

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

**IN THE MATTER OF ROLAND BYFIELD and  
JACQUELINE M. MINTO**

**AND**

**IN THE MATTER OF THE LEGAL  
PROFESSION ACT**

PANEL: Mr Jerome Lee - Chairperson  
Ms Katherine P.C. Francis  
Mr Kevin O. Powell

PRESENT: Dr Roland Byfield

HEARING: December 10, 2022; January 14, February 25, May 27, July 8 and  
September 23, 2023.

**Introduction**

1. Dr Roland Byfield is the Complainant in this matter. By Form of Application dated July 22, 2021 and Form of Affidavit sworn to on March 11, 2022, the Complainant alleges himself aggrieved by acts of professional misconduct committed by attorney Jacqueline M. Minto ("the Attorney").
2. The complaint against the Attorney is three-fold. First, the Complainant alleges the Attorney has not provided him with all information as to the progress of his business despite reasonably requiring her to do so. Second, the Complainant alleges that the Attorney has not dealt with his business with all due expedition.

Third, he alleges that the Attorney has acted with inexcusable and deplorable negligence.

3. The complaint was heard in the absence of the Attorney. It may be necessary therefore to set out the history of the matter to explain why the Panel decided to take that approach.
4. The complaint was fixed for hearing on January 14, 2023. The Complainant was present, but the Attorney was absent. However, the Panel observed that the notice fixing the hearing for that date indicated it would have proceeded by Zoom. In the circumstances, the Panel adjourned the complaint to February 25, 2023 for trial and directed that the Attorney be informed that if she is not present on that occasion the matter may be heard in her absence.
5. The matter did not proceed on February 25, 2023 due to the absence of one of the members of the Panel. On that date, while the Complainant was present in person, the Attorney was not. The secretary to the Panel contacted the Attorney by telephone and in the hearing of the Complainant and the present members of the Panel, she confirmed she was aware of the complaint. The Panel directed the Attorney to file her affidavit in response to the complaint and a list of documents by April 7, 2023. The Panel adjourned the complaint to April 29, 2023 and directed the Attorney to attend in person.
6. The hearing scheduled for April 29, 2023 was postponed to May 27, 2023. On May 27, 2023 when the matter was called up for trial the Panel confirmed that the Attorney was given notice of the hearing. However, the Attorney was absent, did not have a representative present and did not proffer an excuse for her absence. The Complainant was present and ready to proceed. In all the circumstances the Panel proceeded with the hearing in the absence of the Attorney in the exercise of its discretion under the Legal Profession (Disciplinary Proceedings) Rules.

7. The Complainant completed his evidence in chief on May 27, 2023. The Panel adjourned the matter to July 8, 2023 and directed that the Attorney be provided with the notes of evidence and informed that the matter may be completed if she does not attend on the next occasion to cross-examine the Complainant and present her case. On July 8, 2023 the Attorney was absent. She did not provide an excuse for her absence and did not have a representative present on her behalf. Having satisfied itself that the Attorney was given notice of the hearing, the Panel allowed the closing of the Complainant's case and adjourned to deliver its judgment.

### **The Complainant's Evidence and Findings of Fact**

8. The Complainant relied on the Form of Application Against an Attorney-at-Law dated March 11, 2022 and Form of Affidavit by Applicant sworn to by him on the same date. They were admitted into evidence respectively as Exhibits 1 and 2.
9. The Complainant gave *viva voce* evidence before the Panel and relied on documents which the Panel admitted into evidence as exhibits. These documents included:
  - a. Receipt no. 2580 dated January 11, 2008, tendered, and admitted into evidence as Exhibit 3.
  - b. Email dated January 29, 2018, from Jacqueline Minto to Roland Byfield, tendered and admitted into evidence as Exhibit 4.
  - c. Email dated December 10, 2019, to Jacqueline Minto, tendered and admitted into evidence as Exhibit 5.
  - d. Letter dated December 29, 2021, from Paris & Co. to Jacqueline Minto, tendered and admitted into evidence as Exhibit 6.
  - e. Agreement for Sale dated August 27, 2008, tendered, and admitted into evidence as Exhibit 7.

10. The Complainant was a candid and believable witness. The Complainant was not subjected to cross-examination, but the Panel, having seen and assessed him, accepted his evidence as accurate and truthful. His evidence in material respects was also supported by the documentary evidence on which he relied.
11. Having considered all the evidence before it, the Panel makes the following findings of fact.
12. The Complainant retained the Attorney to administer the estates of the Complainant's late father and mother. In January 2008 he paid her \$100,000 to do so. In relation to his late father's estate the Complainant retained the Attorney to apply for letters of administration on his behalf.
13. The Complainant provided the Attorney with all the documents the Attorney requested to complete the application for letters of administration. The Complainant made several visits and calls to the Attorney's office for an update on the application, but they were mostly unsuccessful.
14. It was not until early 2018 that the Attorney informed the Complainant that the application for letters of administration was filed in the Supreme Court. The Complainant subsequently attempted to obtain updates from the Attorney on the progress of the application, but her responses were to the effect that it was delayed due to the court staff misplacing documents.
15. In February 2020 the Complainant retained a firm of attorneys, Paris & Co., to complete the application on his behalf. On March 23, 2020 he informed the Attorney that her services were terminated and requested the return of his documents. The Attorney did not return the documents. Eventually Paris & Co. completed the application letters of administration in the estate of the Complainant's father.

16. Acting for the Complainant, by letter dated December 29, 2021 Paris & Co. wrote to the Attorney requesting that she provide, among other things, the original death certificate of the Complainant's mother and documents related to noting her death on and the duplicate certificates of title for properties in the estate of the Complainant's late father.
17. The Attorney did not return the Complainant's documents and on January 28, 2022 the Complainant spoke with the Attorney and repeated his demand for the documents to be sent to his new attorneys. The Attorney informed him that a package with the documents was being prepared to be sent by bearer. However, up to the date of the hearing neither the Complainant nor his new attorneys had received anything from the Attorney.
18. As a result of the Attorney's failure to return the Complainant's documents the Complainant was unable to complete the sale of one of the properties in his late father's estate registered at Volume 1031 Folio 42 of the Register Book of Titles.

### **Disposition**

19. Based on the findings of fact, the Panel concludes that the Attorney failed to provide the Complainant with all information as to the progress of his business with due expedition having been reasonably required to do so and failed to deal with the Complainant's business with all due expedition and has breached the Canons in this respect.
20. The Canons import a stringent test of the degree of neglect or negligence that constitutes professional misconduct. In Norman Samuels v General Legal Council [2021] JMCA Civ 15 McDonald-Bishop, JA stated:

*[84] The learned authors of the text, The Law of Legal Services (2015) at pages 144 -146, helpfully noted at paragraphs 4.39 - 4.40 that there is a*

*distinction between the fault required for professional negligence and that required for misconduct. They referenced dicta from Saif Ali v Sydney Mitchell & Co [1980] AC 198 at pages 218 and 220, where Lord Diplock explained that the concept of negligence within this context involves “advice, acts or omissions in the course of their professional work which no member of the profession who was reasonably well-informed and competent would have given or omitted to do”.*

*[85] At page 145, paragraph 4.40 of the same text, the learned authors noted that the culpability required for misconduct does not have to amount to a lack of integrity; but it is more than simply making a mistake. Citing the words of Lord Cooke in Preiss v The General Dental Council [2001] 1 WLR 1926 at 1936, they continued:*

*“It is settled that professional misconduct does not require moral turpitude. Gross professional negligence can fall within it. Something more is required than a degree of negligence enough to give rise to civil liability but not calling for the opprobrium that inevitably attaches to disciplinary offences.”*

*In Re A Solicitor [1972] 1 WLR 869, the Court of Appeal decided that negligence by a solicitor may amount to professional misconduct “if it is inexcusable and as such to be regarded as deplorable by fellow solicitors”*

...

21. In this case, the evidence is that the Attorney failed to complete the application for letters of administration 12 years after receiving instructions to do so. It was a process that was completed by the Complainant’s subsequent attorneys, Paris & Co. in less than 24 months – having been retained in February 2020 and in December 2021 sharing the grant of administration with the Attorney. The Attorney also had a duty to return the Complainant’s documents to him on the termination of her retainer but despite promising to do so she has failed to date to discharge her duty.

22. In the absence of any explanation from the Attorney as to the gross dereliction of her duties as the Complainant's Attorney-at-Law, the Panel is constrained to find that she is guilty of professional misconduct in respect of this aspect of the complaint against her.
23. In coming to these conclusions, the Panel finds that the Complainant has discharged the legal and evidential burden of proving his complaint against the Attorney beyond all reasonable doubt – see **Wilton Campbell v David Hamlet (as Executrix of Simon Alexander Privy Council Appeal No. 7 of 2001)**.
24. The Panel directs that a date be fixed at which the Attorney will be allowed an opportunity to make representation in mitigation of the sanction the Panel will impose.

Dated the 23<sup>rd</sup> day of September 2023



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**JEROME LEE**



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**KATHERINE P.C. FRANCIS**



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**KEVIN O. POWELL**