NMLS

JAMAICA

IN THE COURT OF APPEAL

MISCELLANEOUS APPEAL No: 22/2002 &
CROSS APPEAL No: 27/2002

BEFORE:	THE HON MR JUSTICE HARRISON, P. (Ag.) THE HON MR JUSTICE PANTON, J.A. THE HON MR JUSTICE SMITH, J.A.	
BETWEEN:	GRESFORD JONES	APPELLANT
AND	THE GENERAL LEGAL COUNCIL Ex parte Owen Ferron	RESPONDENT

Norman Wright, Q.C., and Miss Nancy Anderson for appellant

Dennis Morrison, Q.C., for the General Legal Council

Joseph Jarrett for Owen Ferron

October 27, 30, 2003, November 17, 18, 19, 20, 26, 2003
and March 18, 2005

HARRISON, J.A:

This is an appeal from the decision of the Disciplinary Committee of the General Legal Council (GLC) on February 8, 2002, which made its finding and order in the following terms:

> FINDING
>
> "The appellant acted in breach of Canon 1(b), IV(f), IV(r) and VII(b)(ii) of the Legal Profession (Canon of Professional Ethics) Rules and was guilty of misconduct in a professional respect.

ORDER that

1. The respondent be fined $300,000.00; $100,000.00 to be paid to the General Legal Council and $200,000.00 to be paid to the respondent.

2. The respondent pay over to the Executor's personal representatives the sums determined pursuant to paragraph entitled Payment of Funds in Hand supra, to wit $1,408,633.08 by way of restitution and deliver up to the said representative the documents of Title and all documents relating to the estate. That in the event that no personal representative of the Executor has been appointed or until such other person is duly appointed to administer the estate of Peter Ferron, deceased, the sums herein mentioned be placed forthwith in an escrow account in the name of the Estate of Peter Ferron, deceased.

3. The appellant pay costs in the sum of $250,000.00 towards the respondent's legal fees."

The relevant facts are as follows: One Peter Alexander Ferron ,who previously resided in England, died testate in Jamaica on March 13, 1988. After his death his wife Regina, and his children, Mrs Cordella King and Owen Ferron, came to Jamaica in the said month of March 1988.

By his will dated February 17, 1988, the deceased left a property in Golden Spring, St Andrew, Jamaica, and another in St Michaels, Barbados, to his three children and grandchildren. The Golden Spring property was subject to a life interest to one Euphemia Campbell with whom he lived in Jamaica up to the time of his death.

In March 1988, Owen Ferron ("Ferron"), the complainant before the General Legal Council went to the law office of the appellant on Duke Street in Kingston, retained him to undertake the handling of the legal affairs of the estate of the deceased, and delivered various documents to him. He paid the appellant, then, a retainer of $600. The appellant advised him that the will would have to be probated and death duties paid. Ferron also paid Beadle Property Consulting to do a valuation of the Golden Spring property. Ferron, his mother and sister, returned to England in April 1988.

By letter dated June 17, 1988, the appellant wrote to Ferron and his sister Mrs King in England, confirming the existence of the property in Barbados identified by "a friend of mine in Barbados", advising them of the life interest of the deceased's three children and that the documents for probate application in Jamaica were ready to be signed by the executors Sydney Lee and Jeremiah Davis, and concluded:

> "The stamp duty payable to the Jamaica Government is substantial, because of the current value of the properties, and apart from that you will appreciate that I have done a considerable amount of work up to this stage – hence I must therefore ask you to let me have by return a Manager's cheque or Draft, drawn in my favour preferably on Barclay's Bank for Nine Hundred British Pounds (£900) out of which the stamp duties will be paid and the balance applied against my professional charges."
>
> (Emphasis added)

By letter to Ferron dated August 24, 1988, in response, presumably to a letter from Ferron dated August 1, 1988, and a telephone conversation between them in July 1988, the appellant wrote:

> "Based on the present rate of exchange the £900 British Pounds requested, will be equivalent to approximately Nine Thousand Jamaican dollars (J$9,000.00) from which the following deductions are to be made:
>
> (a) Based on a returned value of $210,000.00 for the Jamaican estate or assets, the stamp duty payable to Government on the documents to be submitted to our Supreme Court for a grant of Probate of the Will of the deceased will be:
>
> $4,996.00
>
> (b) Amount on account of attorney's fees for a variety of Professional Services already rendered, and to be further performed, separate and apart from the initial retainer of $600.00 already paid me:
>
> $4,004.00
>
> $9,000.00
>
> I may mention that the attorney's fees for the application for probate of the said Will – based on the Jamaican Bar Association Scale of fees, limited to the Probate of the Will solely, is $7,500.00."
> (Emphasis added)

and concluding wrote:

> "I may mention that in anticipation that you would have sent me the money and with a view of saving time, I have arranged with and have got the Executors to sign the necessary documents for filing in Court for Probate."

Ferron sent to the appellant on June 14, 1989, a bank draft in the sum of £500.00. By letter dated June 29, 1989, the appellant acknowledged receipt of the said amount, expressed his disappointment that the funds were not sent to him directly by "Draft or Manager's cheque in English currency" and stated that:

> "The remittance has yielded $4,258.30 which has nevertheless been credited (sic) your account, but applied exclusively against my professional charges, as payment in connection with that aspect, that is more than a year overdue."
>
> (Emphasis added)

The appellant further informed Ferron that, when the further remittance promised by Ferron was received they would be applied:

> "... against the payment of death duties, and stamping of documents for submission in the Supreme Court in support of the Probate application."

Following further correspondence, the appellant wrote to Mrs King, by letter dated November 27,1989, stating that:

> "It is most unfortunate that you have omitted to send me further funds herein, as requested in my letter of September 20 last - since when more than TWO months have elapsed."

By this letter the appellant advised her therein that one of the executors Sidney Lee had died and that application for probate would now have to be made in respect of the surviving executor Jeremiah Davis. On March 1, 1990, Ferron paid £450.00 to the appellant at his office in Jamaica.

By letter dated March 1, 1990, handed to Ferron, the appellant acknowledged receiving the sum of $4,500.00;

> "which has been applied and credited against the cash disbursements and professional charges herein."
> (Emphasis added)

By letter dated August 25, 1990, the appellant requested from Ferron and his sister additional funding. He said inter alia:

> "At this point of time I wish you to remit the Jamaican equivalent of $10,000 so that I can stamp and lodge the probate application papers ... and allocate the difference towards my professional fees."
> (Emphasis added)

In response to this request by the appellant, Mrs King by letter dated January 19, 1991, wrote to the appellant:

> "I am responding to your latest letter dated 25th August 1990 which was received with some disquiet because of the large additional amount requested, especially after we were under the impression that all or most of the fees were already remitted. I accept, as you stated, that it is difficult at the start of legal work that unforeseen difficulties can arise giving slight increase in fees, but I certainly do not accept the enormous amount asked for.
>
> You say that the £500 received in June 1989 yielded J$4,274.40 of which $800 was disbursed for the appraisal of the Barbados property, and $3,474.00 against your fees. However, you do not make it clear to what use the £450.00 ($4,500.00) received from my brother in March/April was applied against. Was it towards your $7,500 professional fees quoted in your letter of 24th August 1988 and your recent letter? In which case only $3,000 would be the balance to you, bearing in mind you have already taken $3,474.00 (already mentioned), or has it been applied to the stamp and estate duties of $5,000, again quoted in

> your recent letter. In either case it would reduce the sum requested considerably. Please bear in mind that to date you have received a total sum of $7,974.00 and apart from the two items mentioned no attempt is made to explain what has happened to the further sum."

The appellant in a reply to her dated January 29, 1991, explained:

> "Yours dated "January 19, 1991" was received by me on the 21st instant, but it would seem that there is some misunderstanding on your part. As the Attorney engaged to perform a wide variety of professional services in respect to this estate, I am entitled to charge not only for the drafting and engrossing of the various documents to be filed in the Supreme Court, (originally estimated at $7,500.00 but that was purely an approximate figure), but also for correspondence, interviews, advice and the several other aspects affecting the estate. This was made clear in paragraph 3, of my letter dated 25th August last, addressed to you and Owen Ferron.
>
> All amounts received by me to date have been allocated against professional services only and nothing has been disbursed for the Government death tax or stamp duty et. (sic) This explains why in my letter of 25th August last, I requested a further remittance of Ja.$10,000.00 out of which the papers could be stamped, and the balance applied towards my own charges – death duties are of course a separate matter."
>
> (Emphasis added)

For the remainder of the year 1991, and during 1992, the Ferrons and the appellants exchanged several telephone calls in respect of the remittance of further funds to the appellant, which funds they were finding a difficulty in obtaining.

By letter dated January 22, 1993, the appellant wrote to Ferron:

> "I am surprised at not having received a response to my letter dated 16th November last, nor have you remitted the sum of L1,500 (sic) pounds in keeping with 2 separate assurances given by you to me on the occasions referred.
>
> These amounts are for allocation against my professional services already performed and for further work to be done. The duty assessed by the Government as per their letter of 3rd November last was $28,543.65. This duty is calculated to 31st October 1992, and as already pointed out, further interest will become payable to the date of settlement.
>
> Until the necessary funds come to hand, I will be unable to stamp or lodge the papers in the Supreme Court to support the Probate Application."

The Ferrons, by correspondence in July 1993, queried the request for £1,500 "which presumably includes fees for your work on the sale of the property in Barbados", and pointed out that £1,200.00 had been paid to the appellant up to then, which latter sum "... as it turns out was merely for administrative work." They complained that this was "... a very huge amount of money, even by British standards" and stated that they could not "afford to service the high cost of standard administrative legal work ... without strict verification." The appellant was requested to send the monies from the sale of the Barbados property to the Ferrons in England "... not converted to Jamaican dollars."

In the interim, a purchaser had been found for the sale of the Barbados property at a price of $50,000.00 Barbados currency. Once the agreement for sale was signed by the vendor Jeremiah Davis, the executor, and the

purchasers, and the sale was consented to by the three beneficiaries, a deposit of $5,000.00 Barbados currency was paid. In his letter dated December 16, 1993, the appellant stated:

> "From the deposit recently received by me, I have paid Stamp Duty on various documents for filing in the Supreme Court to support probate application ..."

The first installment of $20,000.00, Barbados currency, was sent to the appellant in the form of US$9,809.69 draft, by Mrs Cherry Brady-Clarke, attorney-at-law by letter dated October 25, 1993. The appellant, by letter dated October 28, 1993, to Brady-Clarke, acknowledged receipt of the said sum.

By letter dated October 15, 1993, to Ferron, the appellant had referred to further expenses, the fact that the receipt of the deposit from Barbados would be used "... to pay the stamps on the documents in support of the Probate Application" and warned Ferron:

> "... in so far as my professional charges are concerned, it will be necessary for your sisters and yourself to ignore any sum that was previously quoted to you, because Attorneys' fees – like everything else have gone up, and ... this estate has created substantially more work than could reasonably have been anticipated. ...However I am certain that in due course of time, we will be able to work out something that is mutually acceptable." (Emphasis added)

This was the first attempt by the appellant to vary, unilaterally, the initial fee of $7,500.00 for professional charges.

Subsequently, the appellant wrote to Ferron advising him that "10% of the sale price" is the normally accepted attorney's fee. Ferron, in response by facsimile letter dated December 10, 1993, expressed his concern and challenged what he saw as the "elastic nature" of the charges.

By letter dated January 28, 1994, Cherry Brady-Clarke, attorney-at-law, sent to the appellant US$10,398.42 draft along with the conveyance signed by the purchasers. The appellant, by letter dated February 11, 1994, acknowledged receipt thereof.

An "Interim Statement of Account" dated January 26, 1994, sent from Cherry Brady-Clarke to the appellant in respect of the sale of the Barbados property reveals that the sum of US$9,908.69 (BD$20,000.00) received by the appellant on October 28, 1993, was designated as the "Purchasers' loan to vendor." This remittance is relative to the appellant stating in his letter to Ferron dated July 15, 1993:

> "Subject to the approval of the Barbados Foreign Exchange Control Authority the Purchaser is willing to lend Barbados $20,000.00 available to the Executor for the purpose of obtaining the grant of Probate."
> (Emphasis added)

Ferron and his family, including his widowed mother, visited Jamaica in May 1994. He went to the appellant's office and spoke to him.

Ferron returned to Jamaica in February 1995, having been told by the appellant that various documents filed in the office of the Supreme Court

could not be found. The appellant and Ferron together visited the said office. The documents were subsequently located.

Neither in May of 1994 nor in February 1995, did the appellant advise Ferron that he, the appellant, had already received the entire proceeds of sale of the Barbados property, namely in excess of $46,000.00 Barbados currency.

The appellant advised Ferron, by letter dated June 16, 1995, of a disbursement of $2,500.00, Jamaican to one Dennis Fuller, his cousin, as expenses for accompanying Jeremiah Davis, the executor, Ferron's uncle, from White Horses in the parish of St Thomas, to the appellant's office in Kingston.

By letter dated September 13, 1995, to Ferron, the appellant outlined the amounts received since 1988, namely £1,300.00 and $600 Jamaican currency and the disbursements, namely, $5,040 Jamaican. It showed the balance of $7,534.00 in hand. The appellant remarked that he had done "a mass of work" and promised that:

> "... my professional charges will inevitably be substantial, and bear no relation to any sum which may have been previously quoted ..."
> (Emphasis added)

This was a further statement by the appellant that he intended to change the agreed rate of charges for professional services. The appellant stated, only then, that the Barbados property had been sold and the net proceeds sent to him.

On September 28, 1995, in a telephone conversation with Ferron, the appellant confirmed that the Barbados property had been sold and promised to send £4,000.00 to England to assist in the return of Mrs Ferron, the widow, to Jamaica, on receipt of written authorization to do so from the beneficiaries. Written authorization was sent by facsimile correspondence on October 13, 1995.

On October 23, 1995, the appellant telegraphed Ferron stating that he had "arranged by bank transfer" to send the said £4,000.00. Later, on the said date, the appellant telegraphed Ferron and advised that he would refrain from doing so until he, the appellant, had prepared and submitted an account of "receipts and expenditures."

By letter dated October 23, 1995, the appellant recited the disbursements to date in respect of the estate, referring to the Interim Statement of Account dated January 26, 1994, from Cherry Brady-Clarke, which gives:

> "... details as to such portions of the expenses for the Barbadian part of the estate, amounting to ... BD$28,799.71 ... BD$28,799.91 leaving a balance of BD$21,200.29 remitted to me..." (Emphasis added)

The appellant stated that all that remained in the account for the family was $84,566.74. He added the values of the Barbados and the Jamaican properties and then claimed as his fee 10% of the total value. Ferron wrote to

the appellant on November 16, 1995, rejecting his claims and calculations and advised him that his work was suspended.

The appellant, having been requested by Ferron to send the said sum of $84,566.74 to him, replied that as a condition precedent to such remittance, Ferron should accept the figures contained in the appellant's letter of October 23, 1995. Ferron by facsimile letter dated December 1, 1995, repeated his directive of the suspension of any further work by the appellant and a further request for the said $84,566.74.

Ferron spoke to Cherry Brady-Clarke, attorney-at-law in Barbados and she sent him several documents. The documents revealed that by January 28, 1994, the appellant had received from the sale of the Barbados property BD$46,200, that she had deducted only $3,800.00 as expenses and that it was not correct to state, as the appellant had done, that:

> "... the expenses for the Barbadian part of the estate amount(ed) to ... BD$28,799.71... leaving a balance of BD$21,200.29 remitted to me. "
> (Emphasis added)

The sum of BD$20,000.00 which the attorney-at-law Brady-Clarke, stated in her interim statement dated January 26, 1994, as "Purchasers' loan to vendor" and which she paid over to the appellant on October 25, 1993, was described by the appellant in his letter to Ferron dated November 20, 1995, as representing:

> "... funds which the purchasers borrowed at that end in order to obtain the deposit."
> (Emphasis added)

This statement was obviously erroneous and without foundation.

The property at Golden Spring in the parish of St Andrew, part of the estate of the deceased, attracted considerable correspondence and attention. By letter dated July 15, 1992, the appellant sent to the Stamp Commissioner a revenue affidavit dated June 11, 1991, requesting an assessment of the transfer tax on death payable on the value of the property at the date of death on March 19, 1988. The value in the said affidavit was $200,000.00.

The Stamp Commissioner responded to the appellant, by letter dated November 3, 1992, that the said "undisputed" tax on death on the net value as submitted, was assessed, "WITHOUT PREJUDICE," at $28,543.65, and requested that the appellant submit to him several relevant documents, namely, inter alia, copies of the certificate of title, the valuation report upon which the market value of the property is based, the inventory filed in the Supreme Court, the death certificate and the will and probate, if available. The appellant failed, then, to respond to the Stamp Commissioner's request.

By letter dated September 12, 1995, to the Stamp Commissioner, the appellant complained that he had not received a response to his (appellant's) letter of July 15, 1992, and requested a prompt response "... hoping that you have not mislaid the file." Apparently, having located the Stamp Commissioner's letter of November 3, 1992 the appellant by letter dated October 11, 1995, forwarded the requested documents, explaining that:

> " The Beneficiaries of this estate do not reside in Jamaica, and communication with them has become very protracted. This explains why I have not previously responded to your letter of November 3, 1992 ..."

and stating further, that the market value of the property was $200,000.00 as stated by the executor in his affidavit, "... but he did not have any Appraisal Report." By letter dated October 26, 1995, the appellant sent to the Stamp Commissioner a cheque for $33,681.51 to settle the duty assessed:

> "... together with MY assessment of the additional THREE YEARS interest payable for the period November 1, 1992, to November 31, instant."

Ferron stated that the appellant had had a valuation report of the said property from 1988, done by one Mr E. Beadle, in the sum of $300,000.00.

By letter dated December 1, 1995, to the appellant, the Stamp Commissioner advised that he had caused a valuation of the property to be carried out and the value of the property:

> "... two Dwelling Houses ... together containing seven (1) bedrooms was determined at ... $550,000.00."

and that the assessment was amended to $72,819.12 payable as at November 29, 1995, instead of the $33,681.51 remitted, on a declared valuation of $200,000.00.

Curiously, by letter dated December 5, 1995, from the appellant to Ferron, advising him of the tax on death of $72,819.12 then payable, the appellant, inter alia, revealed that:

> "Although from as far back as the 22nd January 1993, I indicated to you that the Government contemplated Death Duty at that stage as being J$28,543.65 you never responded, nor made any remittance ..."
> (Emphasis added)

and, confirming the stance of Ferron, on the existence of the appraisal in the possession of the appellant:

> "I see on my file an Appraisal, addressed to Mrs. C. King and you at #7 Padlock Close, Constant Spring Gardens, Kingston 10, St Andrew, by Mr E.S.A. Beadle, Realtor and Valuator, dated 7th April 1988, who therein placed the market value of the holding at ... J$333,288.00."

The additional amount for tax on death was payable by the estate.

Having advised the appellant on December 1, 1995, that his work for the estate was suspended, Ferron sent a further facsimile letter on December 15, 1995. The appellant responded by letter dated December 20, 1995, expressing his disapproval of Ferron's language as "libellous and defamatory" and threatened that he had:

> "... consulted two distinguished Queen's Counsel to file a writ in the High Court in Jamaica for the grossly untrue and improper attack which you have levelled against my professional reputation, and my integrity ..."

Ferron filed a complaint with the General Legal Council of Jamaica dated May 22, 1996, in accordance with the Legal Profession Act, 1971.

The substance of the complaint was that the appellant:

(a) charged fees that were not reasonable;

(b) had not provided all the information on the progress of his, Ferron's, business with due expedition as he Ferron required;

(c) had not dealt with such business with due expedition;

(d) had not accounted to the complainant for all moneys in his hands for his account although the complainant Ferron, had reasonably required him to do so;

and as a consequence, was in breach of various canons contained in the Legal Profession (Canons of Professional Ethics) (Rules) made under the Legal Profession Act 1971.

The appellant, in his affidavit dated October 29, 1998, filed in response, countered, inter alia, that:

(a) His clients were the executors, Sydney Lee and Jeremiah Davis, and not Owen Ferron and his sisters, the beneficiaries, although the latter were responsible for his fees and the payment of stamp duties, death duties, transfer tax and the cost of obtaining Probate, (vide agreement dated April 18, 1988).

(b) That for the four (4) year period to May 1992, he received only $12,874.00 from Ferron which was insufficient, and continued to act because the latter promised to remit £1,500.00 to him in July 1992. He failed to fulfil that promise.

(c) Continuing to act, the appellant in November 1992, advised Ferron of the assessment by the Stamp Commissioner, and requested the relevant funds and further fees. No funds were received despite a further request in January 1993.

(d) The property in Barbados was sold for BD$50,000.00 and Mrs Brady-Clarke sent him on October 25, 1993, a part payment of BD$20,000.00 and on January 26, 1994, the balance of the purchase price less

BD$8,800.00 in expenses, namely, BD$21,200.00. The latter remittance was accompanied by a request for his undertaking that the said funds be retained by the appellant "... in escrow until ... the recording of Conveyance ..." He gave his professional undertaking accordingly.

(e) Now, in funds, the appellant filed the application for probate in March 1994, but was not obtained until February 1995, due to the tardiness of the Supreme Court Registry.

(f) A certified copy of the probate was not obtained from the said Registry until September 1995, when it was sent to Barbados.

(g) Having sent to the Stamp Commissioner on October 26 1995, the sum of $33,081.51 to cover the assessment on the Jamaican property, the said Commissioner claimed a sum of $72,819.12 based on an increased assessment.

(h) The appellant has performed no work in respect of the estate since November 1995, in obedience to the instructions of Ferron, who accused him of mishandling.

(i) He made a honest mistake in advising Ferron in October 1995, that the amount retained in Barbados as expressed was $28,200.00 instead of $8,200.00, having forgotten that he had received two years earlier an initial remittance of BD$20,000.00!

(j) No amount nor basis for the calculation of attorney-at-law's fees were agreed in 1988, but on March 1995, the surviving executor agreed that the appellant's fees would be 10% of the market value of the estates. (vide agreement dated March 16, 1995). His fees were accordingly $120,000.00 including GCT. He has filed an action in the Supreme Court to resolve the issue of the fee payable, under section 21 of the Legal Profession Act.

(k) As his client, only the executor, and not the beneficiaries, is entitled to an account and the transfer of monies on the part of the appellant.

Having read the various affidavits and heard arguments and submissions of counsel, the Disciplinary Committee appointed by the GLC made its findings, arrived at its decision and made the orders stated earlier.

Before this Court learned counsel for the appellant argued eleven grounds of appeal.

Grounds 4 and 7 were argued together. They read:

"4. There is no basis in fact or in law for the finding that the appellant has acted in breach of Canon 1(b)."

"7. In finding that the appellant was in breach of Canon 1(b) the Disciplinary Committee acted in breach of the Rules of Natural Justice in that:

(a) there were no specific particulars filed in support of this allegation;

(b) the appellant was deprived of the knowledge of the case he had to meet and not given a fair opportunity of preparing for or answering this charge; and

(c) the Committee has failed to identify the specific behaviour which tended to discredit the profession of which he is a member."

Canon 1(b) of the Legal Profession (Canons of Professional Ethics) (Rules) reads:

"(b) 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."

The relevant finding of the Committee reads:

> "With regard to Canon 1(b)
>
> This canon requires the attorney at all times to maintain the honour and dignity of the profession and to abstain from behaviour which may tend to discredit the profession of which he is a member. It is one of the canons that is listed in Canon VIII(d), the breach of which shall constitute misconduct in a professional respect. It has a wide application. It relates to the conduct befitting the attorney in relation to the Court, the regulatory body governing the profession, the law practice, the client, colleagues and certain other persons.
>
> In relation to this matter, the issues would relate to the conduct of the Respondent acting for and on behalf of the executor and the beneficiaries in a matter commenced in 1988 and is still to be completed in circumstances where funds have been received in the course of the administration of the estate and which still remain in the custody of the Respondent, although the Respondent has ceased to act since 1995."

In support of these two grounds learned counsel argued that the amendment of the charges to include a breach of Canon 1(b) should not have been allowed because the appellant, who had already filed his affidavit in answer to the complaints, did not have any knowledge of the relevant case he had to meet nor the opportunity to answer it. The Committee was wrong to use Canon 1(b) as a "catch all", that is, by using the adverse findings in respect of breaches of several other Canons cumulatively, to determine that there was a breach of Canon 1(b). It was a duplication of charges which

would cause the appellant to suffer punishment on the same, fails. A finding of unprofessional conduct must involve disgraceful behaviour of such great moral turpitude to make one unfit for the profession and no such allegation was proven against the appellant.

The complaint of a breach of Canon 1(b) was added by an amendment granted by the Committee on July 1, 2000. The appellant was aware of the amendment and the ambit of the material in support of the allegation. The appellant's affidavit dated July 13, 2000, inter alia, reads:

> "At a meeting of the Tribunal on 1st July 2000, the members requested price documentation and information ..."

and specifically at paragraphs 7 and 8:

> "7. The notes taken of the said ruling by my Junior Attorney, Miss Nancy Anderson reads as follows: "amendments allowed, not on the ground advanced by the Applicant, but only on evidence contained in the Affidavits and relating to matter prior to the filing of the Complaint."
>
> 8. I reaffirm and reassert the matters stated in my several Affidavits, and accompanying documents, filed in response to this Complaint, and deny that I have acted in any way in breach of Canon 1(b) and say further that in the absence of any specific allegations of misconduct, other than those set out in the original complaint, there is nothing further for me to answer."

The appellant therefore specifically addressed the complaint in respect of Canon 1(b) referring in paragraph 8, to the documents filed in response to the

original complaint. The Committee restricted itself to considering, as the appellant agreed in paragraph 7, "... only ... evidence contained in the Affidavits and relating to matter prior to the filing of the complaint." There was therefore no basis for a complaint of a breach of natural justice committed by the Committee. The appellant was advised of the breach and he responded in his defence.

The governing words of Canon 1 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 1(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 1(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. Frequently, in legal proceedings, the same set of facts may point to several breaches of conduct. A tribunal is not for that matter precluded from making an adverse finding on each. The sole prohibition is that the offender may not be punished twice for the same breach. There is therefore no merit in these grounds.

Ground 1 reads:

> "1. The finding that the appellant was in breach of Canon IV(r) is wrong in law and in fact because:
>
> (a) The Committee at page 24 and page 25 have expressly stated:
>
> "we cannot state that the facts support that the business was not carried on with due expedition generally."
>
> (b) The matters stated at pages, 21, 22 and 23 do not support the contention that the appellant failed to provide information as to the progress of the business in that:
>
> (i) "The matters set forth in the sub paragraphs 1 and 2 have to do with the issue of the parties' disagreement about fees and have nothing to do with information as to the progress of the administration of the estate in respect of which the evidence and correspondence shows that the complainant was kept fully informed.

(ii) The uncontradicted evidence of the appellant is that he did not know of the valuation referred to at sub paragraph 3 at page 22 of the judgment at the time when he was submitting a valuation to the Stamp Commissioner."

Canon IV(r) reads:

> "An Attorney shall deal with his client's business with all due expedition and shall whenever reasonably so required by the client provide him with all information as to the progress of the client's business with due expedition."

The Committee, after a chronological recital at page 760 of the record, stated:

> "The facts enunciated above indicated that the Respondent was retained in April 1998, and by June 1998, the Probate documents were prepared and investigations had begun in respect of work to be done in Barbados. Thereafter, there was a lapse between that time and the actual application but we note that circumstances did not permit the submission of the application at that time. We further note that once the circumstances changed by virtue of the receipt of the initial proceeds from the Barbados property, work then proceeded so that the proceeds having been received in January 1994, despite several administrative delays, the Probate was obtained by September 1995. The facts indicate also that the work done in respect of the sale of the property in Barbados seem to have been done with reasonable alacrity.
>
> One must put on record however an area of delay. That is the application to the Stamp Commissioner. This area would seem to fall within the ambit of the complaint filed. On the whole, however, we cannot state that the facts support that the business was not conducted with due expedition generally."

The fact that the Committee found that "we cannot state that the business was not conducted with due expedition generally" and that the work in respect of the sale of the Barbados property "was done with reasonable alacrity" is not inconsistent with its finding that there was a breach of Canon IV(r). The Committee did highlight an area of delay in respect of the application to the Stamp Commissioner.

The appellant had received from the Stamp Commissioner, the latter's assessment dated November 11, 1992, amounting to $28,543,65 for transfer tax on death in respect of the Golden Spring property based on a value of $210,000.00 submitted by the appellant in his application on July 15, 1992. The appellant's letter of September 12, 1995, to the Stamp Commissioner complaining that:

> "... more than 3 years ago I submitted a Revenue Affidavit, dated 11th June, 1991, signed by the Executor, ... but since then there has not been a 'peep out of you' ..."

was a faulty criticism for which the appellant subsequently apologized. How or why this "oversight " arose is difficult to understand. This is so, because in a letter dated January 22, 1993, from the appellant to Ferron, referring to the latter's delay in remitting £1,500.00 to the appellant, he said:

> "These amounts are for allocation against my professional services already performed and for further work to be done. The duty assessed by the Government as per their letter of 3rd November last was $28,543.65. This duty is calculated to 31st October 1992, and as already

> pointed out, further interest will become payable to the date of settlement."
> (Emphasis added)

This is a clear indication that the appellant was fully aware of, was in possession of, and quoted from the Stamp Commissioner's letter dated November 3, 1992.

When, by letter dated October 26, 1995, the appellant sent to the said Stamp Commissioner the sum of $33,681.51, this sum included an "... additional THREE YEARS interest ... for the period –1st November, 1992 to 31st November, instant."

The major part of this period of delay was primarily due to the fault of the appellant who failed to deal promptly with the Stamp Commissioner's assessment from November 1992, and failed to pay the said tax in October 1993, when he was in possession of the remittance of US$9,809.69, ($20,000.00BD currency) from the sale of the Barbados property. The delay attracted the payment of interest at the expense of the Estate.

In addition, the Committee found that the appellant failed to provide to Ferron, all information, expeditiously, of the progress of his business. With this finding of the Committee I also agree.

The appellant failed to advise Ferron, who had assumed the responsibility for payment of the attorney's fees for the application for probate, that such fees initially stated as $7,500.00 "based on the Jamaican Bar Association Scale of fees" was no longer so. The appellant instead sought to

rely on a document dated March 16, 1994, (but properly 1995) purportedly signed by the sole surviving executor Jeremiah Davis, who was then arthritic and could not see, by making his mark. This latter document sought to authorize the appellant to retain as his fees for professional services "... a sum equivalent to ten per cent (10%) of the market value of all assets of which the deceased died possessed." The Committee properly found that:

> "In the circumstances it was entirely inappropriate for the Respondent to seek to vary the original instructions in this way."

In respect of the appraisal of the Golden Spring property which Ferron had obtained from Mr E. A. Beadle, the Committee found:

> "The facts indicate non-provision of information in respect of the fact that the valuation which the Complainant had personally obtained in respect of the Golden Spring property was not used for the application to the Stamp Commissioner which would have been contrary to the purpose of having obtained this valuation."

The said document dated March 16, 1994, purportedly signed by "his mark" by Jeremiah Davis, in authorizing the payment of the executor's commission, inter alia, reads:

> "... 6% ... my commission on the value of the Golden Spring property, as per the Appraisal of E.S.A. Beadle dated April 7, 1988, for Three Hundred and Thirty-Four Thousand Dollars ($334,000.00) which Appraisal, I understand and verily believe, was not delivered to you, until after I had signed the Revenue Affidavit and the Papers in support of the Application."

The inference is that the Beadle appraisal showing a valuation of $334,000.00, was in the appellant's possession after the signing of the Revenue Affidavit showing an unsupported valuation of $210,000.00 for the Golden Spring property, and before it and "the Papers in support of the Application" were submitted. The appellant was duty bound to submit the Beadle appraisal or advise Ferron that he was not going to do so. He did not and thereby withheld information from Ferron.

Furthermore, after the appellant received from the attorney Brady-Clarke the said sum of $20,000.00 BD by letter dated October 25, 1993, he did not advise Ferron of having received such a sum until he did so by letter September 13, 1995, although they had been in correspondence and in personal contact during the said period.

The appellant was therefore correctly found not to have provided Ferron with all the information of the progress of his business "with due expedition," and was therefore in breach of Canon IV(r). This ground also fails.

Grounds 2 and 8 were also argued together. They read:

> "2. (a) The findings of the Committee in respect of the fees charged by the appellant are *ultra vires* the Committee by virtue of the provisions of the Legal Profession Act in particular Section 12 subsections 1 and 7 together with the Rules made thereunder.
>
> (b) The purported findings of the Committee that the Appellant had agreed to accept the fees prescribed as a guide by the Bar Association is completely at variance with the evidence before the Committee. There is no justification

> either in law or in fact for the amount of $36,332.50 fixed by the Committee, which does not even take into account the 15% General Consumption Tax or all the work done by the appellant in the particular circumstances of this matter.
>
> 8. The Disciplinary Committee of the General Legal Council acted without jurisdiction and or wrongly exercised its jurisdiction in attempting to fix fees chargeable by the Appellant under Canon iv(f) as it did so in disregard to Sections 21 and 22 of the Legal Profession Act which established a regime for the determination and recovery of fees between Attorney and Client."

In respect of the fees for professional services charged by the appellant, the Committee found, inter alia:

> "... no evidence was given in respect of the fact that the Complainant who was a party to the initial agreement in respect of the payment of fees was either made aware of the Respondent's intention to vary the agreement or of the fact of the actual variation, despite the copious correspondence between the Respondent and the Complainant, and it is therefore the Panel's decision that the subsequent arrangement cannot stand. Since the Respondent had accepted that he would look to the Complainant for the payment of fees and since he had indicated that he would have been bound by the Jamaican Bar Association's Scale and since there had been no objection to this by the Complainant, we direct that the guidelines as set out by the Schedule at that particular time be adhered to, and accordingly we find that the fees which ought to have been charged are as set out hereunder:

Probate fee at 3% of $334,000.00	$10,020.00
Fees for transmission 1.25% of $334,000.00	$ 4,175.00
Fees for Assent to devise 1.25% of $334,000.00	$ 4,175.00

Fees for Barbados transaction 2.5% of $718,500.00 $17,962.50

Total Fees $36,332.50"

Canon IV(f) reads:

> "(f) The fees that an Attorney may charge shall be fair and reasonable and in determining the fairness and reasonableness of a fee any of the following factors may be taken into account:–
>
> (i) the time and labour required, the novelty and difficulty of the questions involved and the skill required to perform the legal service properly;
>
> (ii) the likelihood that the acceptance of the particular employment will preclude other employment by the Attorney;
>
> (iii) the fee customarily charged in the locality for similar legal services;
>
> (iv) the amount, if any, involved;
>
> (v) the time limitations imposed by the client or by the circumstances;
>
> (vi) the nature and length of the professional relationship with the client;
>
> (vii) the experience, reputation and ability of the Attorney concerned;
>
> (viii) whether the fee is fixed or contingent;
>
> (ix) any scale of fees or recommended guide as to charges prescribed by the Incorporated Law Society of Jamaica, the Bar Association, the Northern Jamaica Law Society or any other body approved by the General Legal Council for the purpose of prescribing fees."

Learned counsel for the appellant argued that the Committee had no jurisdiction to fix the fees that an attorney may charge his client as it did. Its action was inconsistent with the provisions of Section 21 of the Legal Profession Act, which conferred such a power on the Court.

Section 21 of the Legal Profession Act reads:

> "21. – (1) An attorney may in writing agree with a client as to the amount and manner of payment of fees for the whole or part of any legal business done or to be done by the attorney, either by a gross sum or percentage or otherwise; so, however, that the attorney making the agreement shall not in relation to the same matters make any further charges than those provided in the agreement: ..."

The retainer agreement dated April 18, 1988, between the appellant and the beneficiaries recited, inter alia:

> "... it must be fully understood that all Attorney's, fees and other expenses in connection with the estate are to be paid by Cordella King and Owen Ferron ... and Eloise Ferron ... and Mr Owen Ferron has countersigned these instructions not only on his own behalf but as the lawful and duly authorized agent of his two sisters."

By letter dated August 24, 1988, to Ferron, the appellant specifically indicated the basis of the charges for attorney's fees, he said:

> "I may mention that the Attorney's fees for the application for Probate of the said Will – based on the Jamaican Bar Association Scale of fees, limited to the Probate of the Will solely, is $7,500.00. ..."
> (Emphasis added)

He also referred to other work which he would of necessity have to do.

The appellant reaffirmed that fee structure;

(a) By letter dated August 25, 1990, to Mrs King and Ferron:

> "... it is necessary for me to refer to my letter to him of 24th August 1988 ... my fees, limited exclusively to the preparation of the papers to support the Probate Application, would be approximately $7,500.00 ..."

and

(b) By letter dated January 29, 1991, to Mrs. King, which reads

> "... Yours dated "January 19, 1991" was received by me on the 21st instant, but it would seem that there is some misunderstanding on your part. As the Attorney engaged to perform a wide variety of professional services in respect to this estate, I am entitled to charge not only for the drafting and engrossing of the various documents to be filed in the Supreme Court, (originally estimated at $7,500.00, but that was purely an approximate figure), but also for correspondence, interviews, advice and the several other aspects affecting the estate. This was made clear in paragraph 3, of my letter dated 25th August last, addressed to you and Owen Ferron.
>
> All amounts received by me to date have been allocated against professional services only, and nothing has been disbursed for the Government death tax or stamp duty et al ..."

The latter letter confirms that the appellant had indeed regarded himself as bound by the Jamaican Bar Association fee structure having allocated

> "all amounts received by me to date ... against professional services ..."

Any change in the manner or the rate of remuneration should have been made with the beneficiaries or some notification sent to them, seeing

that it was specifically agreed that they assumed the responsibility for the appellant's fees.

The appellant sought to claim fees amounting to 10% of the value of the estate based on an agreement dated "March 16, 1994", purportedly signed by the executor Jeremiah Davis.

In my view, apart from the fact that the appellant is bound by the retainer agreement of April 18, 1988, this later agreement dated March 16, 1994, is self-serving, inadmissible and invalid.

Although the said agreement is in the form of a letter in its commencement, with the address of the executor "White Horses P.O.' and "Dear Mr Jones" it is drafted in the form of an affidavit. It reads, in the first person:

> "I Jeremiah Davis ... Builder ... hereby RATIFY and CONFIRM ..."

followed by numbered paragraphs. In his affidavit dated October 15, 1999, the appellant related how the document came into existence. He said in paragraph 7:

> "7. I strongly dispute his observation in paragraph 7 that Jeremiah Davis placed his mark on the Agreement merely because I told him to do so. The fact is that the Agreement of 16th March 1995, was dictated to my secretary in the presence and hearing of both Dennis Fuller and Jeremiah Davis, the Executor. They then left my room, and went into a waiting area immediately outside my door, whilst the document was being engrossed. When that was accomplished, the document was brought back to me, and at my request, Jeremiah Davis and Dennis

> Fuller returned to my room, where the document was read over and fully explained to him by me, and he expressed complete satisfaction with same. By this time my secretary had left office, and one of my Office Helpers, Faith Bailey, was present when this exercise was in progress and it is her signature that appears as a witness in the left hand corner of the document."

The affidavit of Dennis Fuller dated April 14, 1999, had revealed that Jeremiah Davis was then 87 years old, and in part reads:

> "5. That on a number of occasions I traveled to Mr Davis' residence in the parish of St Thomas in order to accompany him to the respondent's office in Kingston.
>
> 6. That Mr Davis has poor vision, is physically frail and I had to lead him by the hand when crossing the road and going into buildings.
>
> 7. That whenever Mr Davis had to sign documents prepared by the Respondent he would put his mark as he was unable to read or write.
>
> 8. That one of the occasions I accompanied Mr Davis to the respondent's office was on the 16th of March 1994.
>
> 9. That Mr Davis was asked by the Respondent to put his mark to a document to do with the estate of the late Peter Ferron. This document was never explained or read to Mr Davis by the Respondent."
>
> (Emphasis added)

The agreement signed by Jeremiah Davis (by his mark), purporting to be an affidavit, contains no jurat to explain the acceptance of the contents by the deponent who is unable to see and accordingly read, (section 415) of the Judicature (Civil Procedure Code) Law). It is not sworn to before a Justice of

the Peace but witnessed by the "office helper". The inclusion within the document of the paragraph:

> "Today these instructions were carefully read over by me, fully explained and understood as being true, accurate and satisfactory"

reveals that the appellant knew that a jurat was legally required, but failed to conform to the requirements of the statute.

Paragraph 8 of the agreement is intended to be the authority relied on by the appellant as the basis of his claim to an entitlement of 10% of the value of the estate. It reads:

> "8. Up until today, I had interviewed you on several occasions, and participated in lengthy discussions with you regarding all aspects of this Estate. I hereby, now RATIFY AND CONFIRM that, from the very outset, when I gave you instructions to apply for Probate in my name only, of the Last Will and Testament of the deceased, and to perform all relevant services for and on behalf of that Estate, I had authorized you, to collect and retain as your fees for professional services already performed or to be carried out in the future, a sum equivalent to ten percent (10%) of the market value of all the assets of which the deceased died possessed. These would include both the properties at Golden Spring, Jamaica, as well as the Holding at Saint Michaels, Bridgetown, Barbados – any such amounts to be deducted from funds already received or to be collected."
>
> (Emphasis added)

This paragraph is entirely contradictory of previous correspondence commencing with the agreement signed as far back as April 18,1988, by the beneficiaries that the appellant's fees would be based on the Jamaican Bar

Association Scale of fees. The Committee properly rejected this agreement of March 16, 1994, as binding on the parties, holding that it "... cannot stand."

The conduct of the appellant in respect of his attempt to change the initially agreed rate of remuneration to that of 10% of the market value of the estate without the knowledge of the beneficiaries was unfair and unreasonable and in breach of Canon IV(f). Such conduct was indeed unbecoming of the appellant as an attorney and accordingly would itself also be in breach of Canon I(b).

The Committee, in considering the complaint that the fees charged were unreasonable, examined the Jamaican Bar Association Scale of fees in respect of the administration of estates including fees for transmission and assent to devise and the relevant notes thereto authorizing an increase in the percentage of charges "... where more work is involved." The Committee thereafter, using valuations of $330,000.00 for the Golden Spring property and $718,580.00 for the Barbados property detailed "... the fees that ought to have been charged ..." by the appellant. As already indicated such fees amounted to $36,332.50.

Counsel for the appellant argued that the Committee, unlike the Court under section 21 of the Legal Profession Act, had no jurisdiction to fix the fees agreed between an attorney and his client. This complaint is misconceived. The Committee was not asked to, nor was it purporting to fix the fees. The Committee in its exercise of examining the Scale of fees was seeking to

determine whether or not the fees charged by the appellant were fair and reasonable. It quite rightly after that exercise, found that the fees charged were not. There is no merit in these grounds.

Grounds 3 and 9 were argued together. They read:

"3. (a) The Committee having correctly refused to allow an amendment to the Complaint alleging a breach of the Legal Profession (Accounts & Records) Regulations, there was no basis in Law or on the facts for the Committee to assume the power to order the payment of interest on the funds relating to the sale of the Barbados property for the period or the amount calculated or at all.

(b) The Committee have totally ignored the fact that these funds did not either [in] law or in equity become the property of the Estate until the grant of probate and the release of the undertaking of the Appellant given to the Attorney for the purchaser which did not take place until September of 1995.

(c) The Committee has further ignored the fact that the executor left Jamaica prior to September 1995, without informing the Appellant who was totally unaware of the executor's whereabouts until an advanced stage of the proceedings and shortly before the executor was reported as having died.

(d) The Complainants who as the evidence shows, were aware of and in touch with the executor made no attempt to request the executor to require payment of the monies to him but instead the complainants took the position that the appellant was obliged to pay the monies to them. This the Committee has found would have been contrary to law and would have in itself constituted professional misconduct.

(e) Between September 1995, and the date of the commencement of these proceedings the Appellant was under no legal or professional obligation to hold

there (sic) funds in an interest bearing account. The delay in winding up this estate after September 1995 has been due to the fact that the Complainant did not file this affidavit in support of this complaint until June of 1998. Through no fault of the appellant the hearing did not commence until the 24th October 1999 and the main cause of the delay in completing the hearing was not the fault neither of the appellant or his Counsel, neither was it the fault of the appellant that the hearing having been completed in November 2000 the judgment was not delivered for one year and two months."

"9. The Disciplinary Committee erred in law in awarding interest on moneys being held by the appellant calculated up to the date of delivery of the judgment having regard to the following (inter alia):

(i) There was no legal or professional requirement for him to have placed the funds in an interest bearing account during the material times that the moneys were being held by the Appellant;

(ii) The complainant's facsimile of the 16th November 1995, to the appellant effectively suspended the Appellant's efforts to complete the administration of the Estate;

(iii) The Complainant's assumption of responsibility to deal with the Commissioner of Stamp Duty prevented the Appellant from completing this aspect of the administration of the estate.

(iv) The period of time in respect of which interest has been charged was contributed to by:

(a) The complainant's (sic) delay in filing his affidavit grounding his complaint May 1996-May 1998;

(b) The period of one year for the hearing of the complaint; and

(c) The period of 14 months which expired before the delivery of the decision of the Disciplinary Committee."

Counsel for the appellant argued that when the monies were being held there were no regulations in force, until 1999, obliging the appellant to place the monies in an interest bearing account. Consequently no interest should have been ordered. Additionally, the appellant was not responsible for the delay during a period from 1996 to the date of delivery of the decision by the Committee.

The Committee stated, at page 765 of the record:

"INTEREST

The Respondent on his own admission has had in his possession funds belonging to the estate of Peter A. Ferron since 1994. It is the view of the Committee that from at least as far back as April 1994, the Respondent having not contacted the executor nor having done anything about bringing the administration of the estate to a close, ought to have placed the funds in an interest bearing account pending payment over and we so hold.

We find that an interest rate of 24% per annum would be applicable for the period from the 1st April 1994 to December 1999 and at the rate of 12% per annum being the average prevailing rate of interest from then to the date hereof. In spite of the duties imposed on a fiduciary we have accrued simple interest only on the funds in hand up to December 1999 and thereafter compounded at yearly rests. Should these funds not be paid within 30 days hereof then interest should accrue in accordance with the provisions of The Legal Profession (Accounts and Records) Regulations, 1999."

There was undoubtedly a long established practice at common law that the interest earned on clients' monies held by attorneys-at-law was retained by the attorney as his. This historical curiosity that benefited an attorney, who was properly a trustee for the clients' funds has no place in more recent times and has now been absolutely rejected by statute (see paragraph 8 of Legal Professional (Accounts Records) Regulations, 1999, which came into force on March 31, 1999). Mr Morrison on behalf of the respondent submitted that once a client's money was placed on an interest bearing account the interest therefrom was the client's. He referred to the case of ***Brown v I.R.C.*** [1964] 3All ER 119. Their Lordships in the House of Lords held that the previous practice that interest earned on client's monies was the solicitor's, no longer existed. I adopt their Lordships' decision.

In the instant case the appellant stated in his affidavit dated October 14 1999, that his "... revised final figures showing a balance in hand for the Estate of Peter Alexander Ferron, deceased, of $58,289.07" was deposited "... some time ago" in a Savings Account at N.C.B. Jamaica Ltd., 37 Duke Street, Kingston."

It is undoubtedly true that Ferron by his letter dated November 16, 1995, suspended all further work by the appellant in respect of the affairs of the estate. The appellant, as a consequence by his letter to Ferron dated December 20, 1995, decided, inter alia, that; "I leave you to deal direct with the Stamp Commissioner. ..." Neither can one deny the fact that Ferron was

dilatory in filing his affidavit in support of his complaint filed in May 1996, (his affidavit was filed – June 1998) and the Committee's decision was delivered several months after the formal hearing had ended.

However, despite these delays, the appellant was not in any way precluded from placing, in an interest bearing account, the funds in his possession, belonging to the estate, and which were not required for use as necessary expenses.

It is significant to remember that the appellant had in his possession from October 1993, the sum of $20,000.00BD (US$9,809.69) which he had received from the attorney Brady Clarke, in respect of the Barbados property. This sum was never disbursed by the appellant and should have been placed in an interest bearing account for the benefit of the estate.

The Committee in its decision, at page 765 of the record said:

> "As the Respondent was instructed to cease acting however he ought to have paid over the funds in his possession to the Executor so that the Executor could complete the proper administration of the Estate. Even if the Respondent had retained funds claimed as his fees pending the determination of the same, the remainder ought to have been paid over as aforesaid."

The Committee then proceeded to set out the sums of money received by the appellant both from the beneficiaries and from the sale of the Barbados property. It deducted therefrom the appellant's likely fees ($36,332.50), as also an item "Disbursements and Duties" ($101,428.19), to arrive

at a balance of $467,157.71. This latter sum the appellant should have had in hand for the benefit of the estate. On this sum, the Committee calculated:

"Interest at 24% (1.4.94 – 31.12.99)	$644,677.60
Interest at 12% (1.1.00 – 31.1.02)	$296,797.77"
Plus principal	$407,157.71
Total	**$1,408,633.08."**

The appellant had received the final payment on the sale of the Barbados property of US$10,398.04 by February 1994, as evidenced by his letter to Brady Clarke dated February 11, 1994. The estate has been kept out of that portion of its money since then.

The Committee was eminently fair to the appellant in its computation of the interest payable and I see no reason advanced which should cause us to disturb that decision. These two grounds also fail.

Ground 5 reads:

> "5. There is no basis in law or in fact for the finding that the appellant was in breach of Canon VII(b)(ii)."

Canon VII(b)(ii) reads:

> "(b) An attorney shall –
>
> (ii) account to his client for all monies in the hands of the Attorney for the account or credit of the client, whenever reasonably required to do so"

The Committee found, inter alia, that:

> "... Mr Ferron and the other beneficiaries are next of kin in the estate of Peter A. Ferron, deceased, and as

> such would not be beneficially entitled to any particular part of the estate, but would have an interest in the totality of the residue of the estate once ascertained."

and further, that:

> "The fact however that there is no entitlement to the residue until it is ascertained does not in any way affect the complainant's entitlement to an accounting of funds held to his credit, as a client and beneficiary, of the estate."

It was argued that Ferron would be aware of the monies he had sent to the appellant and of the proceeds of the sale of the Barbados property and that the account from attorney Brady-Clarke had the correct amount. The residue was not yet ascertained and therefore there was no right in the beneficiaries to any sums of money.

Undoubtedly, until the residue is ascertained the beneficiaries have no right to be paid the assets or any right in specie. (***Lord Sudley et al v The Attorney General*** [1897] A.C. 11). The Committee, relying on the above and other authorities correctly so found.

The appellant's willingness initially, to send to Ferron, on behalf of the beneficiaries the sum of £4,000.00 was merely gratuitous. The appellant relented thereafter because Ferron declined to confirm the accuracy of the letter of accounting, that the appellant had sent to him. It was Ferron who was in continuous contact with the appellant and who was responsible for the appellant's remuneration. Ferron was entitled to know whenever his further indebtedness arose. Of this, indebtedness, the appellant was never unwilling

so to advise him. Equally, he was entitled to be told when and why no further funds were required from him, Ferron. In the latter instance, the payment by Brady-Clarke to the appellant of the sum of $20,000.00 BD (US$9,089.00) as a "Purchaser's loan to vendor" in October 1993, created funds in the hands of the appellant, ostensibly to be applied towards expenses of the estate. Ferron should have been advised then of such a payment, which would obviate further advance of monies by Ferron, for expenses.

The appellant was less than frank to Ferron:

(1) By letter to Ferron dated July 15 1993, the appellant forwarded the agreement for sale of the Barbados property and said inter alia:

> "Subject to the approval of the Barbados Foreign Exchange Control Authority the Purchaser is willing to lend Barbados $20,000.00 available to the Executor for the purpose of obtaining the grant of Probate." (Emphasis added)

(2) The appellant received the said $20,000.00 in October 1993.

By letter to Ferron dated December 16 1993, the appellant advised:

> "From the deposit received by me, I am paying the stamp duties ... to support the Probate Application ..."

(3) By letter to Ferron dated October 25 1995, the appellant sent a copy of a Statement of Account dated January 26 1994, from Brady-Clarke, and explained to Ferron that the sum of $28,799.71BD represented:

> "such portions of the expenses for the Barbadian part of the estate ..." (Emphasis added)

This sum was equivalent to $413,851.83 Jamaican dollars.

(5) Ferron's query dated November 16 1995, of the $28,799.71BD "expenses" reads:

> "... According to the copy of Cherry Brady Clarke's Interim Statement of Account dated January 26, 1994 which reads: "Purchaser's *loan to vendor* (my emphasis) Barbados National Bank (US$ Draft) 20,207.00".
>
> We take it that this money has also been in your possession. We did not ask for a loan from the buyer nor authorized such a thing. From what date has this sum been in your possession, where has this US currency been since you received it, in a high yield account or where?
>
> Third point. In your letter dated October 23rd, 1995, page 3 you said (referring to the said Interim Account of Brady-Clarke)" ... details as to such portions of the expenses for the Barbadian part of the estate amounting to Barbadian Twenty-eight Thousand Seven Hundred and Ninety-Nine Dollars, Seventy-One Cents B$28,799.71 ..." In other words Brady-Clarke is to be given that colossal sum for Barbadian "expenses". If this is the suggestion, you are clearly not being serious and we are very contemptuous."
>
> (Emphasis added)

The appellant responded by letter dated November 20, 1995, stating:

> "The main reason for sending you a copy of the Statement of Account rendered by Barbados Attorney, Mrs Cherry Brady-Clarke, was to provide specific details, of those items of expenditure for which this estate became liable as the vendor of property in that island.
>
> May I bring to your attention that the purchasers financed the transaction through a bank in Barbados, and the reference in the statement of account for a loan does not in anyway affect you, but, on the other hand, represents funds which the purchasers

> borrowed at that end in order to obtain the deposit."
> (Emphasis added)

and that:

> "the figures set out in my 5 - page account to you dated October 23, 1995, clearly and accurately establish that the sum currently available to the estate is now J$84,566.74 ..."

Having received from Brady-Clarke US$9,809.69 (appellant's letter dated October 28 1993) and US$10,398.42 (appellant's letter dated February 11, 1994,) the appellant, in the letter wrote to Brady-Clarke:

> "... I say confidentially that you ought to have charged more for Attorney's fees, although I dare not indicate that observation to my clients."

The appellant knows that the Barbados property was sold for $50,000.00 BD (US$25,000.00).

The appellant was well aware that the expenses for the Barbados property transaction was not $28,799.71 BD. His misinformation to Ferron must be seen as inexcusable. The Committee's finding that "... Ferron and the other beneficiaries ... would have an interest in the totality of the residue of the estate once ascertained" is sufficiently sound to oblige the appellant to provide accurate information at all times to them. Even negligent conduct in this respect is sanctionable. The author in Cordery's Law relating to Solicitors, 8th edition, at page 319 said:

> "Negligence in a solicitor may amount to misconduct if it is inexcusable and is such as to be regarded as deplorable by his fellows in the profession."

A substantial portion of the funds in the appellant's hands would ultimately be payable to Ferron and the other beneficiaries.

The Committee quite properly on the evidence found that the appellant had not accounted to Ferron in respect of "... all monies in his hand ..." for the credit of the beneficiaries. I agree. Accordingly, the appellant was in breach of Canon VII(b)(ii). This ground also fails.

Ground 6 reads:

> "6. There was no basis in law or in fact to justify the imposition of a fine on the appellant and the award of damages and costs to the Complainant Respondents."

Counsel for the appellant advanced no significant arguments in support of this ground. He reiterated his arguments previously advanced that there was no basis to find that the appellant was in breach of the canons and therefore there was no basis to impose the fines, damages and costs.

The Legal Profession Act in section 12(1) provides the procedure to be employed in circumstances where a complaint is sought to be made in respect of the misconduct of an attorney.

It reads:

> "12. – (1) 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)."

The sanctions that may be applied are recited in sections 12(4) and 12(5) which read:

"(4) On the hearing of any such application the Committee may as they think just make any such order as to:

(a) striking off the Roll the name of the attorney to whom the application relates, or suspending him from practice on such conditions as they may determine, or imposing on him such fine as they may think proper, or subjecting him to a reprimand;

(b) the payment by any party of costs or of such sum as they may consider a reasonable contribution towards costs;

(c) the payment by the attorney of any such sum by way of restitution as they may consider reasonable.

(5) Any fine or any part thereof imposed under subsection (4) may at the discretion of the Committee be paid to the person making the application in whole or part satisfaction of any damage caused to him by the act or default giving rise to his application." (Emphasis added)

In the course of advancing his arguments in support of ground 2, that the Committee had no power to fix fees, which I maintain that it did not,

counsel for the appellant submitted that that decision of the Committee was *ultra vires* its powers because of the provisions of section 12 subsections (1) and (7) of the said Act. He maintained that Canon VII(d) details specified Canons the majority of which are designated by an asterisk. The breach of such Canons attract the sanction specified in section 12(4). The Committee had no power to find that the breach of a Canon without an asterisk, for example Canon IV(f), amounted to misconduct in a professional respect. This argument is without any merit.

Mr Morrison, Q.C., for the GLC, submitted that the fact of some canons designated with the asterisk was meant to facilitate proof of the conduct referred to. The Committee could find an attorney guilty of professional misconduct even if the conduct complained of is not so designated nor stipulated by the Rules. I agree with Mr Morrison's view.

Section 12 of the Act is purposefully drafted in wide terms to embrace all areas of misconduct or wrongdoing of an attorney, in order to maintain a high level of good behaviour of persons in the legal profession. Consequently, in its purest form, section 12(1)(a) reads:

> "12(1) 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 the allegations ... that is to say:
>
> (a) any misconduct in any professional respect
> ..."

This description of the probable acts of "professional misconduct" is comprehensive, non-restrictive and intended to embrace any form of conduct which deviates from normal acceptable mode of decent upright behaviour.

However, misconduct as described in the Canons is specifically referred to in sub-section (a) of section 12(1) of the Act, which continuing reads:

> "... (including conduct which, in pursuance of rules made by the Council under this Part, is to be treated as misconduct in a professional respect.")
> (Emphasis added)

Section 12 is contained in Part IV of the Act and in sub-section (7) reads:

> "(7) The Council may -
>
> (a) prescribe standards of professional etiquette and professional conduct for attorneys and may by rules made for this purpose direct that any specified breach of the rules shall for the purposes of this Part constitute misconduct in a professional respect;"

The Legal Profession (Canon of Professional Ethics) Rules were consequently made under the provisions of section 12(7) and Canon VIII(d) was the rule that directed the "... specified breach of the rules ..." which constituted "... misconduct in a professional respect ..." listing all the Canons designated with an asterisk, including the "non-asterisk" Conan VIII(b). The Canon with the asterisk are therefore merely a segment of the wider area of conduct, namely "... any misconduct in any professional respect."

The said Canon VIII(b) is intended to extract propriety of conduct from an attorney, it reads:

> "(b) Where in any particular matter explicit ethical guidance does not exist, an Attorney shall determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."

The wide ambit of professional misconduct designated by the term "any misconduct in any professional respect" which will be subject to sanction by the Committee in accordance with the power conferred by section 12(4) is further emphasized by the wording of Canon VIII(a). It reads:

> "(a) Nothing herein contained shall be construed as derogating from any existing rules of professional conduct and duties of an Attorney which are in keeping with the traditions of the legal profession, although not specifically mentioned herein."

The Committee clearly had the power to apply the sanctions which it did in pursuance of its powers conferred by section 12(4) of the Act, having correctly found that breaches of the particular Canons, had been proved. This ground also fails.

Ground 10 reads:

> "In refusing to rule on the preliminary objections taken in limine on behalf of the Appellant at the commencement of the proceedings the Disciplinary Committee erred in law by depriving the Appellant of the advantage of having these submissions considered independently of the evidence submitted in support of the allegations made against him."

The Committee made specific rulings in respect of the points raised in limine. It ruled that Ferron was the client of the appellant who had a duty to

account to Ferron and the other beneficiaries although the residue had not yet been ascertained.

A tribunal has an option whether or not to rule on points in limine, or to postpone such ruling until all the evidence had been examined. The Committee chose the latter. The Committee made specific independent rulings on such points. The appellant was not shown to have suffered any disadvantage, nor was he shown to have been prejudiced in any way. There is no substance in this ground, which therefore fails.

Ground 11 reads:

> "Having ruled that the complainant had a *locus standi* as "a person aggrieved" for the purpose of bringing a complaint under the Legal Profession Act, the Disciplinary Committee erred in law in conferring the status of "Client" on the complaint for the purposes of receiving reports on the progress of administration of the estate, receiving accounts in respect of moneys belonging to the Estate and for the purpose of being entitled to be given funds before the administration of the Estate was completed."

The Committee at page 747 of the record found:

> "The Respondent when retained, and accepting that the complainant would pay his fees in our view undertook the responsibility for administering the estate on behalf of the executor and the beneficiaries. It is not in dispute that he agreed to look to the beneficiaries for his fees. The parties conducted themselves in a manner which confirmed that he looked to them for his instructions also. The beneficiaries were in fact his clients and all the parties acted accordingly."

The Committee then referred to the definition of "client" in Webster's Unabridged Dictionary, and continuing said:

> "It is our considered opinion, that all the facts suggest that the position was that the Complainant, through what can be described as a joint retainer, and the clear understanding of all the parties as disclosed by their conduct and the written documentation, and their actions, was the client of the respondent and can therefore lay the complaint pursuant to Canon IV(r) and VIII(b)(ii) and we so rule accordingly."

I agree with this finding of the Committee.

It was Ferron who approached and engaged the appellant's services in April 1988. The retainer letter April 18, 1988, although it is signed by the executors, Sydney Lee and Jeremiah Davis, who stated that they:

> "do hereby jointly and severally irrevocable (sic) authorize, instruct, direct and employ you as our Attorney-at-law ..."

the 2nd paragraph thereof reads:

> " ... it must be fully understood that all Attorneys' fees and other expenses in connection with the estate, are to be paid by Cordella King, Owen Ferron, both of whom are in Jamaica on a short visit and Eloise Ferron, who is still in England, three of the beneficiaries herein."

It was therefore the beneficiaries who, with the full agreement of the executors were liable for the remuneration of the appellant, and not the estate of the deceased. The beneficiaries were in substance the virtual clients. All the relevant correspondence, including the request for fees were conducted with the beneficiaries, by the appellant, and not with the executors. In such

correspondence, the appellant repeatedly expressly referred to the beneficiaries as "his client." For example, in:

(1) letter dated October 28, 1993, acknowledging receipt of US$9,809.63 the appellant said:

> "... Presumably your clients will pay you their Attorney's fees and I will make similar arrangements with mine at this end, ..." and

(2) Letter dated February 21, 1995, to Brady-Clarke, the appellant said:

> "Mr Owen Ferron, my client, one of the beneficiaries, was here last week from England ..."
> (Emphasis added)

The Committee quite properly commented, on page 746 of the record:

> "As counsel for the Complainant stated, the Respondent cannot claim that the Complainant is his client when it suits him and then deny that he is, when it does not."

The attorney/client relationship, besides the normal one, may well exist depending on the circumstances of the case. In ***Adams v London Improved Motor Coach Builders Ltd.*** [1921] 1KBD 495, a case relied on by the Committee, it was held that although the Union of the plaintiff instructed the solicitors on behalf of the plaintiff, the latter was liable for the payment of the solicitors costs because they were acting on the plaintiff's behalf and therefore they were his solicitors.

The appellant at all times regarded the beneficiaries as his clients and represented them to be so. Their conduct and relationship to each other were

as attorney and client. The Committee was therefore correct in finding that they were the appellant's clients. This ground also fails.

The complainant Ferron filed a Cross Appeal against the order of the Committee contending that the order that the appellant pay the sum of $250,000.00 costs should be varied by increasing the amount ordered.

Mr Jarrett for Ferron argued that Ferron, who resided in England, had to instruct lawyers in England since 1976 and also attorneys in Jamaica in order to resolve the dispute with the appellant, at considerable expense. Ferron had incurred total costs of $1,900,000.00 and therefore it was unreasonable that the Committee awarded only $250,000.00.

The Legal Profession Act authorized the Committee to make orders for the payment of costs. Section 12(4) reads:

> "(4) On the hearing of any such application, the Committee may as they think just make any such orders as to –
>
> (a) ...
>
> (b) the payment by any party of costs or of such sum as they may consider a reasonable contribution towards costs"
>
> (Emphasis added)

This is a discretionary power of the Committee.

In the instant case the beneficiaries, faced with a new rate of charges by the appellants, and a deteriorating attorney/client relationship, were forced to employ solicitors in England. The evidence before the Committee

revealed correspondence and the filing of affidavits spanning a period of over four years, in addition to the numerous days of hearing before the Committee.

The affidavit evidence of Owen Ferron reveals that up to June 18 1998, his legal fees were £15,320.00. Up to the conclusion of the hearing before the Committee his total legal charges were $1,900,000.00.

As a general rule a successful party is awarded his costs. The discretion must be a judicial one and costs must be necessary and not unreasonable. The bills of costs show the charges in detail. The order of the Committee that the appellant pay $250,000.00 was based on the power to order "a reasonable contribution towards costs." This amount represents approximately one-eight (1/8) of the actual costs incurred. In my view a much more just and "... reasonable contribution towards costs" would be approximately one-third (1/3) of the said costs. An award of $600,000.00 should be substituted.

The circumstances of this case are, to say the least, extremely unfortunate. The appellant displayed towards his clients an attitude of gratuitous benevolence rather than one of a paid attorney, albeit incomplete at one stage. The appellant's blunt reaction to Ferron's instructions in November 1995, that he cease functioning as their attorney was uncalled for. The appellant's correspondence:

(1) letter dated November 20, 1995, referring to Ferron's payment as "... paltry remittances ... by small installments" and

(2) letter dated December 20, 1995, referring to;

(i) the threatened writ for libel as: "... my Christmas present to you ..."

(ii) "the substantial compensation ... not to mention the Legal Costs ... that will inevitably be enormous, and will also tumble down on your heads,"

(iii) concluding with the observation of Ferron's dealing with the Stamp Commissioner, that:

"fools rush in where angels fear to tread,"

besides being in poor taste, was designed to intimidate. The appellant's contradictory conduct in accepting the $20,000.00 as a "loan" and then describing it as "expenses" in Barbados, explained by him as a mistake, but not explaining why such a mistake was made, does no credit to him as the "very senior and highly respected attorney in the Jamaican scenario for almost 55 years." Certainly, it shades the image of the Jamaican attorney-at-law in his dealings with overseas clients.

The Committee's decision that the breaches complained of were proved cannot be faulted.

This appeal ought to be dismissed and the order of the Committee affirmed, except that the cross-appeal succeeds. The sum of $600,000.00 is substituted for the sum of $250,000.00 awarded as costs.

The respondent and Ferron should have their costs of this appeal.

PANTON, J.A.

I agree.

SMITH, J.A.

I agree.

ORDER:

HARRISON, J.A:

1. The appeal is dismissed.
2. The order of the Committee affirmed except that the cross-appeal succeeds.
3. The sum of $600,000 is substituted for the sum of $250,000 awarded as costs.
4. The respondent and Ferron are awarded the costs of this appeal.