BEFORE THE GENERAL LEGAL COUNCIL

COMPLAINT NO. 0002 OF 2017

IN THE MATTER OF THE LEGAL PROFESSION ACT

GENNILYN ETTIENNE **ATTORNEY-AT-LAW**

AND

ELIZABETH CAMERON **APPLICANT**

Before:

Honourable Justice Rosalyn E. Wilkinson (Retired) – Chairman
Ms. Leslie-Ann Seon
Ms. Skeeta Chitan
Ms. Michael Archibald
Mr. Daniel Roberts

Ms. Xiomara Forsyth, Registrar (Ag) – Secretary

Present: Ms. Elizabeth Cameron, Applicant and appearing in person.
Ms. Gennilyn Ettienne, Attorney-at-Law
Appearances: Mr. Ian Sandy for Ms. Gennilyn Ettienne.

Heard: 9th day of March 2022

Decision delivered: 27th day of May 2022

[1] The Applicant filed her application supported by her affidavit on 21st February 2017. In short, she alleged that she was dissatisfied with the services rendered by the Attorney-at-Law and that there was conduct unbecoming of the profession on the part of the Attorney-at-Law. In the final paragraph of her affidavit, the Applicant states that she was very dissatisfied with the Attorney-at-Law's representation and account of how the $11,000.00 which she paid had been spent and the Attorney-at-Law's request for additional funds.

The issue:

1. Whether the Applicant has made out a case of professional misconduct by way of fees being paid for services not rendered.

The evidence

[2] There was no letter of retainer. Save for a single pro forma invoice issued to the Applicant by the Attorney-at-Law early in the relationship, the Applicant did not receive an updated invoice accounting for how the $11,000.00 fees paid were disbursed. Although there appears to have been no formal document, the Attorney-at-Law accepted that from time to time the Applicant's daughter, Ms. Marcia Cameron (hereinafter "Ms. Cameron") was the Applicant's agent and would seek information on the Applicant's behalf, which information would be released by the Attorney-at-Law to Ms. Cameron. The Applicant, at the date of hearing, was 84 years old.

[3] The Applicant is a retiree who was born in Grenada. Historically, she is the daughter of Mr. Victor Cameron (hereinafter "Mr. Cameron") and Mrs. Myra Cameron (hereinafter "Mrs. Cameron"). The Applicant at some point in her life resided overseas for in excess of 50 years. Her parents had 5 children including herself during the course of their marriage. 2 of her siblings are now deceased. During her childhood, her parents separated but never divorced. The Applicant and her siblings continued to live with Mrs. Cameron. Mr. Cameron entered into a cohabiting relationship with Ms. Winifred Philip following his separation from Mrs. Cameron.

[4] Mr. Cameron died on 12th December 1969. He had a Will which was probated and Mr. Alfred Ferdinand was appointed the sole executor of his estate. Mr. Cameron in his Will left one gift with which the Applicant is extremely concerned. The gift was:

":1. ....

2. ....

3. I give and bequeath a chattel house situate at George the Fifth Street in the town of Grenville, to Manie Cameron for his absolute use and benefit. The said house is situated on lands of Vaughn and Victoria Philip." (The lands are hereinafter referred to as "the property") (Emphasis is the Council's)

[5] Mrs. Cameron died 6th September 1974, a few months short of 5 years after the death of Mr. Cameron. Mrs. Cameron during her lifetime never contested Mr. Cameron's Will.

[6] On 28th July 1998, 29 years after the death of Mr. Cameron, the Applicant was granted Letters of Administration with Will Annexed. According to the Letters of Administration with Will Annexed, Mr. Ferdinand had died leaving part of the estate of Mr. Cameron unadministered. This grant of administration was applied for by attorney-at-law, Mr. I.I. Duncan.

[7] The Applicant's unhappiness about the property which the Will states is that of Mr. Vaughn Philip and Miss Victoria Philip (hereinafter "the Philips") is founded on 2 objections. The first was that the property belonged to Mrs. Cameron because it was her money that ultimately paid for the property and she being a beneficiary of Mrs. Cameron's estate, was entitled to the property. During her evidence, she stated that she

was not the only person entitled but that her surviving siblings were also beneficially entitled. Secondly, she was of the view that the Will was not made by Mr. Cameron.

[8] The Applicant never resided on the property, never collected rent, and knew that her mother had never collected rent for the property after the death of Mr. Cameron, or at any other time during her lifetime.

[9] The Applicant believed that Mr. Cameron purchased the property from Mr. Vandurin De Belotte. No title deed was ever found despite several searches by 2 different search clerks. No title deed was found transferring the property to the Philips or by the Philips transferring the property to anyone. All searches were conducted on the instructions of the Attorney-at-Law.

[10]The Applicant and Attorney-at-Law were persons unknown to each other. The Applicant said that she saw the Attorney-at-Law on a television show, and since she wanted to do something about the property, she telephoned her Chambers and made an appointment.

[11] On 25th February 2015, the Applicant had her first in-person consultation with the Attorney-at-Law. According to the Applicant, at the consultation, she sought legal advice on how she could acquire legal ownership of the property and gave the Attorney-at-Law certain information. The Attorney-at-Law confirms this. The Attorney-at-Law said it appeared that the Applicant believed that there existed a title deed to the property and this being the case the Attorney-at-Law perceived that she could follow a particular course of action to achieve ownership of the property.

[12] According to the Applicant, the Attorney-at-Law advised and assured her that based on her statements that her matter was a straightforward one and could be resolved within four (4) months and with results favourable to her. At the end of the consultation the Attorney-at-Law described certain courses of action that she would take and they were:

i. apply for letters of administration for both parents, with the Applicant being appointed administrator.
ii. carry out a title search for the land in the names of the Philips.
iii. file a suit which would include (a) a vesting order, (b) deed of sale, and (c) a partition order since the Applicant's parents' beneficiaries were more than one.
iv. put a caution on the land through the Inland Revenue Department and the Registry.

The fees stated for the courses of action were:

i. Letters of administration -$1000.00
ii. Caution -$750.00
iii. Suit without title -$7500.00 (including vesting order, partition and sale order)
iv. Suit with title - $6750.00

The Applicant was also informed that if the suit was to be filed without title deed as a foundation, it would cost an additional $2500.00 for the suit.

[13] For the initial consultation, which included the cost of a preliminary search to ascertain whether the property had been transferred to the Philips, the Applicant paid $320.00 to the Attorney-at-Law. The Applicant also informed the Attorney-at-Law that she could not pay the full amount stated (for the suit with title) and the Attorney-at-Law agreed to allow her to pay fifty percent, i.e.$3378.00 so that work could commence on her instructions.

[14] The evidence on course of actions and fees due were supported by the Attorney-at-Law's undated Pro Forma Invoice given to the Applicant after consultation.

"PRO FORMA INVOICE

To. Mrs. Elizabeth Cameron

1. To taking instructions for drafting and engrossing Letters of administration in the estate of Cameron.

2. To taking instructions for the drafting and filing suit for application for vesting order and for a partition order and order for sale of lands belonging to the estate of Victor Cameron, Deceased.

3 To taking instructions for preparation of vesting deed for the benefit of the beneficiaries of the estate of Victor Cameron, deceased.

TOTAL PROFESSIONAL FEES EC$11,000.00

Disbursements

Filing fees for probate $12.00

Filing fees for suit $25.00

Service of claim $100.00

Stamp duties, Property transfer tax, payable to GOG (to be assessed)."

[15] On 1st April 2015, Ms. Cameron visited the Attorney-at-Law and paid the deposit of $3378.00. According to the Applicant, at this time, she was updated via statements made by the Attorney-at-Law to Ms. Cameron as to the outcome of the title search. She was informed that there was no title deed in the names of the Philips and the search continued for a title deed in the name of Mr. Cameron.

[16] During a subsequent in-person consultation with the Attorney-at-Law, the Applicant was informed that the search did not reveal a title deed for Mr. Cameron and so the suit would be pursued as one not based on a title deed. She was informed that as a result of lack of title, there would be additional fees. The fees now totaled $11,000.00. The additional $2500.00 previously cited would be applied to the $6750.00 for the suit. The

Applicant informed the Attorney-at-Law that the sum due was a lot of money and asked whether a payment plan could be arranged. The Attorney-at-Law told her that she did not offer a payment plan and that the total balance owed had to be paid in full.

[17] On 15th April 2015, the Applicant, on an appointment, visited the Attorney-at-Law and paid $7622.00 to complete the payment of all fees due. That the Applicant paid all fees due is not disputed.

[18] Following payment in full of fees requested, the Applicant or Ms. Cameron either met or spoke via telephone with the Attorney-at-Law seeking updates on several occasions including twice during May 2015, 28th May 2015, 15th June 2015, and 6th January 2016. During the course of the meetings and telephone conversations, the Applicant or Ms. Cameron would express disappointment that the matter was not proceeding as the Applicant was led to believe that it would. The Applicant also said that at some point she began to feel uncomfortable with the way the Attorney-at-Law spoke to her and as a result Ms. Cameron assisted by interacting on the Applicant's behalf with the Attorney-at-Law. The Applicant also felt that actions were being taken without being discussed or sanctioned by her.

[19] During meetings/telephone conversations, according to the Applicant's affidavit, she was updated as to certain events and also certain matters were put to her. Amongst the updates and matters were:

(i) no title deed had been found in the name of the Philips or Mr. Cameron,

(ii) the Attorney-at-Law had spoken to the son of a former tenant of Mr. Cameron who acknowledged that the property belonged to Mr. Cameron and said that following the death of Mr. Cameron, his Executor, Mr. Ferdinand, collected the rent,

(iii) an individual had expressed interest in purchasing the land from the Applicant,

(iv) that the Court would question why the Applicant had not challenged the Will before taking out letters of administration with Will annexed,

(v) if she was challenging the Will, then taking out a vesting order and letters of administration would be a conflict because such actions would indicate that she agreed with the Will,

(vi) that there being an individual interested in purchasing the property immediately, then the Attorney-at-Law recommended selling the property and so avoid a lawsuit,

(vii) that the Attorney-at-Law intended to make a deed with the Applicant's name and those of her siblings so that the interested buyer could purchase,

(viii) the other option the Attorney-at-Law provided was that the interested buyer could make a statutory declaration saying that he knew that the land belonged to the Applicant and that could be used to make a deed with the Applicant and her siblings' names which could be used to sell the property,

(ix) the Attorney-at-Law advised that a vesting order could be achieved by making an application to the court explaining how the land belonged to the Applicant, and added that she did not want to go to court because it would open up the opportunity for others to come forward,

(x) the Attorney-at-Law highlighted that another option would be to bypass the issue of the Will and go by way of claiming possession - obtaining a possessory deed although this would not be the strongest form of title,

(xi) the Attorney-at-Law informed that title would be unchallengeable by the Philips so there was no risk, however, the Attorney-at-Law said that she could not guarantee that there would be no court action at a later date,

(xii) the Attorney-at-Law presented another option which was making a deed directly to the interested buyer and let the Applicant sell the property to him,

(xiii) the Attorney-at-Law advised that the safest course would be to ignore Mr. Cameron, altogether, because in the questionable Will, he outlines that the property belongs to someone else,

(xiv) the Attorney-at-Law advised that based on all she had said (on that day) that she further advised that the best course of action that the Applicant could take would be to renounce her administratrix appointment because it would prevent her from owning the property under the Will, and

(xv) no caution had been placed on the land.

At a later date, the Attorney-at-Law recommended the route of the **Possessory Title Act 2016** to obtain possession of the property.

[20] The Attorney-at-Law added to this list of matters of which she had informed the Applicant to include, several discussions with Dr. Baptiste, his brother and the Mrs. DeBellotte.

[21] The Attorney-at-Law did apply for the grant of Letters of Administration in the estate of Mrs. Cameron and same was granted on 19th May 2015. The Applicant stated that she never knew of this application and the grant. At the hearing the Attorney-at-Law said that she was still in the possession of the grant. She tendered no viable excuse as to why she was still in possession of the Applicant's grant.

[22] A suit was filed, **GDAHCV 2016/0179 Elizabeth Cameron (As Administratrix of the Estate of Victor Cameron, Deceased) v. Elizabeth Cameron (Administratrix of the Estate of Elizabeth Cameron, Deceased) Elizabeth Maureen Cameron (As Beneficiary of the Estate of Victor Cameron and Myra Cameron, Deceased)**.The reliefs sought were: (i) Directions from the honourable court as to whether to administer the lands situate at George the Fifth Street in the Town of Grenville in the state of Grenada as being part and parcel of the estate of Victor Cameron; and (ii) Such further or other relief as to this honourable court shall seem just. The certificate of truth was

signed by the Attorney-at-Law with the reasons being stated for doing so: (i) that the certificate was signed on the Applicant's instructions, and (ii) that the Applicant was unavailable at the time the certificate was required. The Attorney-at-Law states that to the best of her knowledge, the suit remains pending and its process throughout the court is not a matter within her immediate sphere of control. The last time she appeared before Shiraz J. was the last date where she was notified that the claim was being listed for hearing.

[23] As to what transpired when the suit came on for hearing, the Attorney-at-Law said:

i. The first hearing was fixed before Shiraz J., and was adjourned.
ii. On the second hearing, the Judge asked for the Attorney-General to be served.
iii. On the third hearing, the Applicant was absent, though notified and the Court was informed that the Attorney-General had been served. The matter was adjourned.
iv. On the fourth occasion, while in court, the Attorney-at-Law was advised that the suit was not scheduled for hearing. However, during the afternoon of the same day, the Attorney-at-Law was informed by Mr. Dwight Horsford that the matter was coming on. Due to the short notice she appeared without the Applicant. There were oral arguments from both Mr. Horsford and the Attorney-at-Law. The matter was then adjourned by the Judge.

In addition to the events in the Court, the Attorney-at-Law says that she asked the Applicant for a plan and valuation and the Applicant only provided a valuation. It is her view that the suit is still pending.

[24] The Applicant's version was:

i. On the first hearing, the Judge asked the Attorney-at-Law to serve the suit on the Attorney-General.
ii. On 11th October 2016, she was advised that the matter had come on for hearing on 10th October 2016, and the Attorney-at-Law inquired as to why she was not in attendance. She had not been informed of the hearing date.
iii. On another date she was asked to attend court and did attend only to be told that the matter was not coming on and then subsequently informed that it had.

[25] The Council made inquiries of the Deputy Registrar of the status of the suit, it having been put into evidence. The history of the matter as recorded in the Court file jacket is as follows:

i. Monday 4th July 2016: Before J. S Aziz.
In Court No. 1
Ms. G Ettienne for the C/mt
Order: Adj'd to 19/7/16 @8.30a.m. AG's Chambers to be served

ii. Monday 10th October 2016 Before J. S. Aziz.

In Chambers No. 5
Before J. S. Aziz
Ms. Ettiene for the Claimant
Claimant absent
Matter adjourned to 7th .11.16

iii. Monday 7th November 2016
In high Court No. 5
Before: J. S. Aziz
Ms. Ettienne for the C/mt
Mr. Horsford appeared amicus
Matter adj. to the 30.1.17

iv. Monday 30th January 2017
In Court No. 1
Before: J. S. Aziz
Matter dealt with administratively
Request by Ms. Ettienne to have matter removed from the list at 8:40a.m.
(Emphasis is the Council's).
Ms. Ettienne indicated that she would speak with the AG's Chambers.

[26] It appears that the Applicant last contacted the Attorney-at-Law on 27th January 2017, when Ms. Cameron telephoned the Attorney-at-Law to reiterate the Applicant's dissatisfaction and to say that she was exhausted, discouraged, distressed and not willing to return to Saint George's as it was becoming expensive. The Attorney-at-Law in response stated that she did not need to return to Saint George's and that she would be represented in court. It was shortly after this telephone call that the Applicant filed her application before the Council.

[27] The Applicant states that in late 2018, she received a telephone call from the Attorney-at-Law to request a meeting to discuss an alternative route for her to acquire possession of the property. At this time the recommended route was using the **Possessory Title Act 2016**. The conversation came to an end when the Attorney-at-Law became aggressive in discussing the Applicant's call in to a television/radio program. Both the Applicant and the Attorney-at-Law had different versions about the call-in save that the call happened.

[28] Under cross-examination, the Applicant said her frustration was not as a result of the delay of the suit, but it was with the Attorney-at-Law's attitude. She was insulting, she never explained anything to her, she never showed a paper saying what she did or what happened, and sometimes as soon as she opened her mouth to speak, the Attorney-at-Law would get angry and on one such occasion said to her that if she were not an old lady, what she would tell her.

[29] There was a question from the Council to the Attorney-at-Law and it was whether given the age of the claim by the Applicant, did the Attorney-at-Law consider that any action to remove rights of the Philips's might have been statute barred and she responded that she had not and only considered the Will as being unadministered[1].

[30] On a question from the Council, the Attorney-at-Law admitted that there was no written statement of work being undertaken and no updated invoice setting out actions being taken so as to account for the $11,000.00 paid. She however, felt that the Applicant was well updated by the telephone calls and in-person meetings between them.

[31] Up to the time of hearing, approximately 5 years after filing of the application, the Applicant had not retained the services of another attorney-at-law, and the Attorney-at-Law had not filed an application to come off the record of the suit. When the Applicant was asked if the Attorney-at-Law was still her lawyer, she responded that she did not know.

The Law

[32] The **Legal Profession Act 2011** Schedule III, the **Legal Profession Code of Ethics**(the **Code**) provides:

"20.(1) An attorney-at-law **shall** provide competent representation to his client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

(2) An attorney-at-law shall always act in the best interest of his client, represent him honestly, competently and zealously, and endeavour, by all fair and honourable means, to obtain for him the benefit of any and every remedy and defence which is authorized by law, steadfastly bearing in mind that the duties and responsibilities of attorney-at-law are to be carried out within the bounds of the law.

(3) The interests of his client and the exigencies of the administration of justice should always be the first concern of an attorney-at-law, and rank before his right to the compensation for his services.

21. (1) Before advising on a client's cause, an attorney-at-law **should** obtain full knowledge thereof, and give a candid opinion of the merits or demerits and probable results, or pending or contemplated litigation.

(2) An attorney-at-law should be reluctant in proffering bold and confident assurances to his client, (especially where employment may depend on such assurances) always bearing in mind that seldom are all the laws and facts on the side of his client; and that "audi alteram partem" is the safest rule to follow.

[1] This response ignores that that Will was probated with Mr. Ferdinand the executor.

(3) Where a dispute allows for settlement without litigation, an attorney-at-law should advise his client to settle the dispute.

....

31(1) An attorney-at-law is entitled to reasonable compensation for his services, but should avoid charges which either over-estimate or undervalue the services rendered.

(2) The ability of a client to pay, should not justify a charge in excess of the value of the service rendered, though the client's indigence may require a change that is below such value, or even no charge at all." (Emphasis is the Council's)

Findings and analysis:

[33] The Attorney-at-Law raised the issue of whether the Applicant's application was within the 3 year limit fixed for bringing applications, and secondly, she states that there was inordinate delay in hearing the application.

[34] The **Legal Profession Act 2011**, section 34 (4) provides that a complaint against an attorney-at-law for professional misconduct shall not be brought more than 3 years after (a) the date of occurrence of the facts giving rise to the complaint, or (b) the date of knowledge of the facts giving rise to the complaint of the Applicant. Based on the facts, the Applicant's application was well within the 3 year period for filing it. The Applicant met with the Attorney-at-Law on 25th February 2015, paid her consultation fee of $320.00 on 25th February 2015, and then by 15th April 2015, had paid in full the fees quoted of $11,000.00. The Applicant filed her application before the Council on 21st February 2017, well within the 3 year period fixed for filing applications.

[35] With regard to the fact that there was delay in fixing the hearing, the fact that the matter remained pending at the Council, was no fault of the Applicant and this delay in no way diminishes the right of the Applicant to be heard. Indeed, it is noted, that the Attorney-at-Law instead of responding to the application by an affidavit as required, sought to respond by a letter dated 26th February 2018, an improper form of response. The Attorney-at-Law only corrected her error by incorporating her letter in her affidavit filed 4th February 2022. The Attorney-at-Law was therefore the non-compliant party by the form of her response to the application.

[36] It is not the Council's duty to second guess the professional advice rendered by an Attorney-at-Law, however, pursuant to the Code rule 20, the Council must find that the advice demonstrated legal knowledge, skill, thoroughness, and preparation reasonably necessary for representation of the Applicant.

[37] The Applicant complained that she did not get any written document telling her what was being done and accounting for how her fees were being disbursed. It appears that from the Applicant's own affidavit that while she was not told about how the fees were being disbursed, that during the various telephone conversations or in-person meetings, that she was informed of certain actions taken or proposed to be taken.

Whether the Applicant fully grasped or understood the legal implications of the suggested actions or those actions taken, that is another matter.

[38] It appears to the Council that a clear point of advice which could certainly be challenged was that of placing a caution in the Registry and in the Inland Revenue. The placement of a caution on land is not provided for in the **Deeds and Land Registry Act Cap. 79**, the law under which deeds pertaining to the transfer of land are registered at Grenada. Further, a caution is not a creature of common law but of statute. A caution is generally found where title to land is registered. There is usually an entire regime as to how it is placed, the notice that must be given of it and to whom (it cannot be done in secret), how it is challenged and removed – see for example the Antigua and Barbuda **Registered Land Act Cap. 374** sections 127 to 131. So any purported registration of a caution in either the Registry or the Inland Revenue Department, would be a registration without any legal value to the Applicant.

[39] There was the suggested advice of pursuing possession pursuant to the **Possessory Title Act 2016**. The Applicant, never having any dealings with the property, it is difficult for the Council to follow how this would have assisted the Applicant.

[40] The suit – the Council observes firstly that the Applicant is cited in the heading as a defendant who is deceased, and yet is the administrator of her own estate. This clearly is inaccurate. Secondly, on perusal, the suit does not seek as reliefs : (i) a vesting order, (ii) a partition order, or (iii) an order for sale, these being the reliefs set out, as would be sought in the suit, in the Pro Forma Invoice.

[41] The Pro Forma Invoice was prepared before the Attorney-at-Law had thoroughly investigated the property which the Will clearly stated was the property of the Philips. That statement alone should have perhaps been an alert that the matter might not have been as straightforward as initially suggested to the Applicant.

[42] It appears that the Attorney-at-Law was "clutching at straws" as she swung from one suggested legal resolution to another as there was recommendation of: (i) a vesting order, (ii) selling the property and so avoid a lawsuit, (iii) make a deed in the Applicant and her siblings' names so that the interested buyer could purchase, (iv) the interested buyer could make a statutory declaration saying that he knew that the land belonged to the Applicant, (v) bypass the Will and go by way of claiming possession, (vi) make a deed directly to the interested buyer and let the Applicant sell to him, (vii) ignore Mr. Cameron's Will altogether, and (viii) the safest course for the Applicant would be to renounce her administratrix appointment because it prevented her from owning the property under the Will. Against this background, it is no wonder that the Applicant was confused.

[43] Finally, under cross-examination, Counsel for the Attorney-at-Law sought to cross-examine the Applicant heavily on the state of the suit and suggested that it was still pending and certainly led the Council to believe that it was still pending when the reality

was that the Attorney-at-Law had removed the matter from hearing on the Court's list and she was to speak with the Attorney-General's Chambers. The suit is certainly not pending and awaiting action by the Court.

[44] The Council, in considering its findings, is not convinced that the Attorney-at-Law showed competent representation of the Applicant as is required by Rule 20(1). This being so, the Council finds that there was professional misconduct by the Attorney-at-Law.

[45] The Council, with regard the matter of the caution, will order a full refund of $750.00. With regard to the suit, the Council will order a refund of the $7,500.00 charged since it did not seek any of the orders proposed and to compound the matter, the Court's record shows that the Attorney-at-Law removed the suit from the Court's hearing list. Total refund shall be $8,250.00.

[46] The Council will also issue a reprimand as compliance with Rules 20 and 21 by the use of the words "shall" and "should" is mandatory.

[47] Finally, the Council sincerely apologizes to the Parties for the delay in the fixing of this matter for a hearing, it having been filed on 21st February 2017.

Order

1. The Council hereby orders that the Attorney-at-Law refund the Applicant the sum of $8,250.00 within 21 days.

2. The Council hereby issues a stern reprimand to the Attorney-at-Law.

Rosalyn E. Wilkinson
Chairman