) and Canon VI (a) of the Canons of Professional Ethics. There, the Complaint was made by the colleague's client. It was submitted that the Gaynor case was strong reason for rejecting the main proposition of the Applicant that the range of possible complainants was limited in the way suggested.

Another reason for the submission was that if that were a correct interpretation of section 12 (1) (a), it would make a mockery of the Canons of Ethics of the profession, enacted for the protection of the public. Thus, for example, disciplinary proceedings could not be taken by a third party against an attorney who fails to honour an undertaking which the attorney gave him. This would have a seriously deleterious effect on the ability of the Disciplinary Committee to enforce the standards of the profession in important areas of practice.

It was further submitted that the judgment of the then President of the Jamaican Court of Appeal, Rattray P., in **McCalla v Disciplinary Committee of the General Legal Council (1993) 49 WIR 213 at 221(g)** supported the position taken by the Disciplinary Committee here. There His Lordship stated:-

"The categories of persons identified in section 12 of the Act are:

> 1. Persons "aggrieved by an act of professional misconduct (including any default) committed by an attorney".

This category clearly applies to persons who have dealings with the attorney, for example his client *or an adversary in proceedings or matters in which the attorney is engaged*, and whose complaint *against the*

attorney is in respect of the conduct of the attorney acting in a professional capacity." (Emphasis mine)

Mr. Vassell also cited **In Re: Petition of McMahon (2002) Scot CS 36 (unreported judgment dated February, 2002),** in which Lord Cullen recognised that an attorney may be liable to disciplinary proceedings for lack of candor or honesty, not only towards his client, but towards his colleagues. He said:

> "Membership of the legal profession is a privilege. Those who exercise that privilege undertake a duty throughout their professional lives to conduct their clients' affairs to their utmost ability and with the complete honesty and integrity. Clients and colleagues should be able to expect these qualities of every solicitor as a matter of course. If the public is to give the profession its respect and trust, it must be assured that when solicitors fail in these duties, they will be suitably dealt with by the profession's disciplinary system."

I adopt the propositions set out in both foregoing judgments as being sound propositions of law in Jamaica, for the purposes of matters of this nature, given the legislative construct of the context within which attorneys-at-law operate here.

Given the nature of these proceedings, that is, a challenge to a ruling made on a preliminary point before the Disciplinary Committee, it is not necessary for me to review the factual allegations. However, if and to the extent that the agreed facts clearly and unambiguously demonstrated there was no misconduct, it would be open to the court to strike down the complaint. That is not the case here. Nor is my ruling to be understood to support any findings of fact, a role which is peculiarly within the competence of the Disciplinary Committee as the tribunal of fact.

I hold, as a matter of law, that the expression "a person alleging himself to be aggrieved by an act of professional misconduct (including any default) committed by an attorney" is clearly wide enough to encompass persons who are not clients of the attorney who is being charged with misconduct. Indeed, insofar as the essence of the challenge of the Applicant to the Disciplinary Committee's Ruling is to the locus standi of the

Complainant, I would adopt the trenchant summation of His Lordship Panton J.A. in his dissenting judgment in the **Frankson** case in the Court of Appeal, cited above:

> 'The question of locus standi is therefore in my view, a "non point"..... I regard the submission as devoid of merit. In my humble view, acceding to it would make a mockery of the legislation and its purpose".

I hold that the decision by the Committee that the complainant is an "aggrieved person" and therefore one competent to bring his complaint before the Committee, is one which is not reviewable given the authorities to which reference was made. I accept that the reliance of the Disciplinary Committee on the analyses of the various judgments of the law lords in **R v I.R.C, Ex Parte Federation of Self-Employed and Small Businesses Ltd.** as to who may properly be considered as having an "interest" in a matter such as an application for judicial review, sufficient to allow such a person to bring proceedings, is well founded. Indeed, in **Arsenal F.C. v Smith (Valuation Officer) and Another, [1979] A.C. 1**, it was held that a ratepayer who managed property for a company in the general area in which that club's stadium was located, was entitled to object to the *value placed on the stadium* and to propose that another value be considered.. The House of Lords upheld the ruling of the Court of Appeal that such a ratepayer was a "person aggrieved" within the meaning of the General Rate Act, 1967.

I also accept the submission by counsel for the Respondent that the Disciplinary Committee was correct in rejecting the Claimant's argument that he owed the Complainant no duty as an attorney-at-law. This is so because, if the "duty" referred to was a different duty than the duty not to mislead, the allegation in the Complaint, issues of fact would necessarily be involved, and so could not properly be the subject of treatment at that time. Further, the complaint which was before the Committee, as noted above, was that the Complainant or his attorney was misled by the Claimant, not that there was some other breach of duty.

Although not strictly necessary for this decision, I would also be prepared to hold as a matter of law, that where a breach of any of the Canons of Professional Ethics occurs and loss or damage is thereby occasioned to a person who ought properly to be within the

contemplation of the attorney when he directs his mind to the canon so breached, such a person may properly bring proceedings against such an attorney under this legislation.

Accordingly, I hold that the claimant's application for Orders of Certiorari and Prohibition fails. Judgment is given in favour of the Respondent.