

**DECISION OF THE DISCIPLINARY COMMITTEE
OF THE GENERAL LEGAL COUNCIL**

Complaint No. 173/2010

**IN THE MATTER of a Complaint
by THOMAS ROSE against SEAN
KINGHORN, an Attorney-at-Law.**

A N D

**IN THE MATTER of the Legal
Profession Act.**

Panel:

Mr. David Batts, Q.C.
Mrs. Jeanne Robinson-Foster
Mrs. Ursula Khan

1. This complaint was sworn to on the 25th October, 2010. The complaint against the attorney is particularized as follows:
 - (a) He has not provided me with all information as to the progress of my business with due expedition although I have reasonably required him to do so.
 - (b) He has not dealt with my business with all due expedition.

2. The matter was first listed for the 16th July, 2011. The attorney was absent and the matter adjourned to the 12th November, 2011. On that date the attorney was again absent. The matter was then adjourned to the 21st April, 2012 and directives given for the attorney to be written to and advised that the matter will be dealt with in his absence if he failed to attend. This letter dated 18th November, 2011 was written and mailed to the attorney. On the 21st April, 2012 the attorney was absent. The Panel satisfied itself that adequate Notice had been sent to the

attorney as required by the rules. This is evidenced by an Affidavit of Service dated 18 April 2012 by Angella Moses who on the 14 March, 2012 posted a Notice of Hearing dated 8 March, 2012 to Mr. Sean Kinghorn. Thereafter, we decided to take the evidence of the Complainant.

3. The Complainant, Mr. Thomas Rose was sworn. He deponed that he lives in Shooters Hill, Kellits, Clarendon. He is 65 years of age. He attended Mr. Kinghorn's office in Linstead. He went there because he was injured. He did not pay him any fees as the attorney would take a percentage, i.e. on a contingency basis. He could not recall the percentage agreed. It was in 2004 that he went to Mr. Kinghorn. The accident occurred in 2001.
4. The Complainant stated that he gave the attorney a medical report and a "police record". On the 29th January, 2004 he signed a Claim Form and Particulars of Claim. These were admitted in evidence as **Exhibit 1**.
5. He stated that he provided the Defendant's address to Mr. Kinghorn and detailed the address which was the address on the Claim Form. The police report and medical certificate were admitted into evidence as **Exhibits 2 and 3** respectively.
6. The Complainant stated that on numerous occasions he went to Mr. Kinghorn's address or he would call, and Mr. Kinghorn always advised that no court date had yet been given. In 2008 Mr. Kinghorn told him that he was unable to locate the Defendant. The Complainant said he then took back his papers. He took them back on the 21st January, 2008. He said that prior to taking back the papers Mr. Kinghorn told him that the driver was uninsured and that he would therefore be required to sue the driver, a Mr. Junior Blackman in his personal capacity.
7. The Complainant said Mr. Kinghorn did not tell him he could not find the Defendant to serve him the papers. He said that he knew where to find the

driver and therefore he gave the police something to give to Mr. Junior Blackman which the police did. He told this to Mr. Kinghorn.

8. He did not know what happened to the owner Mr. Frederick Duncan. He said when he told Mr. Kinghorn the driver was served Mr. Kinghorn told him they had to wait on a court date. He said when he took back his papers in 2008 he did not go to another lawyer because he wanted to wait until he had some money.
9. He went to the General Legal Council because of how Mr. Kinghorn handled the case. He told Mr. Kinghorn that he was dissatisfied and Mr. Kinghorn told him that he was finished with him. He is saying that Mr. Kinghorn was negligent.
10. The matter was adjourned to the 23rd June, 2012 and costs of \$3,000.00 were awarded in Mr. Rose's favor. We directed that the Notes of Evidence be sent to Mr. Kinghorn.
11. On the 23rd June, 2012 Mr. Kinghorn was again absent. The panel satisfied itself that Notice was duly posted, proof of service being by way of an Affidavit dated 19 June, 2012 by Angella Moses who on the 15 May, 2012 posted a Notice of Hearing to Mr. Kinghorn.
12. The matter was then adjourned C.A.V. for us to consider our decision.
13. This Committee reminds itself that the Complainant has a duty to satisfy us beyond reasonable doubt that is so that we are sure. *Campbell v Hamlet [2005] UK PC 19*. We remind ourself also of Rule 8 of the Fourth Schedule to the Legal Profession Act which enables us to proceed in the absence of either party.
14. Having viewed the evidence of the Complainant we find him to be a witness of truth. We make the following findings of fact:

- (a) The Complainant retained Mr. Sean Kinghorn in or about the year 2004.
 - (b) He instructed Mr. Kinghorn to bring an action on his behalf arising out of injuries suffered in a motor vehicle accident.
 - (c) He provided the attorney with a medical report and a police report which contained particulars of the intended Defendants.
 - (d) The attorney did file an action being Claim No. 2004/HCV-00167 on the 29th January, 2004 – Thomas Rose v. Junior Blackman and Frederick Duncan.
 - (e) The claim was served upon Junior Blackman with the assistance of the police and this was communicated to Mr. Kinghorn.
 - (f) The Complainant unsuccessfully attempted to get information from his attorney as to the progress of his case.
 - (g) In 2008 the attorney told him he was unable to locate the Defendants for service.
 - (h) The Complainant retrieved his papers from his attorney in 2008.
15. It is apparent on the findings that the complaint against the attorney has been proved. The Complainant was in 2008 and now, quite in the dark as to the stage at which his claim has reached nor of any steps which he may take to get it underway. Equally, there has been some delay and want of expedition in the period 2004- 2008 when the papers were retrieved. This is particularly so as the claim was served on the 1st Defendant and the attorney was so advised.
16. In the result we find that the attorney has acted in breach of :
- (a) Canon IV (r) of the Legal Profession (Canons of Professional Ethics)
Rules which states:

“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 or to the progress of the client’s business with due expedition.”

17. We have regard to the injuries of the Complainant. However, we bear in mind that he retrieved his papers in 2008 and had he taken them to an attorney he may still have salvaged some benefit from the claim filed and indeed may yet still do so. In all the circumstances however, and in particular the egregious manner in which the attorney has failed to communicate with his client or to pay him the courtesy of a written explanation about the status of his case or difficulties if any being experienced, we impose the following sanctions:-

- (a) The attorney is to pay a fine of \$600,000.00. \$500,000.00 of which is to be paid to the Complainant in part satisfaction of any damages caused pursuant to Section 12 (5) of the Legal Profession Act.
- (b) The attorney is to pay costs to the Complainant of \$6,000.00 (being \$3,000.00 already ordered and a further \$3,000.00).

18. Finally, we note the attorney's failure to attend or respond to this complaint. We remind the attorney that The Legal Profession (Canons of Professional Ethics) Amendment Rules (1983) requires a response to all complaints and the attendance of the attorney at Disciplinary hearings. This forms no part of this decision or its consequences. We caution that a failure to abide by this Canon can itself be the subject of a separate complaint.

Dated the 12th day of January 2012-2013.

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 David Batts, Q.C.

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 Jeanne Robinson-Foster

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 Ursula Khan