



Tom Minogue <tomminogue01491@gmail.com>

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## Complaint regarding the conduct of Lord Brailsford and Lord Philip

1 message

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**Tom Minogue** <tomminogue01491@gmail.com>

25 June 2015 at 12:26

To: judicialofficeforscotland@scotcourts.gov.uk

Dear Sir/Madam,

I wish to make a complaint about the conduct of Lord Brailsford in that he treated my letter to him in a rude and dismissive manner and his written comments, which were lodged in the process, may have prejudiced others, including Lord Philip in a later hearing.

In the case of Lord Philip my complaint is that he stated, from the bench, in an intemperate outburst, before I had said one word of submission to the court, that he knew what I was in his court for, and it was to re-run the Elgin Marbles affair.

I would also complain that Lord Philip refused to address my, polite and properly made pleas, verbally and in writing with regard to a possible malfeasance in public office on the part of Stephen House, QPM, and furthermore failed to give proper reasons for his decision and by these acts and omissions he has brought the role of the judiciary into disrepute.

I would make it clear that I have no complaint about Lord Philip's decision as per his interlocutor and accepted that I am bound by it and am liable to the costs and expenses arising from same. I also accept that the Procedure Roll hearing is a peremptory diet and I have no right of appeal to his decision.

The attached file of complaint made to the Supreme Courts with regard to their staff is, I believe sufficiently detailed to highlight the background to my complaint but should you require and further information please do not hesitate to contact me.

Thanking you in anticipation of your prompt response.

Yours sincerely,

Tom Minogue, Party Litigant



**Graeme Marwick 1.docx**

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By e-mail Thursday DATE April, 2015

Dear Mr Marwick,

**Complaint re irregularities in the Scottish Courts process.**

As you know I have recently been a party litigant in a multiplepointing and wish to record my dissatisfaction at certain aspects of the process.

My first action after reading an advertisement in The Scotsman regarding a 4<sup>th</sup> century BC gold wreath was to contact the Court of Session to find out more about the wreath and they politely directed me to the solicitors representing Stephen House the pursuer who in turn directed me to the police who held the fund who said I couldn't see it, so I wrote to Lord Brailsford [LINK](#), the judge whose interlocutor had ordered the advertisement, to find out if it were the myrtle one that I had an interest in. I did so purely to avoid wasting the courts time if it was of any other plant type, which would have been of no interest to me.

I later found out from the process that my letter, marked private and confidential had been opened by Kathryn Keir, Deputy Clerk to the Supreme Court and she had passed it on to Lord Brailsford with a note [LINK](#), which began: ***"It's bad luck that you signed the interlocutor"*** as if the possibility that I may join the court action was an unwelcome intrusion into a private affair that was none of my business.

Lord Brailsford's response to Kathryn Keir's note [LINK](#) was similarly dismissive of my interest in the gold wreath, or fund *in medio*, to give it its legal title and began ***"As you say – bad luck!"*** and then gave Kathryn Keir instructions to write to me, not to enlighten me as to the type of plant the wreath was modelled on, but rather to advise me that I would have to join the process and then apply to the court for permission to have sight of the fund. This she did [LINK](#).

Given my long standing and genuine interest in a 4<sup>th</sup> century BC gold wreath I joined the process by filing a condescence and claim and defences as objection to the pursuer's condescence. Without knowing the exact format for such things I met the deadline of 1<sup>st</sup> May, handing my

documents in a single, bound folder, contained in an envelope at the Court of Session at about noon on the 30<sup>th</sup> April.

Lord Malcolm was at the door of the delivery address I was given and seeing I appeared to be lost, he kindly took my envelope and said he would make sure it was delivered to the appropriate place on time. Later that day Gillian Stewart of the General Office phoned me to confirm she had received my submissions. She also asked me to come and see her at 2pm the next day, Friday 1<sup>st</sup>, as there were some things she wanted to go over with me.

Gillian Stewart explained that she would not comment or give advice on the legal aspects of the case but she would explain the procedural requirements and clarify any rules or normal, acceptable practice for litigants.

As a consequence of my meeting with Gillian Stewart I had to unbind my single document submission and put separated loose-leaf submissions for Condescendence & Claim and Defences and separate all evidentiary productions and put them in a certain sequence. The result of this, given this had to be done at my home in Fife, and the offices of the court shut early in the evening, was that I was unable to lodge my documents on time.

I correctly dated my documents 1 May and lodged them when the court offices opened the next day, Friday May 2<sup>nd</sup>, and applied by way of a note added to the submissions, a plea to have them accepted as late. [LINK](#)

On 2<sup>nd</sup> May Gillian Stewart phoned me and said my submissions and evidentiary productions were fine, but said my Late Lodging plea note was not acceptable and explained that this would have to be done by way of a 23.2 motion setting out the extenuating circumstances which had caused them to be lodged late. [LINK](#)

I filled in the 23.2 motion form and e-mailed it to her on Tuesday 6<sup>th</sup> as the court was on May Day holiday on Monday 5<sup>th</sup> and she suggested amendments to it that would make it acceptable, including removing my request for a one day extension and leaving this blank. [LINK](#)

On 6<sup>th</sup> May I made the suggested amendments to my 23.2 motion form for late lodgement of papers and sent them to Gillian Stewart [Link](#) who approved them [LINK](#) and I then sent off the form and cheque by post.

In the event, Lord Jones showed understanding, granted my petition, which explained why I lodged my papers a day late, and my claim and defences were approved as being late by his interlocutor of 15<sup>th</sup> May. [LINK](#)

I got the impression that Gillian Stewart was simply going through the motions with me and could have, if she wished, avoided the necessity for late lodging by seeing me sooner and making it clear the format for submissions, but I wasn't sure of this at this stage.

On 23<sup>rd</sup> May a letter was sent to me from the Office of the Keeper of the Rolls complete with a copy of the Warning List which advised me that the Pursuer's Open Record was late. [LINK](#)

I immediately queried this with Gillian Stewart [LINK](#) and she told me that this was a mistake and nothing to worry about as it was published on the rolls of court in error. The open record at this

stage, she explained, was not late and she was in the process of informing all parties of this error.

[LINK](#)

To be clear, I didn't expect Gillian Stewart to give me legal advice, but on 26<sup>th</sup> May, that is, not: ***"within 14 days of my defences being lodged"*** (they were lodged on 2<sup>nd</sup> May) she chose to do so by giving me false legal advice, stating that the Open Record deficiencies of The Pursuer as appearing on the Rolls of Court Warning List were not important as ***"this was published on the rolls of court in error and is not correct. The open record at this stage is not late."***

On 28<sup>th</sup> May, almost a fortnight after Lord Jones had granted my late lodging application, lawyers acting for Stephen House, The Pursuer wrote to me telling me I had no business in to claim or post defences in the multiplepinding and threatening to take court action against me that would result in punitive costs against me, because even if I were correct in my claim that the fund may be from Greece, he had expert evidence in a report from the Second Defender that made it very clear that the wreath was from Turkey. [LINK](#)

The threats in the letter from the lawyers acting on the instruction of Stephen House, The Pursuer were not empty ones and on 19<sup>th</sup> June 2014 they served me with intimation that they would petition the court asking for a By Order hearing to fix further procedure on the basis that my defences were not in order and ***"do not disclose an objection to the condescence of the fund in medio"***. [LINK](#)

By this time I had come across a document on the internet published by the Supreme Courts entitled: ***"Raising and Defending Ordinary Actions in the Court of Session – A Guide for Party Litigants"***, and had some idea of what the process was. Chapter 5 of this guide dealt with adjusting one's case and made it clear that the pursuer must make up and lodge an open record within 14 days of defences being lodged.

**22<sup>nd</sup> June 2014** I felt that rather than receiving threatening letter from the pursuer I should have been receiving notice of his lodging the open record and this puzzled me so I e-mailed Gillian Stewart on asking her to clarify various matters including the adjustment process as: ***"I would like to understand the process of adjusting my submissions and the lodging of open and closed records."*** [LINK](#) Gillian Stewart ignored this request.

By this stage I had lost confidence in Gillian Stewart so, on the eve of the Pursuer's motion being heard in court, I wrote to the Keeper of The Rolls [LINK](#) stating my position, as being that I was in danger of having my defences rejected by the court on a motion of the pursuer, while he had not even compiled an Open Record to allow me to adjust my defences.

The Keeper of the Rolls office didn't share Gillian Stewart's anodyne view of the lateness of the Open Record and shared my concerns by making the matter known to the judge who would hear The Pursuer's motion for a By Order hearing the following day. [LINK](#)

**Thursday 26<sup>th</sup> June 2014** 55 days after my late defences were lodged on 2<sup>nd</sup> May I appeared at a starred hearing and made a submission [LINK](#) in defence of The Pursuer's motion citing their failure to compile an Open Record, and their attempt to breach rule 51.7 (2) of Court of Session Rules, that no order of the court can be granted until defences have been dealt with and the fund *in medio* has been approved.

Lady Scott agreed with me, rejected The Pursuer's motion, and ordered him to produce an Open Record within 14 days. Lady Scott reserved the question of costs. [LINK](#)

On 11<sup>th</sup> August, 2014, I lodged a motion asking for a 6 month extension to the Open Record to allow me time to have adjudication by the Freedom of Information Commissioner on the refusal of Police Scotland to release documents in relation to the removal of the fund *in medio* to Turkey. [LINK](#) The Pursuer opposed my Motion. [LINK](#)

At a hearing on 15<sup>th</sup> August, 2014, Lord Bannatyne granted an extension, but not to the full extent that I had petitioned for and reserved the question of costs. [LINK](#)

My next appearance in court was at the Procedure Roll hearing of 20<sup>th</sup> March 2015. This was as ordered by interlocutor of Lord Jones which appointed the cause on the basis of the Pursuer's first and second pleas-in-law and directed the Pursuer to compile a Note of Argument. [LINK](#)

The Pursuer complied with the Interlocutor and supplied me with their Note of Argument. [LINK](#) The Pursuer also supplied me with a list of authorities that they would be citing and shortly before the hearing, on 17<sup>th</sup> March, they added to this list making their final bundle some 120 pages of data from a total of eighteen different authorities. [LINK](#)

This last minute adjustment left me with the considerable task, in a short space of time, of anticipating which arguments the Pursuer would rely on from the eighteen authorities and then countering these with arguments and authorities of my own. In the short space of time available I came up with my own list of nine authorities. [LINK](#)

After Dr Kirsty Hood, counsel for the Pursuer had spent about 90 minutes stating her case and before I had made one word of submission in response to their two claims, Lord Philip, in an astonishing outburst, made his view clear that he would not allow, what he said was as my intention to have a re-run of the Elgin Marbles affair in his court.

I protested that this was not what the hearing was about; rather it was to determine my objections to the pursuer's condescendence of the fund *in medio*.

I then went on, after briefly responding to the three case authorities cited by the pursuer's counsel, to read out my response to the pursuer's argument in his first plea-in-law, that I had no title or interest to defend [LINK](#) and then responded to the pursuer's second plea-in-law that my defences were deficient. [LINK](#)

I then, with the permission of Lord Philip, made another submission on a point of public interest regarding actions on the part of Stephen House, the pursuer, on the basis that his actions in concert with the Second Defender, the Republic of Turkey and threats made against me amounted to malfeasance in public office. This plea-in-law was appended to my second submission (above) and, as can be seen, had been fully developed in both of my submissions.

Lord Philip then adjourned the court at about 3 pm with a direction that we were to reassemble at 4 pm when he would give his decision.

When the court re-convened Lord Philip read out what he said was his hand-written interlocutor, saying this would be typed up. He made reference to my public interest question, which he referred to as my "**malfeasance**" point and stated he would not be addressing it, as he was only concerned

with the pursuer's condescendence, on which he found in favour of the first and second pleas of the pursuer.

When Lord Philip's interlocutor was typed up and sent to me by Lorna Morgan it did not include his comments about his decision not to deal with my public interests submissions. [LINK](#) When I queried this with court staff I was told by Lorna Morgan that what his lordship had read out was not in fact his hand written interlocutor, as he had clearly stated, but was in fact "***an ex tempore judgement to the Court***". [LINK](#)

As you are aware I have requested all transcripts, including the retired judge's notes associated with the hearing of 20<sup>th</sup> March 2015, and have been told there is none of the former and I am not entitled to see the latter. I have appealed this decision to you with regard the stenographer's record [LINK](#) and have written privately to Lord Philip on the matter. I have not written to Lord Philip via the court, because the last time I did this with Lord Brailsford my mail marked "***private and confidential, not court business***" was intercepted and interpreted by Kathryn Keir before passing it on to the addressee.

### **Conclusion and complaint.**

For the reasons given in my submission to Lord Philip I have no confidence in the date of origin attributed to the fund *in medio*, as it has been fixed by the Second Defender's supposed expert report mainly compiled on examinations in the Turkish Republic by and for agencies of that country, which I have no confidence in.

Accordingly I wish to abandon my claim as I can only have an interest in the funereal wreath of Aspasia who died in 400 BC (Elgin wasn't guessing at the tumulus being hers, he was an expert grave robber and targeted the great and good with local knowledge).

To me it is abundantly clear that the Turkish Government have started with a conclusion that the wreath seized in Edinburgh was from an empty tomb in Milas and filled in the blanks of evidence to go full circle and arrive back at that start point. In order to do this the Turkish authorities have concocted a story which includes the discovery of soil on the wreath in Turkey to tie in with their wish to refurbish the empty Hecatomnus dynasty tomb in Milas.

The fanciful assumption of the Turkish authorities, namely that the wreath is dated 350BC and can only come from Anatolia has been embraced as fact by the Pursuer. The Court also describes the wreath as being 4<sup>th</sup> Century BC, without giving one scrap of evidence to authenticate that date. This leads me to believe that in fact the date of the wreath has been fixed by the Second Defender and taken as read by the police and court officials, when in fact it could be from any date between 700 BC and 400 AD.

Given all of this I have asked Gillian Stewart how I would go about abandoning my claim and she has advised me that I would have to raise a Motion and make my case out to the court as well as detailing my position regarding costs. [LINK](#)

Now if I had been told this before the 20<sup>th</sup> March, 2015, I would have considered doing it. I had experienced courtesy from Lord Matthews, good, fair, treatment from Lord Jones, Lady Scott, Lord Bannatyne, and some of the Scottish Courts departments such as the Keeper of the Rolls office.

On the other hand, I had been treated with contempt by Kathryn Keir and Lord Brailsford and badly advised by Gillian Stewart in the matter of the late Open Record, and taken to court by the Pursuer when he had no right to. However I would probably still have been prepared to fight my corner in a Scottish court.

I say this because I have confidence in my ability to look after my interests and a general belief that we Scots are a fair people and our justice system, while not perfect is better than most.

I believe I have good reason to win an argument before a judge, by explaining to the court that my entry into the legal process had been unnecessary because of flawed, foreign information, regarding the date of the fund *in medio*, and in addition that the Pursuer had openly threatened me and attempted to remove me from the court action by means of punitive costs, all of which amounted to a matter of public Interest and a possible malfeasance in public office by Stephen House.

But wait a minute! I have already rehearsed and delivered all of these sound arguments backed up by supporting documentation and pleadings and what happened? Not only did my sound arguments fall on deaf ears they were heard by a retired judge who had dismissed them and decided that I was in court on some other reason (to re-run the Elgin Marbles affair) before I had opened my mouth! As if that were not bad enough, the record of the judge's intemperate outburst and all other debate and pronouncements by him were not even recorded by the stenographer who busily typed as he spoke. They simply disappeared into the Court of Session ether to be replaced by words that were not spoken.

I now find myself in the position that the Pursuer threatened me with; being involved in a costly court process, but with the added danger that whatever I might say, and no matter how just my case may be, is ignored, and an arbitrary decision, without any reasoning is reached. That is if the events of my last hearing before Lord Philip are repeated.

I may, of course, be lucky, to be welcomed to the court in a helpful manner by court staff independent of a scrupulously fair judge who will decide questions of Court of Session rules breaches, malfeasance, public interest issues and costs on merit, but then again I might be seen by court staff as being "**bad luck**", that is akin to something unpleasant that was carried in from the pavement on somebody's shoe, and the judge might agree with the official's assessment and determine that I am in court not on the basis of my submissions but on some other pretext be it the Parthenon pediments, Masonic membership, or one or other of the extraneous interest I have.

Like the proverbial curate's egg, there are bad and good parts to the Scottish Courts process and on a good day I would have (and have had) no hesitation in appearing there, but since the last hearing I feel as I imagine a Zimbabwean opposition activist would feel, faced with a possible appearance before one of Mugabe's courts.

Shame on the court that (some officials and judges) treated me this way, but it would be shame on me, if after being treated in this manner, I allow it to happen again.

Please address my complaints re the failings of the Scottish Courts Service with regard to the comments and collusion with the judge of Kathryn Keir; the false legal advice of Gillian Stewart, and the breach of Court of Session rules with regard to foreign government agencies determining the age and description of court evidence.

Also please see to it that my claim to the fund *in medio* is abandoned without me having to re-enter the lion's den, so to speak.

Thanking you in anticipation of your prompt consideration of my complaint/request.

Yours sincerely,

Tom Minogue, party litigant