

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

**COMPLAINT NO: 117 of 2007**

**BETWEEN** EARL BIGGS **COMPLAINANT**

**AND** SEAN KINGHORN **RESPONDENT**

**PANEL:** ALLAN S. WOOD  
LILIETH DEACON  
DR. RANDOLPH WILLIAMS

Appearances: Earl Biggs in person.  
Dates of hearing: 16<sup>th</sup> May and 24<sup>th</sup> July 2009

1. By affidavit in support of the complaint sworn on 17<sup>th</sup> April 2007, the Complainant has alleged that the Respondent, acted with inexcusable or deplorable negligence in the performance of his duties as the Complainant's attorney-at-law. The Respondent acted for the Complainant in proceedings for division of matrimonial property situate at 23 Florida Avenue, Independence City, Saint Catherine and the Complainant seeks compensation for the losses that he has suffered. The Complainant's affidavit sets out the gravamen of the complaint as follows:

"I gave Mr. Kinghorn credible and authentic documents to be presented as exhibits which would have the effect of negating the lies which my wife told in the matter but Mr. Kinghorn deliberately suppressed these exhibits and kept some from the Court – resulting in the Court ruling against me and causing me to loose (sic) my house plus hundreds of thousands of dollars."
2. The hearing of the Complaint commenced on 16<sup>th</sup> May 2009 in the absence of the Respondent, the Panel having been satisfied that service of the notice of hearing had been duly effected and there being no explanation for the Respondent's absence. The hearing was adjourned to 24<sup>th</sup> July 2009 to afford the Respondent the opportunity to state a defence and notes of the evidence provided to him. The Respondent again failed to attend on 24<sup>th</sup> July 2009 or to tender any explanation for his absence. The Complaint arises from matrimonial proceedings that had been commenced against the Complainant by Angella Biggs, his wife (hereinafter called the "Claimant").
3. The testimony of the Complainant in summary was as follows:
  - i. Up to 2001 he and his wife resided at the matrimonial home, 23 Florida Avenue, Independence City. The house had been initially rented. There was one child of the marriage, a daughter, Danielle then age 12 in 2004 and in addition his wife had three adult children who resided at the home.

- ii. In 2001, the Claimant migrated to the United States and two of her adult children left the home leaving her adult son, Sheldon Coulson who was a police officer.
- iii. That was the genesis of the problem. Sheldon Coulson became disrespectful and wanted to cohabit in the home with his girlfriend to which the Complainant objected. The Complainant had to write to the Office of the Commissioner of Police to request assistance to put him out. That left only the infant daughter, the Complainant and a helper in the house.
- iv. In 2004 the Complainant allowed his sister-in-law to take his daughter to Portland to spend the holidays with her grandmother. Within days court papers were served on him including affidavits by his wife, Sheldon Coulson and Icilda Gaye (the grandmother) whereby the Claimant applied for custody of the child of the marriage and division of the matrimonial property.
- v. The Complainant approached the Respondent to represent him. The Complainant had been a juror in a case in which the Respondent had represented the accused and he had been very impressed with the Respondent's defence of the accused person.
- vi. In the course of the proceedings, the child was kidnapped and taken to the United States and the custody proceedings were not pursued.
- vii. As to the division of the matrimonial property the Complainant gave the Respondent a number of documents which he felt could refute the lies that were contained in the affidavits of the Claimant, Icilda Gaye and Sheldon Coulson and affidavits by the Complainant were prepared and filed. However, the documents on which he wished to rely to refute the lies were not exhibited. A number of these documents were tendered by the Complainant in the course of this testimony to the Panel including correspondence from his wife while she was in the United States, receipts evidencing payment of arrears of rent, bank pass books, credit card statements, receipts for payment of transportation expenses for the child, and the Complainant's Cable & Wireless medical card. These documents were never tendered during the Court proceedings.
- viii. He contended that the letters from the Claimant showed that whenever she sent amounts, she identified them as gifts for the children and her mother. It was not true that she sent money to purchase the house.
- ix. Prior to its acquisition the house had been rented for \$15,000 per month. The Complainant paid the down payment to rent the house and he continued to do so as he was the only person working. He was the sole breadwinner.
- x. The landlady told them that she was planning to sell the house and would give them priority as they were good tenants. His wife asked the landlady to forego rent to allow them to accumulate some money to purchase the property.
- xi. He gave his wife some money to go to Curacao in 1997. He rented a vehicle and tried to sell the goods. However this venture was a failure for the reason that she bought things that were too expensive and could not be sold.
- xii. Michael Spencer, a friend who was a co-worker at Cable & Wireless lent the Complainant \$300,000 to make the deposit on the house. The closing costs were borrowed by his wife and he took a loan of \$80,000 to repay same. After the money was paid down to purchase the house the landlady said she wanted the back rent which was

- then \$120,000 to be paid in US dollars. He paid the back rent and tendered in evidence receipts dated 27<sup>th</sup> July 2002 and 30<sup>th</sup> March 2003 totalling US\$4,000.00.
- xiii. Further, he also discussed with the Respondent that he was interested in cross questioning the Claimant and her witnesses and on one occasion in August 2005 when the matter came up in Court in the Respondent's absence, the Complainant requested Miss Deidre Coy who was holding for the Respondent to request cross-examination which she did. However, the Judge, Justice McIntosh said she was not going to allow cross-examination. He realised that the matter was going against him. Miss Coy asked for an adjournment.
- xiv. He then spoke to the Respondent who promised that next time he would be there. He asked the Respondent about submitting his exhibits, he also spoke to Miss Coy about this and Miss Coy indicated to him that the Respondent had said to her that she should not present them. His affidavit made no reference to these exhibits for example his wife had deponed that he gambled away her savings of \$500,000 and as a consequence she took poison and was taken to the Portmore Health Centre where her stomach was pumped. The Complainant maintained that such an incident never occurred and this was confirmed to him by the doctor who could have been called to give evidence but again no attempt was made to do so.
- xv. On the next occasion when he went to Court he knocked and entered the Judge's chambers and the Judge and the Claimant's attorney were obviously surprised to see him. They had the court file and were in a hurry to close it. The Judge told him that the Respondent could not attend and was seeking an adjournment. His wife's attorney proceeded to make statements to the Judge that divulged negotiations and without prejudice letters and misrepresented the facts including stating that he had never supported the child and that he had a gambling habit. He told the Respondent and he did nothing about it.
- xvi. The claim for division of the matrimonial home proceeded to judgment on the basis of written submissions from the parties. On 25<sup>th</sup> November 2005, the Judge ordered that the Complainant was entitled to 20 per cent and his wife 80 per cent of the beneficial interest in the matrimonial home with consequential orders giving the Claimant option to purchase the Complainant's interest and giving the Claimant's attorney-at-law carriage of sale with powers to the Registrar of the Supreme Court to execute any document with regards to the sale or transfer of the matrimonial home. The matter had proceeded to judgment without cross-examination of any witness entirely on written submissions by the respective parties.
- xvii. Following upon the judgment of the Court delivered 25<sup>th</sup> November 2005 an appeal was filed on the Complainant's behalf by the Respondent on 7<sup>th</sup> December 2005.
- xviii. The Complainant's evidence was that he asked the Respondent if he needed to apply for a stay of the judgment to which the Respondent advised that he had appealed and time would not be a factor. An application for a stay was not made.
- xix. On 22<sup>nd</sup> February 2006, the Registrar of the Supreme Court transferred the Complainant's interest in the matrimonial home.
- xx. In June 2006 the Complainant took his file from the Respondent who was displeased that the Complainant had filed a complaint with the Disciplinary Committee against his wife's attorney.

- xxi. On 14<sup>th</sup> December 2006 the Complainant was evicted from the home.
- xxii. All he received for his interest in the property after deduction of costs was \$2,580.00 and he was put out on the street.
- xxiii. Following the eviction, the Complainant fell into a deep depression with the result that he lost his job at Cable & Wireless and has been unable to hold employment since.
4. It was revealed in the course of the Complainant's testimony through questions posed by the Panel that prior to the judgment, the Claimant's attorney had made an offer by letter dated 27<sup>th</sup> April 2005 (exhibit 12A) for settlement of the claim for division of the matrimonial property on the basis that the property be divided equally, that the Complainant should have the option to purchase his wife's 50 per cent share and failing such an agreement that the property be sold and the proceeds divided equally. The response by letter 6<sup>th</sup> May 2005 (exhibit 12B), on the Respondent's letterhead signed by Deidre Coy accepted the proposal for the Complainant to purchase the Claimant's half share but added a term that the Claimant should pay the Complainant's legal costs. By letter dated 10<sup>th</sup> May 2005 (exhibit 12C), the Claimant's attorney responded proposing that each party should bear their own costs. The response by letter dated 30<sup>th</sup> May 2005 (exhibit 12D), again signed by Deidre Coy was that the Complainant's further instructions were that "if Mrs Biggs does not intend to pay the legal costs incurred by Mr Biggs thus far, he wants the matter to proceed through the courts."
5. In response to questions from the Panel, the Complainant admitted that the Respondent had in fact urged him to accept his wife's settlement offer and he had rejected that advice and insisted on the condition that his wife must pay his legal costs. He had also wanted an apology from his wife but that demand was not communicated at the Respondent's urging. This was a most unfortunate decision by the Complainant, no doubt driven by bitterness towards his wife. However, that fact does not absolve the Respondent of his obligation to represent the Complainant with reasonable care and diligence so long as he continued to act in the matter.
6. The Complainant also called as a witness Mr. Michael Spencer who had been a co-worker with the Complainant at Cable & Wireless and who confirmed that he had loaned the Complainant the sum of \$300,000.00 for the down payment towards the matrimonial home and that this sum had been repaid to him by the Complainant by deduction from his salary paid by Cable & Wireless.
7. The Complainant's case against the Respondent was that he had failed to tender into evidence the documentary evidence and to call witnesses such as Mr. Spencer to support his case and to refute the lies that were told by his wife. The Legal Profession (Canons of Professional Ethics Rules) 1983 Canons IV(s) (hereinafter called the "Canons") provides:-
- (s) In the performance of his duties an Attorney shall not act with inexcusable or deplorable negligence or neglect.

8. The Panel is guided by the decision of the Court of Appeal in Witter v Roy Forbes (1989) 26 JLR 129. In that case the attorney had received a settlement proposal on 27<sup>th</sup> January 1979 which had a deadline for acceptance by 30<sup>th</sup> September 1979 and the attorney failed to communicate the proposal to his client until October 1980, well after the deadline had passed. The Court of Appeal held that a finding that the attorney had acted with inexcusable or deplorable negligence or neglect was justified. Carey JA noted at pages 132 to 133 that in promulgating the Canons, the General Legal Council had taken a practical approach, no doubt appreciating that where an attorney conducted a busy practice some slips would inevitably occur that could be labelled as negligence or neglect, but as this was the expected (unavoidable) consequence of a busy practice, the attorney ought not to be penalised for same as having committed professional misconduct. The proper remedy would be to seek redress by way of an action in the Court for negligence and not to penalize the attorney for an act of professional misconduct. Nevertheless, there was a level of neglect or negligence which no reasonably competent attorney would be expected to commit and this is what Canon IV (s) addressed as being professional misconduct by attaching the label “inexcusable or deplorable”. It is for the Disciplinary Committee to determine whether the attorney had gone beyond an acceptable level of negligence or neglect into the realm of what is “inexcusable or deplorable”. Carey JA stated:-

“The Council is empowered to prescribe rules of professional etiquette and professional conduct. Specifically, rule (s) of Canon IV is concerned with professional conduct for Attorneys. It is expected that in any busy practice some negligence or neglect will occur in dealing with the business of different clients. But there is a level which may be acceptable, or to be expected, and beyond which no reasonable competent Attorney would be expected to venture. That level is characterised as ‘inexcusable or deplorable’. 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 cannot accept that the determination of the standard set will vary as the composition of the tribunal changes. The likelihood of variation is in the sentence which different panels might impose but that, doubtless, cannot be monitored by the Court or the Counsel itself.”

9. It is well established that in determining whether professional misconduct has occurred, the applicable standard of proof is that the Disciplinary Committee must be satisfied beyond reasonable doubt that the Complaint must be established: see Campbell v Hamlet [2005] UKPC 19. Accordingly where a complaint of professional misconduct is made, the Disciplinary Committee must be satisfied beyond reasonable doubt that the complaint has been established.

10. We add that Canons I (e) and I (f) impose on an attorney a duty to provide a response to a complaint and to attend the hearing as follows:
  - “(e) An attorney shall so far as possible comply with a request from the General Legal Council or the Disciplinary Committee for comments or information on any aspect of a complaint being considered by the General Legal Council or the Disciplinary Committee.
  - (f) An Attorney shall ensure his attendance at Disciplinary Committee proceedings when so requested by the Disciplinary Committee.”
11. Canons I (e) and I (f) posit a professional duty upon an attorney against whom a complaint is made to respond providing comments and information to the Disciplinary Committee and where as in this case, the complaint is fixed for hearing and the attorney is duly notified of the hearing, the attorney is also duty bound to attend the hearing. Where an attorney fails to provide any information in response to the complaint and fails to attend the hearing to state a defence when repeatedly notified of the hearing and the evidence tendered against him, the Disciplinary Committee can in our view quite reasonably treat such failure by the attorney to respond as constituting an admission by the attorney that the allegations and the evidence submitted by the complainant are not being challenged. In any event where the attorney’s breach of Canons I(e) and I(f) causes delay or is wasteful of the Disciplinary Committee’s time, an order for costs can also be made against the attorney pursuant to s12(4C) (b) of the Legal Profession Act.
12. The testimony that was given by the Complainant provided a moving account in support of his complaint against the Respondent and it should be added that the Respondent has not bothered himself to refute same at any stage of the proceedings. However perusal of the affidavits filed in the course of the proceedings in the Supreme Court which the Complainant tendered in evidence gives a different picture from that given by the Complainant in his testimony to the Panel and compels the Panel to find that the Complainant is not a reliable or truthful witness.
13. In respect of the claim for division of the matrimonial property, affidavits were filed by the Claimant, Sheldon Coulson, her son and Icilda Gaye, her mother. The Claimant’s evidence by affidavit filed in the Supreme Court dated stamped 23<sup>rd</sup> July 2004 was that:
  - i. She married the Complainant in 1994 having had a daughter by him in 1992. At the time she met the Complainant she was renting 23 Florida Avenue. In 1994 they learned that the house was available for sale and it was decided to save towards acquiring it.
  - ii. She had made most of the contributions for the acquisition of the matrimonial home from her earnings overseas commencing from 1996 when she did informal business, buying goods in Curacao and Panama and then in the United States for sale in Jamaica. Her money was used to purchase a vehicle for \$60,000 which was resold for \$200,000 which was put in the bank towards purchasing the home.

- iii. That in 1999 she discovered that the Complainant had gambled or otherwise frittered away the savings of \$500,000.00 to the point that they were forced to borrow the down payment of \$300,000.00 to acquire the house and that even the payment of rent had fallen into arrears; that when she returned to Jamaica in 1999 and realised what had occurred she became suicidal and tried to take her life and attended the Portmore Medical Centre where the doctor had to pump her stomach.
  - iv. That the house was acquired with a mortgage from the National Housing Trust (NHT) and it was arranged that the Claimant would send money to pay the household expenses while the Complainant was to use his salary to pay the mortgage.
  - v. That the mortgage repayments were to have commenced in May 2000 and that by August 2000 she was informed by NHT that the mortgage was 3 months in arrears. She was forced to borrow US\$700.00 from her employer which she sent to her aunt to make the payment.
  - vi. That she returned to Jamaica in December 2000 at which time the relationship with the Complainant had deteriorated. She returned to the United States in July 2001 and sent back funds as before to meet household expenses while the Complainant was to pay the mortgage.
  - vii. In October 2001 she discovered that the mortgage was again in arrears from April 2001 and that the house was about to be auctioned. She again had to send money to pay the mortgage.
  - viii. That she had moved Sheldon Coulson into the house to take care of the daughter and since 2001 she had been sending money to meet the household expenses as well as paying the mortgage.
  - ix. That the Complainant had moved a lady into the house and that her daughter had called her very upset at what had occurred. This she attributed as the cause of the breakdown between the Complainant and her son, Sheldon Coulson and that it was Sheldon Coulson who had insisted that the woman leave the premises.
14. In response the Complainant filed an affidavit in the Supreme Court dated stamped 30<sup>th</sup> August 2004 containing several statements and admissions that were adverse to his case including:
- i. He corrected the Claimant that they learned that the house was available for sale in 1997 not 1994. Further that the Claimant made no contribution to the purchase of the vehicle which was purchased with a loan and sold in the same year for \$160,000. He agreed that that money was put in the bank (paragraph 12). That the Claimant only sent money sporadically and in small quantities primarily as grants to her family. They never saved \$500,000 and he was forced to borrow the down payment (paragraph 13).
  - ii. At paragraph 15 while denying that he had frittered away money or that the Claimant had attempted to take her life, he admitted that prior to purchase of the matrimonial home, the rental had fallen into arrears to the tune of \$120,000. He had asked for a waiver on the rent as he was solely responsible for household expenses, the expenses of the children, the rent, the finding of the deposit. He

found himself in dire financial straits and the Claimant was not offering much assistance.

- iii. At paragraph 16 that it was the Claimant who had borrowed the money to pay the closing costs. Further that they had an argument and he decided to pay the household expenses not the mortgage instalments and the Claimant would have to pay the monthly mortgage instalments.
  - iv. At paragraph 18 that he made his position clear that he would not be carrying the impossible burden of making mortgage payments and paying household expenses. He would pay the household expenses and Danielle's expenses and that it was for the Claimant to pay the monthly mortgage. The Claimant sent no funds to him for Danielle. If the mortgage payments had fallen into arrears it was because the Claimant did not make the payments.
  - v. At paragraph 25 the Complainant stated his earnings to be \$60,000 per month.
15. The Affidavit of Sheldon Coulson filed in the Supreme Court dated stamped 13<sup>th</sup> August 2004 deponed that:
- i. His mother had been travelling from 1999 to earn money to pay the family's expenses and that in 2001 she went to the United States.
  - ii. That in 2004 the Complainant had hit Danielle on several occasions and on one specific occasion had boxed her over homework (paragraph 6).
  - iii. That he suspected that the Complainant had commenced a relationship with the helper in 2003 and this was upsetting to Danielle who on one occasion saw the helper lying on the Complainant's bed, that he confronted the Complainant who questioned his authority to speak to him like that (paragraph 11).
  - iv. In June 2004 Danielle had called him most upset to say that the helper had moved her things into her mother's bedroom (paragraph 14). He went to the house and confirmed that this was so and he removed the helper's things from the bedroom. This led to the Complainant cursing his mother and to avoid the altercation he left the house. On his return the police were present.
  - v. That the Complainant was not contributing to payment of the mortgage with the result that the mortgage had fallen into arrears and the Claimant had sent him money to pay off the arrears which were about \$200,000.00(paragraph 21).
  - vi. That since 2004 his mother has been paying the mortgage by standing order from her bank account and that she remits the money to him for lodgement to the account. The receipts for payment of the mortgage were exhibited (paragraph 22).
  - vii. Sheldon Coulson went on to also depon that as his contribution to the household expenses he had been paying the electricity, water, telephone and cable bills and that he also has been paying the property tax (paragraph 23).
16. To this affidavit the Complainant responded by affidavit filed in the Supreme Court dated stamped 30<sup>th</sup> August 2004 wherein:
- i. He admitted having boxed Danielle but denied that this was over homework Rather he stated that Danielle had stolen money from him and had lied and he thought that this warranted punishment so he slapped her in the face (paragraph7).



- ii. The Complainant went on that on occasions he has had to punish Danielle by spanking her as “I am one of the parents who does not believe that I should spare the rod and spoil the child.” That Sheldon Coulson had a problem with him punishing Danielle and had set himself up as some imaginary protector and on that occasion (presumably when he had slapped Danielle in the face) Sheldon Coulson had confronted him with his firearm conspicuously displayed in his waist (paragraph 8).
  - iii. The Complainant denied having anything other than a “platonic” relationship with the helper (paragraph 9), that it was not true that the helper was in his room but that due to Sheldon Coulson’s allegations the helper moved out when Sheldon Coulson cursed her but the Complainant begged her to return as she was doing a good job (paragraph 10),
  - iv. That the helper subsequently returned and Sheldon Coulson threw out her things and assaulted her and the Complainant with the result that the Complainant called the police (paragraph 11).
  - v. There was no denial of the evidence given by Sheldon Coulson as to payment of the mortgage and other household expenses.
17. From this state of the evidence in the Supreme Court, it is clear that a generous offer was made on behalf of the Claimant to settle the claim for division of the matrimonial home on the basis that the beneficial interest be divided equally and offering the Complainant the option to purchase her share. Despite the urging of the Respondent, the Complainant rejected that offer for the reason that he required the Complainant to pay his legal costs. Save in the most exceptional case, a wife who seeks division of the matrimonial home will not be ordered to pay costs: see Jones v Jones (1990) 27 JLR 65. As the Complainant had persisted in his unreasonable position that his wife should pay his legal costs, the Respondent would have had a good reason to withdraw from the matter. However, it is clear that he elected to proceed notwithstanding, and having so elected, the Respondent owed a duty to act with reasonable care and that in our view entailed presenting the best case available to the Complainant.
18. In proceedings for division of matrimonial property, where factual accounts are contradicted and the credibility of witnesses has to be determined, a party is entitled to ask that such factual issues and the issue as to his credibility be judged after cross-examination of the deponents: Chin v Chin (No1) (1999) 58 WIR 335. A review of the written submissions filed by the Respondent on the Complainant’s behalf failed to make this point. That having been said the affidavits filed by the Complainant contained several admissions that were adverse to his case, the most relevant to the determination of the division of the matrimonial property being that so far as he was concerned the mortgage payments were the responsibility of his wife, his admission that the mortgage had fallen into arrear and that the arrears and further payments were to be borne by his wife.

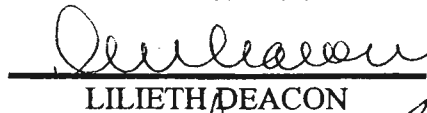
19. In course of the hearing of the complaint, there has been no suggestion by the Complainant that the contents of his affidavits were not an accurate account that reflected his instructions to the Respondent. Having regard to those affidavits it is difficult to come to any conclusion other than that the Complainant made minimal contribution to the acquisition of the matrimonial home because he regarded that to be the obligation of his wife and that moreover that the Complainant had physically abused his twelve year old daughter and sought in his affidavit to the Court to justify such cruelty. More relevant to our purposes, the Complainant's affidavits in the proceedings in the Supreme Court contradicted in material respects his testimony to the Panel that he was the sole breadwinner, that his wife made no contribution to the acquisition of the matrimonial home and supported that, apart from the deposit that he raised by a loan, the majority of the repayments of the mortgage were made by his wife, particularly after the Complainant had failed/refused to make payments and the mortgage fell into arrear. Having regard to this state of the Complainant's evidence before the Court, it is difficult to see in what way the documents that the Respondent failed to exhibit to the Court could have assisted and certainly the Panel has gained no assistance. The correspondence from his wife in 1995 and 1996 (exhibit 8), pre-dated the acquisition of the matrimonial home and, while making mention on occasion of her remittances of money and gifts designated for named persons, including gifts to the Complainant, this correspondence is more remarkable as a record of his wife's struggles and toil in the United States and her fervent wish for a happy life with the Complainant in their own home. There was nothing in that correspondence that in our view refuted the evidence of his wife or which was inconsistent with her case.
20. Clearly also there was an inherent lack of consistency and logic in the Complainant's evidence to the Panel. His evidence supported that he had contributed to the payment of rent not the mortgage. Yet although the landlady was asked to forego rent, there was nothing accumulated to make the \$300,000.00 down payment for the acquisition of the home; that down payment had to be borrowed in 1999 from his friend and in addition the closing costs also had to be borrowed by his wife. Yet rental was in arrears and was demanded by the landlady. The arrears of rent were not paid until 2002 and 2003 long after the house had been purchased. What had become of the rental that was not paid by the Complainant and ought to have been accumulated for the acquisition of the house and as well the \$160,000 proceeds from the sale of a vehicle that he had admitted was put on the bank account for the acquisition of the home. The Complainant's account is simply not credible and on the gravamen of the complaint concerning the failure to exhibit the Complainant's documents, we find in favour of the Respondent.
21. It causes the Panel considerable difficulty that the Respondent failed to make an application for a stay of execution of the judgment when the appeal was filed on 5<sup>th</sup> December 2005. The Complainant's evidence was that he enquired of the Respondent whether a stay was necessary and that the Respondent's advice was that the appeal having been filed, time would not be a factor. However it is trite that an appeal does not operate as a stay and such an application ought to have been made in all the

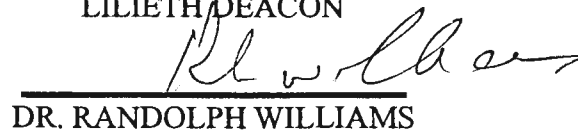
circumstances. That being said we observe that the Complainant dismissed the Respondent in June 2006, six months prior to his eviction and has since taken no step to pursue the appeal. It is likely that the Respondent at the stage when he filed the appeal simply had no faith in the prospects of the appeal, coupled with a lingering displeasure that, contrary to his advice, the Complainant had rejected the offer of a fifty percent share of the property. In essence driven by the Complainant's unreasoning malice towards his wife, a most favourable offer had been rejected and in turn it is likely that the Respondent, whose advice had not been heeded, had lost interest. There was undoubtedly an element of neglect on the part of the Respondent in his conduct of the matter. However it was the Complainant who was the author of his own misfortune and we see no basis for awarding compensation to the Complainant.

22. In the peculiar circumstances of this case, notwithstanding that the Respondent has not seen fit to state a defence to the complaint, for the foregoing reasons the Panel declines to come to a finding that there has been deplorable or inexcusable neglect on the part of the Respondent to warrant the imposition of any sanction. However, we do find that in failing to attend the hearing of the complaint and in failing to provide any information to the Disciplinary Committee concerning same, the Respondent has in breach of Canons I (e) and I (f) acted in a manner that is not merely discourteous but which is unbecoming of the profession of which he is a member. Had the Respondent complied with his duty under Canons I (e) and I (f) to provide information with respect to the complaint as requested and to attend the hearing, the Panel would have been assisted in its task and the Respondent's breach of the aforesaid Canons has undoubtedly caused delay and waste of time, for which we are of the opinion that an order for payment of costs by the Respondent is warranted. Accordingly, pursuant to s12 (4C) (b) of the Legal Profession Act, the Respondent, Sean Kinghorn is ordered to pay costs to the General Legal Council in the sum of \$20,000.00.

Dated the 26<sup>th</sup> day of September 2009

  
ALLAN S. WOOD

  
LILIEITH DEACON

  
DR. RANDOLPH WILLIAMS