

BEFORE THE GENERAL LEGAL COUNCIL

COMPLAINT NO.001 OF 2013

IN THE MATTER OF THE LEGAL PROFESSION ACT

CAJETON HOOD

ATTORNEY-AT-LAW

AND

KINGSLEY LALSINGH

APPLICANT

BEFORE:

Dia C. Forrester, Attorney General – Deputy Chairperson

Mrs. Celia Edwards Q.C.

Ms. Leslie-Ann Seon

Ms. Skeeta Chitan

Mr. Michael Archibald

Mrs. Xiomara Forsyth, Registrar

APPEARANCES:

Mr. Ian Sandy Counsel for the Attorney-at-law; Cajeton Hood present

Mr. Kingsley Lalsingh in person

DECISION OF THE GENERAL LEGAL COUNCIL

HEARING: 11th November 2021

DECISION: 27th May 2022

Introduction

1. This dispute arises out of consultation meetings between an Attorney-at-law and the Applicant, his client. Those meetings are alleged to have created a legal relationship wherein the Attorney-at-law would provide legal services to the client for due compensation. Notably, there is no written retainer agreement in place setting out the parameters of the engagement, the actual services to be provided and the legal fees payable. The absence of a written retainer agreement created many discrepancies as to the expectations of the parties to this matter, the services to be provided and the associated fees.

Procedural History

2. The following summarises the procedural history of this Complaint:

- a. By letter dated 16th May 2013, the Applicant initiated this Complaint against the Attorney-at-law accompanied by an Affidavit of even date.
- b. At a meeting of the Council on 31st August 2016, the Council determined that there was a prima facie case to be answered.
- c. By letter dated 15th September 2016, the Council wrote to the Applicant indicating that it was minded to proceed with his complaint and that the Attorney-at-law would be given an opportunity to make representations and be heard on the Complaint
- d. By letter dated 6th January 2017, the Council wrote again to the Applicant drawing his attention to its 15th September 2016 Letter and giving an additional 14 days for a response.
- e. By letter dated 19th January 2017 Counsel for the Attorney-at-law wrote to the Council seeking additional time to respond to the Complaint.
- f. By letter dated 22nd February 2017, Counsel for the Attorney-at-law responded to the Complaint of the Applicant. Accompanying that document were three draft deeds of assent prepared for the Estate of Lynthia Eileen Bonaparte.
- g. By letter dated 25th April 2017, the Council wrote respectively to the Applicant and the Complainant advising that the issues arising can only be determined at a hearing of the Council into the Complaint.
- h. A Notice of Hearing dated 1st October 2020 was sent to the Applicant and the Complainant listing the matter for hearing on 1st December 2020.
- i. By email dated 4th October 2019 the Applicant enquired as to the status of the hearing of his Complaint.
- j. By letter dated 13th November 2020, Counsel for the Attorney-at-law wrote to the Council raising preliminary objections notwithstanding the indication of the Council that the matters being raised will be determined at a hearing of the Council into the Complaint.
- k. By letter dated 17th November 2020, the Applicant wrote to the Council requesting an adjournment of the 1st December 2020 hearing of the Complaint.
- l. By letter dated 22nd June 2021, Counsel for the Attorney-at-law wrote to the Counsel enquiring about the preliminary objections being determined.
- m. A further Affidavit of the Applicant sworn 12th July 2021 was submitted by the Applicant to the Council.
- n. By a Notice of Hearing dated 1st October 2021, the Council gave Notice of Hearing of the Complaint to both the Applicant and the Attorney-at-law.

Preliminary Issues

3. Two issues that may be treated as Preliminary Issues were raised by Counsel for the Attorney-at-law by way of letter dated 13th November 2020 as follows:
 - a. Whether the provisions of the Legal Profession Act No. 25 of 2011 as amended (“LPA”) apply in the circumstances of this case; and
 - b. Whether there is a prima facie case for the Attorney-at-law to answer.
4. There was a further issue raised by Counsel for the Attorney-at-law which was that the issue of a retainer agreement is a matter of contract, which does not fall within the jurisdiction of the Council to determine as matters relating to the construction of a contract are to be decided upon by a Court of law. The Council has not treated with this issue as a preliminary issue for determination and has comprehensively addressed the powers of the Council in relation to matters of such nature in a subsequent section of this decision.
5. The issue advanced in relation to the application of the LPA, was that the incident took place between 28th June 2010 and mid-2011 prior to the promulgation of the Legal Profession Act which was published on 15th November 2011. As a consequence, the Attorney-at-law contended this is a matter that predated the passage of the LPA which makes the latter inapplicable thereto. That submission has no merit as the facts of this matter, which are recited below, confirms that the complaint arises from an invoice being sent by the Attorney-at-law to the Applicant on 18th March 2012. At that time, the LPA was already part of the laws of Grenada. Therefore, the Complaint in question falls within the purview of the LPA and is subject to the jurisdiction of the GLC under Part V of the Act.
6. In relation to the issue of a prima facie case on the Complaint, it is useful to set out the provisions of the LPA which, relate to the Council’s consideration of whether a prima facie case is shown on a complaint:

Section 35 (2)

The Council, before fixing a date for the hearing of a matter, may require the applicant to supply further information and documents relating to all allegations as it thinks fit, and in any case where, in the opinion of the Council, no prima facie case is shown, the Council may, without requiring the attorney-at-law to answer the allegations,

dismiss the application, and notify the applicant and the attorney-at-law of the dismissal within seven days of the application being made.

Section 35 (3)

In any case in which, in the opinion of the Council, a prima facie case is shown, the Council shall fix a date for hearing, and the secretary shall serve notice of the date on the applicant and the attorney-at-law, together with a copy of the application and affidavit.

7. The Council has a duty pursuant to Section 35 (3) of the LPA to determine whether there is a prima facie case to be answered by the Attorney-at-law before a Notice of Hearing is issued to a party. The legislation does not envision the participation of the Attorney-at-law in that initial consideration of the Complaint by the Council but certainly, at the hearing, an Attorney-at-law may properly advance a preliminary objection as to whether there is a prima facie case to be answered and the Council would hear arguments from both parties in relation to that issue. In this case, the Council at its meeting of 16th August 2016 determined that there was a prima facie case to be answered and, invited the Attorney-at-law to respond to the Complaint. The Attorney-at-law responded to the Complaint on 22nd February 2017.
8. At the hearing of the Complaint on 13th October 2021, Counsel for the Attorney-at-law raised the issue of whether the Complaint disclosed a prima facie case. Mr. Sandy argued that the Council had not responded to his letter of 13th November, 2020 and that his client could not determine what was the complaint being made against him so as to put the Attorney-at-law in a position to respond to the Complaint notwithstanding the 22nd February 2017 letter from Counsel for the Attorney-at-law responding to the Applicant's Complaint. The parties were invited to advance arguments as to whether a prima facie case was disclosed on the Complaint. It was evident that the parties were not in a position to address the Council in a comprehensive manner as to the preliminary objection raised at that hearing. As such, the Council granted permission to both parties to lodge written submissions on the issue. This ensured that both parties had an opportunity to fully consider the preliminary objection raised and make representations to the Council on that issue, which is a critical aspect of ensuring there is procedural fairness to all parties. The Attorney-at-law lodged submissions on 21st October 2021 and the Applicant lodged submissions on 2nd November 2021. At the return hearing of the Complaint, the Council advised the parties that there was a prima facie case shown and reserved its reasoning on that issue for delivery on its determination of the substantive Complaint. Those reasons now follow having considered all arguments of the parties.

9. Counsel for the Attorney-at-law, in relation to the absence of a prima facie case, contended that there is a duty of disclosure, in particular, that there should be disclosure of information in relation to the allegations made against him. Further, that particulars of the charge had to be given to him by the Council which was not done on its finding that there was a prima facie case to be answered, and is therefore prejudicial. Notably, Counsel for the Attorney-at-law argues that *“as far as Mr. Hood is concerned, he did work pursuant to Mr. Lalsingh’s instructions, he billed for his work in accordance with the established schedule of fees at the time and he exercised his common law and statutory lien over Mr. Lalsingh’s documents when Mr. Lalsingh refused to pay his invoice. It is respectfully submitted that such conduct could never amount to professional misconduct.”* The above must be coupled with his argument that the Complaint failed to identify which provision of the LPA had been breached by the Attorney-at-law and that in laying a charge under the LPA, *“the acts of professional misconduct should be identified and so too the provisions of the Act breached...”*.
10. It is important to note that the Complaint of the Applicant together with all documents presented by the Applicant were provided to the Attorney-at-law by the Council so that he was fully aware of the case presented by the Applicant against him.
11. In response, the Applicant sought to identify parts of the LPA that his Complaint triggered, in particular the Code of Ethics, Section 1, Section 32, and Section 68 of the LPA. It must be stated that legal submissions are not the appropriate place within which to advance matters that should properly be particularised in a Complaint. The Applicant as a self-represented litigant cannot be taken to have been aware of that issue but notwithstanding, the Council must consider whether the failure to particularise the sections of the LPA which an Applicant alleges has been breached in his Complaint is fatal to a finding as to whether a prima facie case is made out.
12. The Council’s jurisdiction to consider a Complaint begins the moment the Complaint is lodged in accordance with Section 35 (1) of the LPA. Once the Council determines there is a prima facie case, the Council proceeds to hear and determine the complaint. It is only where the Council comes to a determination that no prima facie case has been made out, whether on its own initial consideration of the complaint in accordance with Section 35 (2) of the LPA or upon the determination of the issue following a subsequent objection made by an Attorney-at-law, that the Council may dismiss the complaint.

13. The ordinary dictionary meaning of “prima facie” is “at first sight; on the face of it; as appears at first sight without investigation”¹. Halsbury’s defines “Prima facie evidence” as meaning evidence which, if not balanced or outweighed by other evidence, would suffice to establish a particular contention”.² The concepts of a ‘prima facie case’ and ‘prima facie evidence’ are distinguishable as the former requires no examination of the evidence or merits of the case whereas the latter requires there to be sufficient evidence in support of a particular contention. A prima facie case for the purposes of Section 35 of the LPA therefore has a peculiarly low threshold and the Council ought to so restrict its consideration of whether there appears, in a case of this nature alleging professional misconduct, “on the face of it”, any issues of professional misconduct arising. It involves no consideration of whether any issue raised has been proved.
14. It was most peculiar that Counsel for the Attorney-at-law took issue with the failure of the Applicant to specify the particular provisions of the LPA his client was alleged to have breached and asserted that in the absence of this, his client was not in a position to advance a case in response, since these arguments were being advanced after Counsel for the Attorney-at-law on 22nd February 2017 responded to the Complaint of the Applicant. Counsel for the Attorney-at-law emphasized that the form of the Complaint was essentially grossly inadequate and contended that the same was fatal seeking ultimately to strike out the Complaint. In considering this issue, the Council notes the learning of the Privy Council that procedure is a servant not a master.³ Likewise, that the substance of the Complaint should properly be examined to determine what if anything, the Complaint contains that may amount to a breach of the professional duty of the Attorney-at-law to his client.
15. On reviewing the contents of the Complaint and documentation lodged in support by the Applicant which the Attorney-at-law was provided with and, without making a finding in relation to whether the Complaint against the Attorney-at-law amounts to professional misconduct, that Complaint reveals that the Applicant, who is self-represented, raised issues of unfair or unreasonable fees being charged by the Attorney-at-law and allegations that the Attorney-at-law was improperly withholding original documents alleged to belong to the Applicant.

¹ Oxford English Dictionary, 2nd ed (1989), vol XII at 470–471

² Halsbury's Laws of England > Civil Procedure (Volume 11 (2020), paras 1–496; Volume 12 (2020), paras 497–1206; Volume 12A (2020), paras 1207–1740) > 18. Evidence > (3) Weight of Evidence > 695. Prima facie, sufficient and conclusive evidence.

³ Texan Management Ltd and Others v Pacific Electric Wire & Cable Company Ltd - [2010] 4 LRC 1 para 1 per Lord Collins

16. Despite the ineloquence in the drafting of the Complaint and the failure to reference a specific section of the LPA therein, on a due consideration of allegations before the Council, it is evident those allegations relate to matters of professional misconduct and were sufficiently stated in such a manner as to enable the Attorney-at-law, a learned individual and duly qualified legal practitioner, to ascertain the allegations that were being made against him and to properly advance a response to the Complaint. Again, it is noted a substantive response was in fact advanced by the Attorney-at-law on 22nd February 2017.
17. It must be considered whether the Applicant's failure to identify the act of professional misconduct complained of or to specify the applicable section of the LPA is prejudicial to the Attorney-at-law's ability to defend the Complaint and is therefore fatal. Section 35 (1) of the LPA provides that "*[a]n application to the Council requiring an attorney-at-law to answer allegations contained in an affidavit, shall be made in writing under the hand of the applicant in Form I of Schedule IV, and shall be sent to the secretary of the Council, together with an affidavit by the applicant in Form II of Schedule IV, stating the facts on which he relies in support of this application.*" Section 35 (1) of the LPA does not require an Applicant to specify which aspect of the LPA has been breached. Section 35 (1) of the Legal Profession Act merely requires the Applicant to advance the factual assertions in support of his case, in this instance, of professional misconduct. Those factual assertions were indeed advanced by the Applicant in his Affidavit lodged on 16th May 2013 accompanied by a letter of even date. From the Applicant's 16th May 2013 Affidavit, it is evident that there was an Attorney Client relationship, there are allegations of excessive fees being charged and what appears to be a lien exercised by the Attorney-at-law on original documents belonging to the Applicant due to non-payment of fees. The charging of excessive fees is a matter that the Council can properly examine, as an attorney-at-law is prohibited from charging fees that are unfair or unreasonable⁴ likewise, the Council can also examine what happens to a client's property when an Attorney client relationship ends.⁵
18. With the threshold of a prima facie case being low, and having full regard to the circumstances of this matter, we find that the Applicant has met the threshold for establishing a prima facie case as his Complaint discloses

⁴ Schedule III Legal Profession Code of Ethics Part B Mandatory Provisions and Specific Prohibitions Section 60 of the Legal Profession Act

⁵ Schedule III Legal Profession Code of Ethics Part A In Relation To The Profession And Himself Section 35 Legal Profession Act

evidence of there being an attorney client relationship in existence, there was an issue in relation to excessive fees being charged to be determined and that the Attorney-at-law may have improperly withheld documentation that his now former client was seeking to have returned after termination of the attorney client relationship.

19. Having found that there was a prima facie case for the Attorney-at-law to answer, we now proceed to deal with the substantive aspects of the Complaint.

FACTS

20. Although the professional legal relationship between the parties began on the 28th June 2010 (the “Initial meeting”), the facts giving rise to the Applicant’s Complaint were only brought to his knowledge when he received an invoice from the Attorney-at-law dated the 18th March 2012.
21. At the Initial meeting, the Applicant attended the Chambers of the Attorney with one Mavis Lalsingh seeking to have the will of their late mother probated and properties transferred thereafter. The Applicant alleges that the fees quoted for those services were \$3,000 for the probating of the will and \$3,000 for the transferring of the properties. No formal Retainer Agreement setting out the services to be provided and agreed fees was signed to formalise, in writing, the agreement between the Applicant and the Attorney-at-law. There is no dispute that there was an oral agreement between the two parties for the referenced legal services to be provided. The Attorney-at-law issued an invoice dated 5th July 2010 to the Applicant for “Probate plus VAT” (\$2,300.00) and “Taking instructions plus VAT” (\$575.00). The Applicant paid the 5th July 2010 invoice in full. The Grant of Probate was issued on 6th October 2010.
22. Despite there being a discussion in relation to transferring properties in the Initial Meeting, it was not until sometime in April 2011 that the Applicant returned to the Attorney-at-law to discuss further having three Conveyances prepared to transfer property from the Estate to the beneficiaries. The Applicant confirms that he was told on that occasion he would be provided with an indication of the fees to be paid to have the properties transferred for him in about two or three days. The Attorney-at-law indicated he told the Applicant that fees for the conveyancing work to be done would be based on the value of the conveyance using the standard fees from practise in Grenada. There was once again no written Retainer Agreement between the parties arising out of that meeting setting out the services to be provided

and the fees payable for those services. Subsequently, the Applicant, on the request of the Attorney-at-law in or about November 2011, gave the Attorney-at-law the probate document for the purpose of recording at the registry, and the property deeds for Ms. Bonaparte - the original deeds were kept by the Attorney-at-law. The Attorney-at-law confirmed that he attended to the preparation of the Conveyances as requested.

23. During the hearing, it was apparent that the Applicant assumed that the fee quotation given to him in the Initial Meeting, or at least a sum in the vicinity of the same, was what he would have to pay for those services as he was surprised to receive an invoice dated 18th March 2012 from the Attorney-at-law, which had fees listed as a percentage of the value of the Estate of the deceased. The Council notes a 29th June 2012 letter from the Applicant to the Attorney-at-law stating that he had a telephone conversation with the Attorney-at-law in early March 2012 when the Attorney-at-law informed him that legal fees were not a flat rate but a percentage and he objected to that fee then. The Applicant no longer contended at the hearing that he already paid the Attorney-at-law for the conveyances but that he was charged a sum not agreed. This is the crux of the factual dispute between the Applicant and the Respondent, that is, what fees are payable for the legal services provided. A review of the invoice that the Attorney-at-law issued to the Applicant as fees for legal services was not based on the value of the property being conveyed but the value of the Estate of the Deceased, which is not in keeping with the standard fees used in practice, that is, the Bar Association Non-Contentious Fees that the Attorney-at-law stated informed the fees he charged the Applicant.
24. Coupled with the above, the Applicant asserted that he did not receive drafts of any of the Conveyances so he is unaware of Counsel having actually provided any legal services. The Attorney-at-law indicates that three deeds were in fact prepared and that another Attorney undertook that work on his behalf and, the conveyances were thereafter shared with the Applicant by way of email. The email evidence before the Tribunal does not confirm those draft deeds being shared with the Applicant though copies of those deeds were affixed, albeit in an almost illegible form, to the 22nd February 2017 letter where the Attorney-at-law responded to the Complaint. It is peculiar that at the hearing, the Attorney-at-law indicated that he was unable to present copies of the deed to the Council as his computer system crashed and he therefore had no records of those emails and, the deeds, the latter is surprising.
25. It is surprising that the Attorney-at-law had no copies of the deeds as though barely readable, the Council was presented with draft conveyances by the

Attorney on 22nd February 2017. The Attorney who was said to have prepared the conveyances gave no evidence at the hearing. The Council was presented with no evidence that those draft conveyances were presented to the Applicant. The Applicant indicated that he objected to the 18th March 2012 Invoice, ended his engagement of the Attorney-at-law, and asked for the original deeds given to the Attorney-at-law to be returned. The Attorney-at-law maintained that he performed the legal services he was engaged to provide and on not being paid he opted to exercise a lien on the conveyances as drafted and original documents pending payment of legal fees for services provided.

Findings of the Council

26. The Council accepts that there is evidence of the existence and scope of an Attorney Client relationship between the Applicant and the Attorney-at-law for which fees are payable. Accordingly, that Attorney Client relationship is a determining factor as to whether or not an act of professional misconduct may have taken place and should be inquired into by the Council. What we have in the circumstances of this case, is an Attorney Client relationship being terminated by a client on the attorney rendering a bill for services coupled with a dispute as to whether the legal services contracted were actually performed. Ideally, a pro forma bill should have been presented by the Attorney-at-law prior to work being done for the client particularly having regard to the fact that there was no written retainer agreement in existence. Whilst the Council holds with high regard the indication of the Attorney-at-law that he did have another Attorney assist him with the preparation of conveyances and drafts of the same were provided, the Council simply cannot accept as a fact that drafts of those documents were presented to the Applicant. The Council does note that no evidence was advanced by the Applicant that he asked to see the conveyances prepared as his focus was on terminating the attorney client relationship on being issued an invoice charging more than he agreed with the Attorney-at-law to pay and having his original documents returned. With that being the state of affairs, the Council is constrained to find that whilst the Attorney-at-law did prepare conveyances, he withheld sharing those draft conveyances with the Applicant as he was not paid any fees.
27. This raises the issue of when fees become payable - whether before or after legal services have been provided? There is no written retainer agreement stating what fee is payable and or when fees are payable. Further, there is no established method as a matter of custom which dictates that fees are payable in advance or in arrears for the performance of legal services.

Additionally, the LPA does not mandate when fees should be paid and the Council will not venture to prescribe a manner in which that should be done. The LPA defines fees to “*include remuneration, charges and disbursements*” all of which the 18th March 2012 invoice of the Attorney-at-law touched.⁶ Section 24 of the LPA states that an Attorney-at-law is entitled to recover his fees for services rendered in that respect. There is nothing in the LPA that prohibits an Attorney-at-law from exercising a common law lien to recover money alleged to be due and owing.

28. The issue turns now on whether there is a lawful basis for the exercise of a lien and whether the exercise of a lien gives rise in the circumstances of this case to any form of professional misconduct. It is salient at this juncture to note the jurisdiction of the Council, particularly noting that Counsel for the Attorney-at-law contends that issues relating to the retainer agreement are contractual and not for the Council’s consideration. The jurisdiction of the Council is limited to the determination of matters of professional misconduct. However, where the issue of professional misconduct in question is determined on the existence and scope of any Attorney Client relationship, the Council cannot reasonably be precluded from inquiring into the nature of such retainer agreement whether written or oral. This was the case in **Frankson v The General Legal Council [2012] JMCA Civ 52** where the Jamaica Court of Appeal ratified the jurisdiction of the General Legal Council to not only inquire into the existence and nature of the retainer agreement between the parties but also to make findings of fact and law on the same.

29. According to Halsbury’s laws of England, a “*Lien, in its primary or legal sense means a right at common law in one person to retain that which is rightfully and continuously in his possession belonging to another until the present and accrued claims of the person in possession are satisfied. In this primary sense, it is given by law and not by contract.*”⁷⁷ Noting the preceding, a lien can only operate in circumstances where all three of the following conditions are met:

- a. The attorney-at-law has an entitlement to fees - This may arise where the retainer has been terminated; a non-entire contract exists and there has been some incremental benefit to the client; or by contractual term where there is a fee arrangement in place.

⁶ Section 2 of the LPA

⁷⁷ Halsbury's Laws of England > Lien (Volume 68 (2021)) > 1. Liens and other Security Interests > (1) Types of Lien > 902. Legal lien.

- b. The attorney-at-law makes a demand for those fees to be paid by submitting a bill of costs to the client (which is required pursuant to section 50 of the Legal Profession Act if a recovery claim for fees is being advanced by an attorney-at-law)
- c. The client refuses to meet the demand for fees – This refusal may be express or implied.

30. An Attorney-at-law exercising a common law lien cannot give rise to professional misconduct unless that lien was improperly exercised. To determine that the lien was improperly exercised requires the Council to determine whether the fees charged by the Attorney-at-law was unfair or unreasonable. It is unusual for fees for a conveyance to be charged based on the value of an Estate and not the value of the property being conveyed. The Council accepts the Attorney-at-law's representation that he was using the standard fees of practice. That standard fee of practice is the Bar Association Scale of fees which guides what may be charged to a client for non-contentious matters. Noting that representation of the Attorney-at-law, it is apparent that the fee he sought to charge the Applicant is not in keeping with those standard fees of practice. Schedule III of the Code of Ethics Part B Section 60 of the LPA which is under the mandatory provisions that must be complied with in the Code of Ethics, provides the following in relation to fees:

“60.—(1) An attorney-at-law shall not charge fees that are unfair or unreasonable.

(2) In determining the fairness and reasonableness of a fee, the following factors may be taken into account—

- (a) the time and labour required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- (b) the likelihood, that the acceptance of the particular employment, will preclude other employment by the attorney-at-law;
- (c) the fee customarily charged in the locality for similar legal services;
- (d) the amount involved, (if any) or the value of the subject matter;
- (e) the time limitations imposed by the clients or by the circumstances;
- (f) the nature and length of the professional relationship with the client;

(g) the experience, reputation and ability of the attorney-at-law concerned”

31. It is evident that the criteria set out in the Code of Ethics Section 60 of the LPA is a discretionary criteria that the Council may take into consideration in assessing a Complaint as to whether the fees charged by an Attorney-at-law were unfair or unreasonable such as to amount to professional misconduct. Conveyancing requires extensive knowledge of property law, but we note that the Attorney-at-law indicated that the actual preparation of the conveyances were outsourced to another attorney-at-law to prepare with no indication that the client approved a non-member of the Attorney-at-law's firm undertaking the work. A curious aspect of the invoice is the reference thereon to a “rebate” of \$2,500 which is almost equivalent to what the Applicant paid initially for the Grant of Probate. A “rebate” is a refund for monies paid. It is evident to the Council that the Attorney-at-law wanted to charge the Applicant a different legal fee collectively for work undertaken in relation to the Estate of the deceased. In particular, the Attorney-at-law wanted to charge a percentage of the value of the estate to administer the Estate which, in practise would involve applying for a Grant of Probate and preparation of all instruments to transfer ownership in properties of various types. The Council deems it unreasonable and unfair for the Attorney-at-law to seek to charge the Applicant a percentage of the value of the Estate of the deceased for the preparation of conveyances to transfer property from the Estate to beneficiaries, particularly when fees for the probating of the Estate were paid by the Applicant in full in November 2010.
32. Having found that the fees charged for the legal services to be provided were unfair and unreasonable, the Council can now consider the issue of the lien.
33. It is critical at this juncture to revert to the 16th May 2013 Affidavit and letter of the Applicant, which is the Applicant's Complaint, as that is what informs the case to be answered by the Attorney-at-law. The 16th May 2013 Affidavit and letter accompanying same states “*This Attorney is holding my legal documents which I have already paid for, and insist that I pay him a balance outstanding, before he will deliver the documents to me. I need those documents and maintain I already paid for services rendered and do not own him*”. In the penultimate paragraph the Applicant states “*...I emailed Mr. Hood requesting all original documents relating to Ms. Bonaparte's Estate...*”. The Council takes the references to “legal documents” as relating solely to the original deeds given by the Applicant to the Attorney-at-law for the purposes of preparation of conveyances to transfer properties from the Estate to the beneficiaries of the Estate.

34. The facts before the Council confirm that the Applicant paid fees in relation to obtaining a Grant of Probate. There is no evidence before the Council from either the Applicant and or the Attorney-at-law that confirms that any further sums were paid by the Applicant for any additional legal services. Without the Applicant having based his complaint on whether excessive fees were charged, the Council cannot properly decide on that issue and declines to do the same as that was not the case the Attorney-at-law was asked to answer in the Complaint though consideration of the issue of fees was unavoidable in treating with the Complaint. The Applicant's Complaint seeks the return of documents. The Council does indicate that fees in what the Attorney-at-law referenced as standard practice does require Attorneys to charge fees for conveyances based on the value of the property and not the value of the Estate. That finding puts the validity of the invoice into question and the Attorney-at-law may well have no outstanding properly issued bill for the Applicant to settle, which means there may be no lawful basis on which to keep the documents of the Applicant. But the Council's jurisdiction as stated before, is limited to professional misconduct in the context as asked by the Applicant and we cannot determine the lawfulness of the exercise of the lien as that is for another forum.

35. Noting that the common law allows the imposition of a lien for non-payment of fees, the Council does not find that the decision of the Attorney-at-law to impose a lien by withholding the Applicant's documents amounts to professional misconduct despite its finding of fact in relation to the fees charged. Good sense would suggest that the Attorney-at-law should return the documents to the Applicant.

ORDER

36. The Council therefore dismisses the Complaint against the Attorney-at-law in relation to the improper withholding of documents belonging to the Applicant on the termination of the Attorney Client relationship.

37. The Council takes the opportunity to remind Attorneys-at-law of the importance of formalising their terms of engagement with clients as that simple but important step protects them while providing legal services.



Dia C Forrester
Deputy Chairperson