JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 140/99

BEFORE: **THE HON. MR. JUSTICE DOWNER, J.A.**
THE HON. MR. JUSTICE PANTON, J.A.
THE HON. MR. JUSTICE COOKE J.A. (Ag.)

BETWEEN: **SONIA JONES** **APPELLANT**

AND: **THE GENERAL LEGAL COUNCIL** **RESPONDENT**

Donald Scharschmidt Q.C. instructed by Gresford Jones for the Appellant

Patrick Brooks for the Respondent

June 21, 22, 23,26 27, 2000 and May 21, 2003

DOWNER, J.A.

Introduction

The Disciplinary Committee of the General Legal Council made the following orders on 15TH December, 1999, against Attorney-at-Law Sonia Jones (the "appellant"):

(i) Pursuant to section 12(4)(a) of the Legal Profession Act the Respondent is suspended from practice for a period of nine months from the date of this Order

(ii) Pursuant to section 12(4) (c) of the Legal Profession Act the Respondent is to pay the sum of One Hundred and Fifty Thousand

> Dollars ($150,000.) by way of restitution, such sum to be collected by the General Legal Council and paid over to the complainant
>
> (iii) The Respondent is to pay the complainant's costs in the sum of Fifteen Thousand Dollars ($15,000).

The orders were made pursuant to section 12(4) of the Legal Profession Act. There does not appear to have been any stay of execution with respect to these orders.

It is pertinent to set out the relevant sections of the Legal Profession Act (the "Act") which empowered the Disciplinary Committee to make the aforesaid orders. Section 12(1) reads:

> "12.-(1) Any such 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);
>
> (b)any such criminal offence as may for the purposes of this provision be prescribed in rules made by the Council under this Part."
>
> ....

Then 12(4) reads:

> "(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."

The appellant was aggrieved by the orders made against her, so she has appealed to this Court pursuant to section 16 of the Act. Her grounds of appeal were as follows:

> "The findings and each of them are against the weight of the evidence and are unreasonable. There is no proper basis for the award of compensation and or costs to the Complainant."

The charges stated in the Notice and Grounds of Appeal against the appellant were:

> "1. The appellant has breached Canon IV(r) in that she has failed to deal with her client's business with all due expedition.
>
> 2. Also in breach of Canon IV(r), the Appellant has failed to provide her client with all information as to the progress of his business

with all due expedition despite being reasonably required to do so.

3. The Appellant has breached Canon IV(s) in that, in the performance of her duties, the Appellant has acted with inexcusable or deplorable negligence or neglect.

4. The Appellant, has breached Canon VII (b) (ii) that she has failed to account for all monies in hand for the account or credit of her client when she was reasonably required to do so.

5. The Appellant, by her conduct, has breached Canon I(b) in that she has failed to maintain the honour and dignity of the profession and she has brought her profession into disrepute."

These Canons were made pursuant to section 12 (7) of the Act and are entitled, the "Legal Profession (Canons of Professional Ethics) Rules." They are to be found in the Jamaica Gazette Supplement dated Friday December 29, 1978.

The allegations were based on an affidavit of the complainant Alton Johnson made pursuant to section 12(1) of the Act. His complaint was that in July 1993 he retained the appellant to act on his behalf for the sale of 3 Milton Avenue, Kingston 20. As he could get no word from the appellant during the remaining months of 1993 and the first half of 1994, despite frequent requests, he terminated the retainer and requested that she discontinue the sale. He also asked that she return the deposit to the purchaser and render a statement of account. The complaint was that she did not comply with any of these instructions.

In addition to telephone requests, Alton Johnson also wrote to the appellant. Be it noted that breach of Canon VII (b) (ii) as well as other charges preferred pursuant to the other Canons constitute misconduct in a professional respect. It was in circumstances where he could get no response from the appellant that Alton Johnson informed one of the purchasers of the property that he was no longer willing to sell the property which was now valued at $1,300,000 in contrast to the original selling price of $680,000. The purchaser then offered $150,000.00 more which he rejected.

The other complaints were that instructions were given to the appellant to pay water rates out of the deposit of $130,000 which she declined to do. An enquiry was made as to whether the deposit was earning interest, but no answer was forthcoming.

The adverse findings were made by the Disciplinary Committee (Pamela Benka-Coker Q.C., Norma Linton Q.C. and Allan Wood) and it is convenient to deal firstly with the most serious complaint.

Failure to render accounts

Canon VII of the 1978 Legal Profession (Canons of Professional Ethics) Rules states:

> "**Canon VII**
>
> (a) An Attorney shall comply with rules as may from time to time be prescribed by the General Legal Council relating to the keeping in separate accounts –
>
> (i) the funds of himself or any firm with which he is associated; and

(ii) those of his clients

*(b) An Attorney shall –

(i) keep such accounts as shall clearly and accurately distinguish the financial position between himself and his client as and when required; and

(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.

and he shall for these purposes keep the said accounts in conformity with the regulations which may from time to time be prescribed by the General ~~Legal Council~~.

(c)Nothing in these Canons shall deprive an Attorney of any recourse or right whether by way of lien, set-off, counter-claim, charge or otherwise against monies standing to the credit of a client's account maintained by that Attorney."

The Disciplinary Committee stated:

"At the time of his request for an account, by the letter dated 29th July 1994, the Complainant was, in our view justifiably dissatisfied with the Respondent's performance and was communicating the termination of her retainer; notwithstanding that communication the Respondent continued to act, to hold the deposit paid to her under the agreement for sale and failed to provide the account requested until one year later when an account dated 12th July 1995 was provided, Exhibit 9. The balance held by the Respondent at the date of her accounting, was not forwarded until 17th August 1995, see Exhibit 10, a letter from Ian Wilkinson dated 2nd October 1995. What was the justification for the Respondent's delay in complying

with the Complainant's clear and unambiguous instructions?"

The Disciplinary Committee examined with care the explanation adduced by the Appellant and having regard to the onus of proof rendered its reason thus:

> "The Respondent's answer was that there was no power to impose such a condition but it was done as a precaution. Subsequently the following exchange occurred between the Complainant and the Respondent:
>
> 'Johnson: What is your fiduciary responsibility to me when you were acting as my ~~attorney~~?
>
> Jones: It is my understanding that when a deposit is paid to a lawyer, the lawyer holds the deposit on behalf of the purchaser or in certain circumstances for both as a stakeholder. I do not believe that I owed Mr. Johnson a fiduciary duty as I was not a trustee for him but for the purchasers although I did owe a duty to him to account. If I was a trustee for Mr. Johnson I had a duty to account to him for money which passed through my hands.'
>
> The Respondent's evidence as to her understanding of her fiduciary duties, if any, to her client, the Complainant, is in our opinion the most important piece of testimony elicited in this matter, for when her actions and omissions are viewed in the context of her understanding of her legal and fiduciary duties, it becomes apparent that the Respondent's conduct, and particularly her refusal to comply with the Complainant's instructions to hand over the papers and to account to him, was not necessarily motivated

> by considerations of what was in the best interests of the Complainant, who was her client, but rather, we infer, may have been influenced by her opinion that she was holding the deposit as trustee for the purchasers pending completion and, therefore, that her principal duty was to protect their interests in that money. We also infer that because the Respondent was of the view that, pending completion, she was holding the deposit paid under the agreement for sale on behalf of the purchasers, she would also have been of the view that she had no duty to account to the Complainant before completion, and particularly when called on to do so in July 1994."

The matter of the onus of proof is important. The earliest case cited to us on this is **Re a Solicitor** [1945] 1 All E.R. 445 at 449 where Scott L.J. said:

> " This brings us to a contention, most strenuously argued by counsel for the appellant, that proceedings before the Disciplinary Committee are governed by the rules of criminal law, or that such proceedings are at any rate quasi-criminal. On this footing he suggested that the proceedings were irregularly conducted in certain respects. Whether the proceedings can properly be described as quasi-criminal or not, in our opinion there is nothing in the statutes or rules which binds the Disciplinary Committee to the rules of criminal law. Even if the Committee were so bound, we are satisfied that no miscarriage of justice has been occasioned by any of the matters referred to by counsel."

In **Bhandari v Advocates Committee** [1956] 3 All E.R. 742 at 744 Lord Tucker in delivering the opinion of the Board said:

> "With regard to the onus of proof, the Court of Appeal said:
>
> > 'We agree that in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of

> professional men sitting in judgment on a colleague who would be content to condemn on a mere balance of probabilities.'
>
> This seems to their Lordships an adequate description of the duty of a tribunal such as the Advocates Committee, and there is no reason to think that either the committee or the Supreme Court applied any lower standard of proof."

The principle enunciated above has been explained and followed in **Re a Solicitor** [1992] 2 All E.R. 335 at 344. This is how Lord Lane C.J. stated the matter:

> "The industry of counsel has brought to light no English authority directly in point. In **Bhandari v Advocates Committee** [1956] 3 All E.R. 742 at 744-745, [1956] W.L.R. 1442 at 1452 the Privy Council, on appeal from the Court of Appeal for Eastern Africa in the case of a solicitor who had been found guilty of professional misconduct, concluded that the following exposition of the onus of proof in such cases was adequate, namely:-
>
> '. . . in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of professional men sitting in judgment on a colleague who would be content to condemn on a mere balance of probabilities.'
>
> It seems to us, if we may respectfully say so, that it is not altogether helpful if the burden of proof is left somewhat undefined between the criminal and the civil standards. We conclude that at least in cases such as the present, where what is alleged is tantamount to a criminal offence, the tribunal should apply the criminal standard of proof, that is to say proof to the point where they feel sure that the charges are proved or, put in another way, proof beyond reasonable doubt. This would seem to accord with decisions in several of the provinces of Canada.

> We have been referred to **Re Shumiatcher and Law Society of Saskatchewan** (1966) 60 DLR (2d) 318 at 328, where the following passage in the judgment delivered by Culliton CJS appears:
>
> > '. . . when a complaint is made against a solicitor which may result in his suspension or disbarment, effect should not be given thereto unless the grounds of the complaint are established by convincing evidence, and when the complaint involves a criminal act, by evidence establishing the grounds beyond a reasonable doubt. In the assessment of the evidence, the solicitor's explanation should be accepted if there is a reasonable probability of it being true.'
>
> (See also **Re a barrister** [1954] 1 DLR 814 at 818, a decision from New Brunswick.)"

Then on the same page the reasons continue thus:

> "Finally the *Code of Conduct of the Bar of England and Wales* provides by reg. 10 that at the proceedings before a disciplinary tribunal: 'The Tribunal shall apply the criminal standard of proof.' It would be anomalous if the two branches of the profession were to apply different standards in their disciplinary proceedings."

The appropriate test as decided by the Disciplinary Committee was put thus:

> "It is well settled on the decided cases, that in disciplinary proceedings involving allegations of dishonesty or moral turpitude against an attorney-at-law, it is requisite that the standard of proof beyond reasonable doubt be applied in coming to determination: see **Bhandari v Advocates Committee** [1956] 3 All E.R. 742 (P.C.); **Re a Solicitor** [1992] 2 All E.R. 335. This principle has been accepted and applied in the previous decisions

of this Disciplinary Committee and we so apply that standard."

As for a further aspect of the law on this charge the Tribunal stated:

> "We unhesitatingly hold that the Respondent's view, that the vendor's attorney holds the deposit paid under an agreement for sale on behalf of the purchaser, in the absence of a stipulation to the contrary, is not the correct legal position. An accurate statement of the law is to be found in **Halsbury's Laws of England 4th ed. Vol. 44 (1) at para. 126** as follows:
>
> > 'Holding of deposit on sale. A solicitor acting for a vendor in a sale of property either by private treaty or by auction who receives a deposit in the ordinary way and without any statement in the contract that it is paid to him as a stakeholder holds it in law merely as agent for the vendor and not as stakeholder. He must, therefore, pay it over to his client on demand. In the absence of facts giving rise to a contrary inference, where he is acting for both parties he is probably a stakeholder. Solicitors who hold funds which are paid to them as stakeholders hold those funds as trustees for the client, whose property the funds remain at all times. Such funds are not held in a contractual or quasi-contractual capacity.'
>
> A similar statement is also to be found in the same work at **Vol. 42 para. 86** as follows:
>
> > 'If the payment is not made to the solicitor as stakeholder he receives it as agent for the vendor. Thus the payment is in effect payment to the vendor, and cannot be recovered from the solicitor personally. The deposit is not merely part payment, but a guarantee of the due performance of the contract by the purchaser. Hence it may be forfeited if the sale goes off owing to his default.'
>
> See also **Cordery on Solicitors, 9th ed. Vol. 1 Part F para.61."**

Since the grounds of appeal complain that the findings of the Tribunal were against the weight of the evidence and unreasonable the following statement of Lord Goddard in **Re a Solicitor** [1956] 3 All E.R. 516 at 517 is pertinent:

> "This court is always, and always has been, very loth to interfere with the findings of the Disciplinary Committee either on a matter of fact, because they understand these matters so well, or with regard to penalty. If a matter were one of professional misconduct, it would take a very strong case to induce this court to interfere with the sentence passed by the Disciplinary Committee, because obviously the Disciplinary Committee are the best possible people for weighing the seriousness of professional misconduct."

With respect to the charges listed as (ii) and (iii) in the Record which read:

> "(ii) She has not dealt with my business with due expedition
>
> (iii) She has acted with inexcusable or deplorable negligence or neglect in the performance of her duties."

the wording of the relevant canons read:

> "Canon IV
>
> *(r) 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.
>
> *(s) In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect."

Before addressing the charges made pursuant to these two Canons it is convenient to refer to **Leslie L. Diggs – White v George Dawkins** (1976) 14 J.L.R. 192 which was cited because of a finding by The Disciplinary Committee which reads:

> "5) The Respondent by her conduct, has breached Canon 1 (b) in that she failed to maintain the honour and dignity of the profession and she has brought her profession into disrepute."

The caption of this case is somewhat unusual as it is The General Legal Council which was the respondent and not George Dawkins, the complainant. Another unusual feature is that the respondent did not appear. Also to be noted is that the case was heard in 1976 and was therefore governed by 1972 Canons which have been repealed. Nevertheless the principle adumbrated that there ought to be no finding against an Attorney-at-Law which was not properly put to him at the hearing is sound. This is in substance an appeal to natural justice and in **General Council of Medical Education and Registration of the United Kingdom v. Spackman** [1943] 2 All E.R. 337, the House of Lords set aside a finding by the General Medical Council which did not afford the doctor charged, a hearing.

Quite apart from principles in the above case paragraph 3 of the Fourth Schedule to the Act reads:

> "3. An application to the Committee to require an attorney to answer allegations contained in an affidavit shall be in writing under the hand of the applicant in Form I of the Schedule to these Rules and shall be sent to the secretary, together with an

affidavit by the applicant in Form 2 of the Schedule to these Rules stating the matters of fact on which he relies in support of his application."

There is no doubt that the affidavit of Alton Johnson the complainant contains distinct charges. The Form of Application envisages that if there are distinct charges in the affidavit, they amount to "conduct unbecoming her profession on the part of the said Attorney-at-Law, Sonia Jones". So this particular charge is there at the outset. To appreciate this it is helpful to cite the Form of Application in this case:

"FORM OF APPLICATION AGAINST AN ATTORNEY-AT-LAW

To the Committee constituted under the Legal Profession Act, 1971 (Act 15 of 1971)

In the matter of **ALTON GEORGE JOHNSON**

and **SONIA JONES** AN Attorney-at-Law

In the matter of the Legal Profession Act, 1971

I, the undersigned **ALTON GEORGE JOHNSON**
Hereby make application that* **SONIA JONES**

Attorney-at-Law, may be required

To answer the allegations contained in the affidavit which accompanies this application.

I make the application on the ground that the matters of fact stated in the said affidavit constitute conduct unbecoming her profession on the part of the said

of Attorney-at-Law **SONIA JONES** in her capacity

In witness thereof I have hereunder set my hand this
12th day January 1995

Alton Johnson signature
8 Milton Avenue Kingston 20 Address
Student.....Profession, business or occupation"

As a result of the charge being stated in the Form of Application, the Disciplinary Committee was justified in making a finding in that regard. Also they found against the appellant on the other charges and these charges amounted to conduct unbecoming of her profession. The three Orders made against the appellant demonstrate that they were made with respect to contraventions of the relevant Canons and the Orders are in conformity with section 12(4)(a)(b) and (c) of the Act.

As for the two specific charges that the appellant acted with inexcusable or deplorable negligence and that she did not deal with his business with due expedition in the circumstance of this case, these are in substance alternative ways of stating the same charge. There is an additional aspect to the second alternative in that the failure to provide information as to the progress of the client's business is a further breach.

The findings of the Committee in this regard are stated thus:

> "i) That the Respondent failed to discharge her professional responsibility as the attorney-at-law acting for the Complainant, as vendor in the sale of the premises 8 Milton Avenue, Kingston 20 in that the Respondent failed to submit the agreement for sale to the Stamp Office for assessment to stamp duty and transfer tax within 30 days of the making of the agreement, which was concluded in the month of August 1993, when amendments to the agreement were finalized and the deposit of $130,000.00 paid over to the Respondent by

the purchasers' attorney-at-law. This default by the Respondent continued for more than a year until the agreement was falsely dated the 24th August 1994, and stamped on or about the 9th September 1994. The Respondent was undoubtedly responsible for the submission of the agreement for sale to the Stamp Commissioner outside of the time prescribed for the payment of stamp duty and transfer tax.

(ii) The Respondent's delay in stamping the agreement for sale, as aforesaid, was the principal cause for the completion of the sale being unduly delayed, and during that period, while the agreement was not stamped, the Respondent would have had the benefit of the deposit which had been paid to her under cover of a letter dated 6th August 1993, Exhibit 6, from the purchasers' attorneys.

(iii) The Respondent held the agreement undated for approximately one year and it was not until the month of September 1994, that the Respondent submitted the agreement for sale, bearing the false date of 24th August 1994, to the Stamp Commissioner for the assessment of transfer tax and stamp duty.

(iv) The Respondent failed to furnish any adequate or reasonable explanation for her failure to stamp the agreement as required by law."

In reviewing the evidence the Disciplinary Committee stated:

"Although Exhibit I was not stamped, written in hand at the top right hand corner of the first page of the document are the words:

"S.D. $17,870.00 Stamp Duty)
T.T. 48,750,00 Transfer Tax)
66,620.00"

> This handwriting obviously refers to amounts in respect of stamp duty and transfer tax. Exhibit 1 also has on the first page the handwritten date 1/6/94 which on the Complainant's evidence was written on the document by him, on the date that he had attended the Respondent's office and obtained a copy of the document on file from her secretary. Thereafter it was the Complainant's evidence, that the Respondent refused to see him despite frequent calls and visits to her office."

Mindful of the onus of proof, the Committee stated:

> "The cross-examination of the Complainant by learned counsel for the Respondent was extensive and a number of documents were introduced as exhibits during cross-examination, the thrust of which was to establish that the Respondent was not responsible for the delays, but rather delays were caused by the fact that the premises was occupied by a tenant to whom the Respondent gave notice to quit dated 17th December 1993 (Exhibit 12), and that the Complainant had nonetheless instructed the tenant to remain in occupation, with the result that an action had to be commenced in the names of the purchasers by plaint dated 12th May 1994 (Exhibit 14) in order to obtain vacant possession. Further the Complainant admitted that by that time he no longer wished to proceed with the sale, as the premises had appreciated in value and was worth considerably more than the price fixed under the agreement, and that the tenant was told to remain in occupation as he did not wish to have the premises remain vacant. That by letter dated 27th June 1994 (Exhibit 20) the Complainant wrote to the Respondent instructing her to cancel the sale and that she responded on the 5th July 1994 (Exhibit 21a) advising that she could not do so as the delays were not the fault of the purchaser, but revolved around the non-departure of the tenant, as vacant possession was a precondition for completion.
>
> During the cross-examination of the Complainant a stamped and dated copy of the agreement for sale

> was put into evidence by the Respondent's counsel as Exhibit 26 and a number of questions thereafter turned on that document. Exhibit 26 is dated the 24th August 1994 and contains the signatures of the purchasers as well as the Complainant as vendor, the date for completion is specified as 30th September 1994, the document is stamped and denotes that stamp duty in the sum of $35,740 and transfer tax in the sum of $48,750 were paid on 9th September 1994, and a copy of the first page of an instrument of transfer was also tendered as Exhibit 26(a) and contains similar notations as to payment of stamp duty and transfer tax. Copies of entries to the certificate of title for the premises were tendered as Exhibit 27 and revealed that the transfer to the purchasers from the Complainant was registered on a day in January 1996 which is illegible. A letter from Mr. Wilkinson to one of the purchasers, Ms. Janet Francis dated March 21, 1996 was tendered as Exhibit 31, and confirmed that Ms. Francis was now the owner of the premises."

In assessing the evidence on the issue of delay or negligence the Disciplinary Committee found as follows:

> "The Respondent's testimony that the agreement for sale was submitted to the Stamp Office on the 30th September 1993 and held until the 8th September 1994 when duties were assessed, is not a credible or believable story on the evidence and documents tendered by the Respondent. If indeed the agreement for sale had been submitted with the documents applying for exemption from death duty for the removal of the name Enid Johnson, the deceased joint tenant, from the title for the premises, we would have expected that the Stamp Commissioner would have made mention that the agreement for sale was being held pending a valuation of the premises in circumstances where the Stamp Commissioner forwarded the certificate granting the exemption from death duty, under cover of letter dated 27th January 1994 addressed to Gresford Jones, which advised that there was no liability to tax for the removal from the

> title of the name of the deceased joint tenant. Further even if that letter made no mention of a hold up or problem with the assessment of the agreement for sale, we would also have expected a follow up letter from the Respondent to the Stamp Commissioner on that matter, to complain of the delay in making the assessment of stamp duty and transfer tax on that agreement. The Respondent did concede that it is unusual for the Stamp Office to accept an undated agreement for sale for stamping and that the fact that the submission to, and acceptance of an undated agreement is not in keeping with the usual practice of the Stamp Office, also supports, in our view, the rejection of the Respondent's testimony that the undated agreement for sale was submitted to the Stamp Office on 30th September 1993.
>
> ...
>
> Regrettably, the Panel finds that on the matter of the submission of the agreement for sale for stamping, the Respondent was not a witness of truth, and the Panel does not accept that she made any attempt to submit the agreement for sale for stamping on 30th September 1993. We are compelled to conclude that, as is reflected on the stamped copy of the agreement for sale, which is dated the 24th August 1994, (Exhibit 26), the agreement was held undated for approximately one year, which explains why the Complainant was able to obtain an undated, unstamped photocopy of the agreement from the Respondent's secretary on 1st June 1994. minus the signature page bearing the signatures of the purchasers, Exhibit 1. It is our finding that the Respondent wholly failed in her duty as the vendor's attorney-at-law having carriage of the sale to ensure that the agreement for sale was stamped within 30 days of its creation, which was at latest, when a copy of the agreement with agreed amendments was returned to the Respondent by the purchaser's attorney-at-law by letter dated 17th September 1993, Exhibit 7."

Then continuing the Committee found that:

> **"The Stamp Duty Act s.76(1)** provides that any contract for the sale of any interest in property shall be charged with ad valorem duty as if it were a conveyance on a sale of the estate in the property and s 32 (3)(a) stipulates that the instrument must be duly stamped with the proper duty before 30 days after it is first executed. The Transfer Tax Act s. 19 (1) stipulates that in respect of such a contract, the amount of transfer tax which is chargeable shall be collected and treated as if it were additional stamp duty imposed under the Stamp Duty Act and to which s 32(3) of the Stamp Duty Act is applicable. We find that as a consequence of the Respondent's failure to submit the agreement for sale for stamping until September 1994, when the Respondent submitted the agreement bearing a false date, the aforesaid provisions of the Stamp Duty Act and the Transfer Tax Act were breached by the Respondent, who had been ~~entrusted with~~ carriage of the matter as her professional responsibility. The payment of penalties which would have been due for the late stamping of the agreement for sale was thereby avoided. An attorney's participation in the submission of a falsely dated document for the purpose of Revenue has been held to be a criminal offence, and such a document is a forgery: see **R v Wells** [1939] 2 All E.R. 170. Even on the Respondent's own testimony that the undated agreement was submitted to the Stamp Office on 30th September 1993, as the agreement had been concluded on 6th August 1993, when the signed agreement was forwarded by the purchaser's attorney with the deposit of $130,000, the agreement would have been submitted to the Stamp Commissioner out of time."

In view of the statutory provisions and the authority on which the above passage relies, it is important to quote the relevant provisions and basis of the reasoning in **R v. Wells.**

In **R v. Wells** (supra) the passage at page 171 is relevant:

> "It is submitted by Mr. Tucker, on behalf of the appellant, in the first place, that the deed of Apr. 21, 1936, was not a false document within the meaning of the Forgery Act, 1913, s. 1(2), because the time of making the deed was immaterial, since the Finance Bill, 1936, was merely a bill, and might never have passed into law, and that, therefore, since the document was not a false document, the crime of forgery was not committed. This argument appears to us to involve the proposition that nothing can be material which may subsequently become immaterial. Such a proposition is, in our view, fallacious. On the contrary, the fact that a circumstance may subsequently become immaterial has no relevance to its materiality at the time in question. After the introduction of the Finance Bill, 1936, the time of making a settlement on children irrevocable was the most ~~material matter~~ for decision. The date was, in our judgment, material both to the intention of the parties and to the purposes of the deed. Indeed, the only reason for falsely stating the time in the present case was that the time was thought to be, and in all probability would be, all-important. Where the deed purports to be executed at a certain false time, and the only reason for choosing that false time is that it is desired to obtain an advantage to the parties to the deed by reason of that false time, it is impossible to say that the time is not material."

As for the Stamp Duty Act section 76(1) reads:

> "76.-(1) Any contract or agreement for the sale of any equitable estate or interest in any property, or for the sale of any estate or interest in any property except land or other property locally situated outside Jamaica, or goods, wares or merchandise, or stock, or marketable securities, or any ship or vessel, or part interest, share or property of or in any ship or vessel, shall be charged with the same *ad valorem* duty as if it were an actual conveyance on sale of the estate, interest or property contracted or agreed to be sold and in lieu of the duty payable on such conveyance."

With respect to the requirement to pay the duty within thirty days section 32(3)(a) reads:

> "(3) In the case of such instruments hereinafter mentioned, as are chargeable with *ad* valorem duty, the following provisions shall have effect –
>
> (a) the instrument, unless it is written upon duly stamped material, shall be duly stamped with the proper ad valorem duty before the expiration of thirty days after it is first executed, or after it has been first received in Jamaica, in case it is first executed at any place out of this Island, unless the amount of duty is uncertain, and the opinion of the Stamp Commissioner with respect to the amount of duty with which the instrument is chargeable, has, before such expiration, been required in writing."

Then section 19(1) of the Transfer Tax Act in relation to the conveyance treats the transfer tax as additional Stamp Duty thus:

> "19.-(1) Subject to the provisions of section 21 and without prejudice to the provisions of sections 29, 30 and 32 or any provisions of this Act as to relief or appeal from taxation or objection thereto or as to refund of tax but notwithstanding anything to the contrary otherwise provided, where any transfer (or, without prejudice to the generality of any provisions of this Act, any such contract of transfer, or any such assignment or contract of assignment of the right to a transfer under any such contract, as is required to be treated as a transfer by virtue of section 10) is effected or evidenced (apart from the provisions of this section) by any document stamped as required under the Stamp Duty Act, any amount of tax which is chargeable in respect of the said transfer shall be regarded, collected and otherwise treated as additional stamp duty imposed in respect of that document by that Act and to which subsection (3) of section 32 thereof applies; and the provisions of section 18 shall, in relation to the payment of the said

> amount under the foregoing provisions of this subsection, apply as in relation to payment of such tax."

Having regard to the reasoning of **R v Wells** (supra) and the relevant statutory provisions, the findings of fact of the Disciplinary Committee concerning the falsity of the contract with respect to the date so as to avoid paying the correct duty must be affirmed.

Failure to provide information with due expedition

Here is how the Disciplinary Committee recounted the appellant's failure to provide information with due expedition:

> "In 1995, the Respondent complied with the Complainant's instructions to hand over his files and to provide a statement of account. This was after the Complainant had retained Mr. Ian Wilkinson to act on his behalf in the matter in January 1995. A letter to the Complainant from his new attorney, Mr. Ian Wilkinson dated October 2, 1995 (Exhibit 5) advised the Complainant as follows:
>
> "(a) I received Instrument of Transfer from Ms. Jones on the 20th March, 1995;
>
> (b) I received a Statement of Account from Ms. Jones on the 13th of July, 1995 and,
>
> (c) I received the sum of Twenty-Nine Thousand Two Hundred and Forty-Five Dollars and Sixty-Nine Cents ($29,245.69) on the 17th of August 1995. Kindly note that the said sum was sent to me on an undertaking not to disburse same in part or in whole unless you sign a formal release acceptable to Ms. Jones. If you need any further assistance or information please do not hesitate to contact me.

> By that time the Complainant had made a formal complaint to the Disciplinary Committee of the General Legal Council supported by an Affidavit dated 12th January 1995. The Complainant testified that this came after numerous attempts over an 8 month period to obtain some information on the state of the transaction and to ascertain from the Respondent when same would be completed, to no avail."

The Disciplinary Committee found in favour of the complainant by concluding that :

> "(2) Also in breach of Canon IV (r) the Respondent has failed to provide her client with all information as to the progress of his business with all due expedition despite being reasonably required so to do."

Conclusion

The findings of the Disciplinary Committee when examined against the notes of evidence and the relevant statutes and authorities demonstrate that the Committee made a correct assessment of the evidence and applied the law correctly.

The opinion of Lord Sumner in **Re Iles** (1922) 66 Sol J 297 (P.C.) was quoted in the reasons of the Disciplinary Committee and are so appropriate that I reiterate them. They are as follows:

> "It was said that if the act was dishonest it was a very small one, but in a solicitor's practice there should be no small dishonesties. True it was that the act was done long ago, and that the record disclosed no other delinquency either before or after. But the court was entitled to reflect that the fact had become known, in spite of the appellant, in circumstances of such

> notoriety in which any leniency might have grave consequences, and that it had been established in spite of an ingenious but somewhat audacious attempt to conceal it by discreditable denials... In an appeal relating to the conduct of a solicitor in such a Community as Port of Spain it was necessary to bear in mind how greatly the conditions differed from those which prevailed in this country. A small community was one in which a solicitor was relatively a conspicuous person, in which the professional body was limited in number, and was therefore less able to overbear by the sheer weight of its probity the misdoings of a single member. The public benefits by the steady pressure of authority in keeping its legal advisers to the line of their duty. It was not the interest of the appellant alone that had to be considered, nor was the absence of complaint from any individual who had been aggrieved of great importance in his favour. The profession to which he belonged, the community which it had been his duty to serve, and the Government to which revenue ordinances he owed obedience, had all to be considered..."

This case was cited with approval in **Forde v The Law Society** (1980) 40 W.I.R. 361. It is appropriate to give that citation also, as the relevant page of **Re Iles** has been removed from the Law Report in the Supreme Court Law Library. **Forde** reads at page 374:

> "In **Re Iles** (1922) 66 SJ 297 a solicitor of the Supreme Court of this country was struck off the Roll for the alteration of a deed after its execution for the purpose of evading a penalty that was payable for stamping the deed out of time. In delivering the judgment of the Board Lord Sumner has this to say (at page 297):
>
> 'It was said that if the act was dishonest it was a very small one, but in a solicitor's practice there should be no small dishonesties.
>
> 'In an appeal relating to the conduct of a solicitor in such a community as Port-of-Spain it

> was necessary to bear in mind how greatly the conditions differed from those which prevailed in this country. A small community was one in which a solicitor was relatively a conspicuous person, in which the professional body was limited in number, and was therefore less able to overbear by the sheer weight of its probity the misdoings of a single member. The public benefits by the steady pressure of authority in keeping its legal advisers to the line of their duty, and the court which exercises that authority must largely depend on the high standard observed by its officers, not being assisted by the presence of the powerful professional organization which exists in this country. It is for the court in the first instance to consider the form in which they ought to assert their disciplinary powers...".

In the light of these principles, I have no hesitation in dismissing the appeal and affirming the Order of the Disciplinary Committee with costs to the respondent.

PANTON, J.A.

Mr. Alton Johnson, a primary school teacher, was a client of the appellant who, at the time of the disciplinary hearing, had been an attorney-at-law for twenty-seven years. On the 15th day of December, 1999, the Disciplinary Committee of the General Legal Council, having heard evidence from both parties, found that the appellant had contravened the Canons and the rules of ethics of the legal profession in several respects. The Canons breached were specified thus:

1. Canon 1V (r), in that she failed to deal with her client's business with all due expedition.

2. Canon 1V (r), in that she failed to provide her client with all information as to the progress of his business with all due expedition despite being reasonably required so to do.

3. Canon 1V (s), in that, in the performance of her duties, she acted with inexcusable or deplorable negligence or neglect.

4. Canon V11 (b)(ii), in that she failed to account for all monies in hand for the account or credit of her client when she was reasonably required so to do.

5. Canon I (b), in that, by her conduct, she failed to maintain the honour and dignity of the profession and she has brought her profession into disrepute.

As a result of these breaches, the appellant was suspended from practice for a period of nine months from the date of the order, ordered to make restitution of $150, 000 to the complainant, and to pay his costs of $15,000.

The appellant filed two grounds of appeal:

1. The matters of which the complainant complained were not supported by the evidence; and

2. The Disciplinary Committee went beyond the matters complained of and dealt with matters not raised in the complaint.

It should be noted that there has been no complaint against the penalties imposed, and the record does not disclose that there has been any stay of the order of suspension from practice. That being so, the period of suspension having expired, and it being assumed that the appellant was not engaged in practice during same, the appeal is really concerned with the reputation of the appellant as well as the payment of the compensation due to the complainant.

What were the matters of which the complainant complained?

As long ago as June 27, 1994, the complainant, Alton Johnson, wrote to the Jamaican Bar Association thus:

> "Dear Sir,
>
> I am hereby registering a complain (sic) against lawyer Sonia Jones of 5 Duke St., Kingston. I have instructed lawyer Sonia Jones to transact sale of 8 Milton Ave of Kingston 20. Lawyer Sonia Jones for over eight months (8) have (sic) not

> completed the sale of 8 Milton Avenue Kingston 20. I have given lawyer Sonia Jones (her) instructions to stop the sale of 8 Milton Avenue and hand over the files to me immediately. I would like your office to investigate lawyer Sonia Jones as to why such poor service".

This letter was admitted as exhibit 3 at the hearing before the Disciplinary Committee. It bears the stamp of the General Legal Council and indicates that it was received on June 29, 1994. From this letter, it is clear that the complaint that was made was in respect of "poor service" by the appellant as regards her handling of the sale of premises situated at number 8 Milton Ave., Kingston 20. The letter was followed by ~~an~~ affidavit and a statement of the nature of the complaint on a prescribed form. These bear the date 12th January, 1995, and are signed by Mr. Johnson. The General Legal Council received these on the 19th January, 1995. The complaint on the prescribed form states:

> 1. She has not provided me with all information as to the progress of my business with due expedition, although I have required her to do so.
>
> 2. She has not dealt with my business with due expedition.
>
> 3. She has acted with inexcusable or deplorable negligence or neglect in the performance of her duties.
>
> 4. She has not accounted to me for all moneys in her hands for my account or credit, although I have reasonably required her to do so.

Although the complaint was first made in 1994, the disciplinary hearing, which lasted eight days, did not take place until 1999.

The evidence presented on behalf of the complainant

Having been dissatisfied with the services, or lack thereof, of another attorney-at-law, the complainant turned to the appellant. This was in either June or July, 1993. The agreement between them was for the appellant to obtain a grant of probate in respect of the will of the complainant's deceased wife and to act for the complainant in respect of the sale aforementioned. Exhibit 1 shows the signing by the complainant of an undated contract prepared by the appellant in respect of the sale of the property. This document having been signed by the complainant, the appellant did nothing further in respect of this sale for eight months. The complainant, in a state of frustration, consulted another attorney-at-law, and then instructed the appellant not to proceed any further with the sale, and also to provide him with a statement of account. A letter dated July 29, 1994, from the complainant to "lawyer Sonia Jones" (the appellant) was admitted as **exhibit 2** at the hearing by the disciplinary committee. It reads thus:

> "I would like to have a statement of account regarding all transaction (sic) which you have undertaken on my behalf.
>
> I would like to collect all files which you have regarding any and all business transacted on my behalf.

> I have given verbal instructions to your telephone receptionist on Monday 25, 1994 (sic) regarding the above mentioned matters.
>
> Please treat the above matter with the urgency and promptness I expect from an efficient attorney."

The appellant did not respond promptly to the complainant. On the letter is a note in her handwriting saying that she had written to the complainant to say she would "only give papers to another attorney". This note bears no date, and no copy of the letter it speaks of was ever produced in evidence. The appellant was further requested in a letter dated January 3, 1995, **(exhibit 4)** to turn over the complainant's "files, money or any , and all materials"... "immediately" to Mr. Ian Wilkinson, an attorney-at-law. This letter was received at the appellant's office on January 4, 1995, but the request was ignored for several months. The appellant's slovenly approach to the complainant's request is evidenced by a letter dated October 2, 1995, from Mr. Wilkinson to the complainant. This letter was tendered in evidence as **exhibit 5** and it states the following:

1. the appellant sent the instrument of transfer to Mr. Wilkinson on March 20, 1995;

2. the appellant sent the statement of account to Mr. Wilkinson on July 13, 1995; and

3. the appellant sent the sum of $29,245.69 to Mr. Wilkinson on August, 1995.

The delay in proceeding with the sale resulted in financial loss to the complainant. The appellant had, notwithstanding the instruction not to proceed,

effected a transfer of the property some considerable time after it should have been transferred and this resulted in the loss of a better bargain by the complainant.

This summary of the evidence would not be complete without reference to four particular exhibits tendered at the disciplinary hearing. It will be recalled that the appellant was retained in either June or July 1993. **Exhibit 6** is a letter dated 6th August, 1993, to the appellant from the attorneys-at-law acting on behalf of the prospective purchasers of the complainant's property. It reads:

> "We act for the purchasers and further to telephone conversation between yourself and the writer of 30th Ultimo we are pleased to enclose herewith Victoria Mutual Building Society Manager's Cheque No. 091366 dated 20th July 2993(sic) in the sum of $130,000.00 being the purchasers' deposit in the captioned transaction.
>
> Also enclosed please find the Agreement for Sale duly signed by the Purchasers but as per our agreement to be amended to include Karen Theresa James as one of the Purchasers (we believe that the purchase price on the said Agreement is incorrectly stated).
>
> We look forward to receiving a copy of the amended Agreement signed by the Vendor in due course.
>
> Kind thanks for your prompt attention hereto.
>
> Yours faithfully,
> Lopez & Lopez
>
> Per: Gregory Lopez"

So, within a month or two (at most) the appellant had received the deposit in respect of this transaction. Within two weeks of the date of **exhibit 6** , the appellant received from Myers, Fletcher & Gordon, attorneys-at-law, the duplicate certificate of title with the surveyor's identification report attached thereto **(see exhibit 34).**Then, on the 19th August, 1993, in a letter admitted as **exhibit 8**, the appellant wrote to Lopez & Lopez acknowledging receipt of **exhibit 6.** She enclosed a copy of the certificate of title that had been sent to her by Myers, Fletcher & Gordon, and stated, "this establishes that this is a joint tenancy, so there should be no complication in regard to the estate". Then, by letter dated 17th September, 1993, the purchasers' attorneys-at-law wrote thus to the appellant:

> "Further to conversation held today between yourself and the Writer, we enclose herewith a photocopy of the Contract of Sale . . . with the agreed amendments highlighted in pink viz. inclusion of the Volume and Folio numbers for the captioned land and deletion of Special Condition Number four (4).
>
> We have been advised by the Victoria Mutual Building Society, Mrs. R. Ivey that our client's application has been in principle approved and that once the contract is amended they will begin processing the loan in earnest.
>
> We are therefore requesting that you let us have a photocopy of the original contract for Sale with the agreed amendments initialed by yourself."

This letter was admitted as **exhibit 7.**

The appellant's response

In the opinion of the appellant, there was no delay in delay in dealing with the sale, and she did not cause the complainant to suffer financial loss. She mentioned that there were problems in getting vacant possession, and placed reliance on **exhibits 21A 24 and 32**

Exhibit 21A is a copy of a letter dated 5th July, 1994, from the appellant to the complainant. It reads thus:

> "I have seen your recent note to me herein. There have been delays and problems in this matter, but none of these are the fault of the purchasers. They essentially revolve around the non-departure of the tenant who had promised you to leave.
>
> VACANT POSSESSION IS A PRE-CONDITION IN THE CONTRACT, AND IT IS VITAL THAT YOU DO NOT GIVE HER THE IMPRESSION THAT SHE CAN STAY.
>
> I cannot comply with your instructions, and I must advise that the purchasers will simply lodge a Caveat and file a Suit against you in the Supreme Court which will tie up everything for you. This is obviously not to your benefit. The Water Commission can do nothing to you as you are not the contracting party. I am suing the tenant for Recovery of Possession and water Rates. You are liable to pay for purposes of completion of the sale but you should be re-imbursed.
>
> I confirm the conversation with Miss Brown. I must also bring formally to your attention, a letter from the Purchaser's Lawyers of 30.6.94, copy attached. Please see to it that the repairs are done forthwith.
>
> Please keep up the pressure on the tenant. This is the key to the matter."

The "note" referred to in this letter seems to be **exhibit 20,** dated June 27, 1994, in which the complainant addressed the appellant in the following terms:

> "I am advising and instructing you to withdraw the sale of 8 Milton Avenue immediately. Please convey this information to the relevant persons. This is my irrevocable undertaking to you."

Exhibit 24 is dated 5th September, 1994. It is a copy of a letter from the appellant to the complainant. It reads:

> "Reference to previous correspondence. It is my obligation to bring to your attention that a Notice making time of the Essence has been served on you care of me.
>
> This is an inevitable consequence of your flagrant and continuous Breach of Contract and your refusal despite requests to either give me instructions to complete or to advise me what Lawyer you wish to hand over the matter (sic).
>
> A Notice such as this normally prelude to a Supreme Court case (sic).
>
> May I again advise you formally to give me the written instructions to complete this matter and so save yourself a lot of additional trouble"

The third exhibit on which the appellant placed reliance was her letter of 8th August, 1995, to Mr. Ian Wilkinson. That letter is **exhibit 32**. It is headed "Re: Estate Enid Johnson", and is in response to Mr. Wilkinson's letter dated July 26, 1995, querying the appellant's charge of $8,000.00 "for, inter alia, issuing notice to quit". The latter letter also requested the appellant to forward the stated balance of $29, 245.69 in favour of the complainant.

While being examined in chief, the appellant informed the disciplinary committee that on the 30th September, 1993, she had submitted the contract for sale to the Stamp Commissioner along with a cheque for $66,620.00. This sum,

she said, "was made up of $48,700 transfer taxes and $17,870 for stamp duty". The committee inquired directly of her if the agreement was submitted on the 30th September. She replied, "And was so held for over a year". Later, she said that she had made an error and that "originally" she had sent "$48,750 on 30th September, 1993". She was requested by the committee to produce the cheque and the covering letter enclosing the cheque. According to the record of the proceedings held on the 12th June, 1999, she produced a cheque dated 8th September, **1994**, payable to the Stamp Commissioner in the sum of $17,870, signed by her. This cheque was admitted in evidence as **exhibit 37**. There is a copy of a letter dated 30th September, 1993, from the appellant to the Stamp Commissioner. It was admitted as **exhibit 38**. However, it should be noted that that letter does not show that the agreement was sent to the Stamp Commissioner on that date as the appellant had stated.

The disciplinary committee's findings

The disciplinary committee, in delivering its decision, made observations and findings which clearly indicated how they arrived at their decision. The panel of experienced attorneys-at-law took note of the fact that the letter of the 30th September, 1993,**(exhibit 38)** "made no reference to an agreement for sale being submitted at that time". The committee also noted that a document entitled "stamping requisition" was allegedly sent by the appellant (according to her evidence) to the Stamp Commissioner along with the agreement for sale. However, this document bears no stamp or other indication of having been

received by the Stamp Commissioner. With reference to this situation, and the fact that the appellant had made a note on another document to the effect that all relevant papers were at the Stamp Office, the committee had this to say:

> "Despite the reliance placed on same by the respondent, the panel finds that the aforesaid documents are obviously self-serving, the first being a document prepared in the respondent's office and there being no acknowledgement of any nature from the Stamp Office that the documents therein described were submitted and received on the date reflected in the requisition, and the second document being only of relevance for the respondent's hand written notation on her file copy of that document, a notation which plainly could have been made at any time".

Mr. Brooks for the respondent in this appeal submitted that the only inference that may be drawn from this finding is that the committee felt that the appellant had made a concoction. This submission is well-founded and the committee had ample evidence on which to make the finding. Indeed, the committee went on to say that :

> "the respondent's testimony that the agreement for sale was submitted to the Stamp Office on the 30th September, 1993, and held until the 8th September, 1994, when duties were assessed, is not a credible or believable story on the evidence and documents tendered by the respondent".

Further, the committee stated:

> "If indeed the agreement for sale had been submitted with the documents applying for exemption from death duty for the removal of the name of Enid Johnson, the deceased joint tenant, from the title for the premises, we would have expected that the Stamp Commissioner would have made mention that the agreement for sale was being

> held pending a valuation of the premises, in circumstances where the Stamp Commissioner forwarded the certificate granting the exemption from death duty, under cover of letter dated 27th January 1994 addressed to Gresford Jones, which advised that there was no liability to tax for the removal from the title of the name of the deceased joint tenant. Further even if that letter made no mention of a hold up or problem with the assessment of the agreement for sale, we would also have expected a follow up letter from the respondent to the Stamp Commissioner on that matter, to complain of the delay in making the assessment of stamp duty and transfer tax on that agreement. The respondent did concede that it is unusual for the Stamp Office to accept an undated agreement for sale for stamping and that the fact that the submission to, and acceptance of an undated agreement is not in keeping with the usual practice of the Stamp Office, also supports, in our view, the rejection of the respondent's testimony that the undated agreement for sale was submitted to the Stamp Office on 30th September, 1993".

The disciplinary committee was most emphatic in its assessment of the credibility of the appellant in respect of the submission of the agreement for sale to the Stamp Commissioner. It expressed itself thus:

> "Regrettably, the Panel finds that on the matter of the submission of the agreement for sale for stamping, the respondent was not a witness of truth, and the Panel does not accept that she made any attempt to submit the agreement for sale for stamping on 30th September, 1993. We are compelled to conclude that, as is reflected on the stamped copy of the agreement for sale, which is dated the 24th August, 1994, (exhibit 26), the agreement was held undated for approximately one year, which explains why the complainant was able to obtain an undated, unstamped photocopy of the agreement from the respondent's secretary on 1st June, 1994, minus the signature page bearing the signatures

> of the purchasers, exhibit 1. It is our finding that the respondent wholly failed in her duty as the vendor's attorney-at-law having carriage of the sale to ensure that the agreement for sale was stamped within 30 days of its creation, which was at latest, when a copy of the agreement with agreed amendments was returned to the respondent by the purchaser's attorney-at-law by letter dated 17th September, 1993, exhibit 7".

In my opinion, these findings by the disciplinary committee were based on solid evidence which amply justified the committee's conclusion that the appellant contravened canons 1V(r) and 1V(s) of the Legal Profession (Canons of Professional Ethics) Rules made under the Legal Profession Act and published in the Jamaica Gazette Supplement (Proclamations, Rules and Regulations) dated Friday December 29, 1978. The appellant clearly did not demonstrate the urgency and efficiency that are required in relation to the sale of land in a country where values of property do not necessarily hold for long, bearing in mind the notorious fact that the Jamaican currency has been unstable for many years. That she demonstrated a lack of urgency was bad enough. She, however, went beyond that. She seriously compromised the situation and herself by falsifying documents in a vain effort to give the impression that she had acted promptly. For an attorney-at-law to have so done is inexcusable. This ground of the complaint was proven beyond any doubt.

Delay caused by the complainant's tenant

The committee said:

> "While the panel accepts that the complainant did instruct the tenant to remain in possession, and

> thereby, may also have contributed to the delay in completion of the sale, we find that this arose from the complainant's frustration with the delays which had occurred to that point, coupled with the respondent's failure to give adequate response to his inquiries or to provide any reasonable explanation for the delay".

This observation by the committee led Mr. Scharschmidt, Q.C., to submit to us that there was no basis for frustration on the part of the complainant as he had contributed to the delay by telling the tenant that she could stay until the completion of the sale.

The following question and answer is instructive:

> **Scharschmidt:** The contract stated vacant possession. You appreciate that the tenant had to leave before the sale could be completed?
>
> **Panel:** The tenant had to leave before the sale could be completed.
>
> **Johnson:** Yes.
>
> **Panel:** Who completed the sale Miss Jones or Mr. Wilkinson?
>
> **Johnson:** Mr. Wilkinson
>
> **Panel:** Was the sale completed?
>
> **Johnson:** A caveat was lodged which caused some delay ..... When Mr. Wilkinson took over was the tenant still there?
>
> **Johnson:** The tenant was there for security reasons.

Scharschmidt: The tenant was there for the security reasons you referred to earlier?

Johnson: Miss Marlene Hutchinson was told that the property was sold but she could stay until the sale was completed.

Scharschmidt: You told her that?

Johnson: Yes.

Panel: Did you put them in possession?

Johnson: Yes.

Panel: Who were they?

Johnson: Mr. George Campbell and family.

Panel: ~~When?~~

Johnson: When lawyer Jones sent them notice to quit.

The witness was then shown an undated notice to quit which was admitted into evidence as **exhibit 13**. Then followed this exchange:

Scharschmidt: Mr. Johnson did you ever tell .. the persons referred to are the James. Did you ever tell them that you had changed your mind about selling them?

Johnson: After 8 months had passed and Lawyer Jones did not give me any reasons for the undue delay, I sought legal advice. I was told that as long as the contract was not signed, and transfer was not made, I could abort the sale. I spoke to one of the purchasers. I said I would not proceed unless they would be willing to pay. I said that it had gone on too long and the property now valued more. That particular purchaser said they were willing to meet the counter offer of $150, 000.00 more which was not attractive.

Scharschmidt: When would this conversation have taken place?

Johnson : In 1994 when I advised lawyer Jones not to proceed.

The suggestion that the complainant contributed to the delay so far as the presence of the tenant was concerned is misleading and indeed erroneous as a copy of a letter **(exhibit 22)** produced by the appellant shows that the tenant had vacated prior to the 26th July, 1994-- and this is against the background that the appellant still did not send the cheque to the Stamp Commissioner until September, 1994. The cold fact, therefore, is that this question of the tenant is a red herring. So too is the matter of the complainant trying to renege on the contract.

There is no doubt that evidence was presented in support of the matters complained of. The Disciplinary Committee gave careful and mature consideration to what was presented and argued, and gave a decision which befits the situation. There is no good reason to disturb the decision.

In forming this view that the committee's decision should not be disturbed, I am mindful of several decisions in matters of this nature cautioning againt interference by appellate courts, unless there is clear reason so to do.

In **Re A Solicitor** [1954] 1 All E.R. 445 at 447, Scott, L.J. said:

> "It is important to consider the attitude which the Court of Appeal ought to adopt towards a second re-investigation of the Disciplinary Committee's findings of fact. There are two reasons for special caution. In the first place the Disciplinary Committee of today is a "specialized tribunal", created by Parliament to deal with questions of professional duty peculiarity within the knowledge of the profession itself, and for that

> reason constituted of members of that profession specially selected for their knowledge, experience and position by the Master of the Rolls (who in one sense is the head of that profession), or in his absence by the Lord Chief Justice. As Lord Hewart, L.C.J., in **Re A Solicitor** (1928), 72 Sol. Jo.368, said at p.. 269:
>
> > 'The purpose and policy of that legislation was undoubtedly to make solicitors as far as possible master in their own house.'
>
> The second reason is that we ought to apply the general principle, upon which the House of Lords acts In regard to appeals from concurrent findings of fact of the two lower courts, viz., that unless such findings are vitiated by some error of law, the House will very rarely interfere with the findings of the first court. no reason why the conclusions of fact reached by the statutory tribunal for solicitors should be given any less weight than the decisions on fact of a judge of the high court sitting without a jury."

Lord Goddard,C.J. in **Re A Solicitor** [1956] 3 All E.R. 516 at 517, said:

> "This Court is always, and always has been, very loth to interfere with the findings of the Disciplinary Committee either on a matter of fact, because they understand these matters so well, or with regard to penalty. If a matter were one of professional misconduct, it would take a very strong case to induce this court to interfere with the sentence passed by the Disciplinary Committee because obviously the Disciplinary Committee are the best possible people for weighing the seriousness of professional conduct."

It should be added that this Court has recognized the special position of a disciplinary committee in relation to the problems of practice. Carey, J.A. had this to say in **Witter v. Forbes** (Supreme Court Civil Appeal No. 1/86 – delivered on April 6, 1989):

> "The attorneys who comprise a tribunal for the hearing of disciplinary complaints, are all in practice and therefore appreciate the problems and difficulties which crop up from time to time in a reasonably busy practice and are eminently qualified to adjudge when the level expected has not been reached."

I would dismiss this appeal, and order that the appellant do pay the costs of the appeal, such costs to be agreed or taxed.

COOKE J.A. (Ag.)

Having read in draft the judgments of my brothers Downer and Panton JJA. I too agree that this appeal should be dismissed with costs to the respondent.

DOWNER, J.A.

ORDER

Appeal dismissed. Order of the Disciplinary Committee affirmed. Costs to the respondent to be taxed if not agreed.