

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

FINDINGS

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh**

against

**Iain John Smith Vaughan,
Solicitor of Messrs Caird Vaughan
Solicitors, 1 Bank Street, Dundee**

1. A Complaint dated 7 February 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Iain John Smith Vaughan, Solicitor of Messrs Caird Vaughan Solicitors, 1 Bank Street, Dundee (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal fixed a procedural hearing for 21 June 2007 and notice thereof was duly served on the Respondent. When the Complaint called on 21 June 2007 it was adjourned to a further procedural hearing on 23 August 2007. At the procedural hearing on 23 August 2007 the matter was adjourned to a substantive hearing on 7 November 2007 and notice thereof was duly served on the Respondent.

4. When the Complaint called on 7 November 2007 the Respondent was present and represented by his solicitor William Macreath, Glasgow. The Complainers were represented by their fiscal Jim Reid, Solicitor, Glasgow.
5. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint.
6. The Tribunal found the following facts established:-
 - 6.1 The Respondent was born on 9 October 1952. He was admitted as a Solicitor on 21 October 1993. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 25 October 1993. From 1 November 1993 to 24 March 1995 he was employed by the Firm of Bruce Short & Co, Dundee. From 27 March 1995 he has been a partner with Messrs Caird Vaughan, Solicitors, 1 Bank Street, Dundee.
 - 6.2 George Mathers & Co Solicitors, 23 Adelphi, Aberdeen, on behalf of and as instructed by their client Mr A intimated a Complaint by letter dated 24 June 2004 to the Complainers alleging that the Respondent in acting for Mr A had a conflict of interest in that he had previously acted for a Mr B. Mr B was a former co-accused of Mr A.
 - 6.3 In or about October 1999 Caird Vaughan Solicitors accepted instructions to act for Mr B. They acted for the said Mr B from in or about October 1999 to October 2001. The Respondent along with other personnel in the firm of Caird Vaughan acted for and represented Mr B during said period.
 - 6.4 The work carried out by the Respondent included inter alia the following:-
 - 02.12.99- Attendance with Mr B at Aberdeen Sheriff Court for the calling of the Petition.
 - 06.12.99 -Writing To Mr B and to the Procurator Fiscal.
 - 29.12.99 - Considering the Crown Witness List and writing to Mr B, civilian witnesses and Grampian Police.

- 27.01.00 -Writing to Mr B advising that some Crown Witness Statements were available and asking him to get in touch.
- 01.06.00 &
- 02.06.00 -Perusing transcripts and writing to Mr B accordingly.
- 04.07.00 - Letters to the Procurator Fiscal, Grampian Police and various witnesses.
- 14.07.00 - Framing a Minute for separation of charges, writing to various parties with a copy Minute and to Counsel with a copy Minute and Productions.
- 26.07.00 - Attendance at the High Court, Edinburgh with Counsel and Mr B for the Preliminary Diet.
- 15.09.00 - Letters to the Procurator Fiscal and Mr B in respect of a change of bail address.
- 16.02.01 - Letters to Counsel, Mr B and the Procurator Fiscal in respect of the copy Indictment being received, letter to Precognition Officer requesting Witness Statements.
- 02.03.01 - Attendance at the High Court, Forfar for the calling of the case.
- 13.03.01 - Letter to Mr B re time-bar.
- 13.06.01- Preparation for Bail Hearing and attendance at Aberdeen Sheriff Court for calling of case.
- 18.06.01 - Framing a Note of Appeal and the appropriate letters enclosing a copy of the Note.
- 20.06.01 - Letters acknowledging receipt of a Minute lodged in Court by Co-Accused, considering same and letters to Mr B.
- 04.07.01 - Writing to Counsel and the High Court in respect of the Appeal.
- 22.08.01 - Preparing for Deferred Sentence and attendance at High Court, Edinburgh for calling of the case.
- 31.08.01 -Writing to Mr B in respect of Deferred Sentence date.
- 28.09.01 - Further letter to Mr B in respect of Deferred Sentence date

6.5 In the course of acting for Mr B, Caird Vaughan on the instructions of Mr B framed, intimated and lodged a Notice of Incrimination which sought to incriminate Mr A. The Respondent acted for Mr B at various points between October 1999 and October 2001 and both before and after preparation and intimation of the Notice of Incrimination which was done in or about 26 February 2001. The Respondent attended at the High Court in Forfar with Counsel on 2 March 2001. The Respondent was or ought to have been aware of said Notice.

- 6.6 Mr A appeared on Petition on 30 September 1999. He was charged along with others with being concerned in the supply of cocaine and Diamorphine and possession of cannabis with intent to supply. The Co-Accused included the said Mr B. At that time Mr A was not represented by Caird Vaughan.
- 6.7 In respect of the said charges Mr A failed to appear for Trial. The Crown dropped charges in respect of several of the Co-Accused and the said Mr B pled guilty to reduced charges in October 2001.
- 6.8 Mr A was arrested in April 2002 and remanded in custody. He was subsequently indicted in respect of the said charges originally contained in the Petition on which he appeared on 30 September 1999. He was convicted of one (as amended) of the two original charges and also convicted in respect of two charges of a failure to appear.
- 6.9 In respect of his defence of these charges Mr A in or about June 2002 decided to seek alternative solicitors and met with the Respondent. The Respondent ultimately accepted instructions to act for Mr A and continued to so act until conclusion of Mr A's Trial on or about 9 August 2002

7. Having heard submissions from the Respondent's solicitor and from the fiscal, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- 7.1 His acting for a client, Mr A, when he had previously acted for Mr B, in circumstances where his firm had sought to incriminate Mr A when acting for Mr B and in circumstances Mr B.
- 7.2 His acting in a conflict of interest situation by accepting instructions to act for Mr A when he had access to confidential information in respect of the case against Mr B, which could be relevant to the defence of Mr A.

8. Having heard mitigation on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 7 November 2007. The Tribunal having considered the Complaint dated 7 February 2007 at the instance of the Council of the Law Society of Scotland against Iain John Smith Vaughan, Solicitor of Messrs Caird Vaughan, Solicitors, 1 Bank Street, Dundee; Find the Respondent guilty of Professional Misconduct in respect of his acting in a conflict of interest situation by acting for a client when he had previously acted for the co-accused in circumstances where his firm had sought to incriminate the client when acting for the co-accused in circumstances where the Respondent acted throughout the prosecution of the co-accused and by accepting instructions to act for a client when he had access to confidential information in respect of the case against the co-accused which could be relevant to the defence of the client; Censure the Respondent; Fine him in the sum of £2500 to be forfeit to Her Majesty; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on a solicitor and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed) Alistair Cockburn
Chairman

9. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

A Joint Minute was lodged agreeing all the facts, averments of duty and averments of professional misconduct in the Complaint. It was accordingly not necessary for any evidence to be led. Lengthy submissions were however made to explain the background and the circumstances in this case. The Complainers lodged an inventory of productions which was accepted. The Fiscal moved to amend the wording of Article 2.10 of the Complaint, there was no objection and this was agreed. Mr Macreath indicated that he was withdrawing the previous Answers lodged by the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid indicated that what had happened was set out in the Complaint but that Mr Macreath would be able to provide the Tribunal with a more detailed background.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath referred the Tribunal to the Court Opinion in connection with the Appeal by Mr A to the Court of Session, which had been successful. The Court had found that the Respondent had acted in a conflict of interest situation. Mr Macreath outlined the Respondent's personal circumstances and explained the background to what had happened. Mr A had appeared on an indictment along with others, which included charges in connection with the supply of drugs. Mr B was also charged with supply of drugs offences. Mr B instructed Caird Vaughan to act and a criminal legal aid certificate was transferred to Caird Vaughan. When the case called in August 2000 at the High Court in Stonehaven, Mr A was not present and a warrant was granted for his arrest. The indictment against Mr B and others was deserted pro loco et tempore. Mr B's Counsel was instructed by Caird Vaughan to incriminate Mr A in connection with the drugs charges faced by Mr B and a notice of special defence of incrimination was lodged. In autumn 2000 the Crown proceeded against Mr B and others but Mr A still had a warrant outstanding against him and he was not included on this indictment. The trial had to be adjourned because Mr A had been incriminated by Mr B and another and he was not there. The indictment against Mr B and others

(but not Mr A) eventually called at the High Court in Stonehaven in August 2001. Mr B was represented by the Respondent. He pled guilty to some charges and his not guilty pleas were accepted in respect of the supply of drugs charges which were the charges in respect of which Mr B had lodged a special defence of incrimination incriminating Mr A. In April 2002 Mr A was arrested in England and taken to a prison in Aberdeen. He was served with an indictment which included, among other charges, the charges of supplying drugs. Mr A's original solicitor stopped acting for him and Mr A asked for an R Shepherd from Aberdeen but he declined to act because he had previously acted for a co-accused who had also incriminated Mr A. In August 2002 the Respondent had a consultation with Mr A and explained that he had previously acted for Mr B. Mr Macreath stated that Mr A knew that in any event. In July 2002 the Respondent wrote to Mr A stating that he was to take advice with regard to whether or not he could remain acting in the case. The Respondent wrote to Mr Robertson, Junior Counsel for advice. The letter sent indicated that he had previously acted for a co-accused on the same charges but these charges had not been proceeded with. The letter did not mention that when the Respondent had acted for Mr B he had incriminated Mr A or that Mr B might have given him information in connection with Mr A. Counsel did not issue an Opinion and there was no consultation. The Respondent's assistant, Ms C, visited Mr A in July 2002 and went over the evidence with him. There was discussion with regard to incriminating other people but no mention of Mr B. Counsel's view was that there was no evidence to be able to incriminate Mr B. The Respondent was responsible for supervising his assistant Ms C. In August 2002 the trial proceeded against Mr A and a special defence of incrimination against a co-accused, Mr D, was lodged. Mr A's position was that he had only been sleeping at the Clifton Road address in Aberdeen and had not known that there were drugs in the flat. Mr D and Mr B had been in the bedroom. Mr A lodged an appeal against his conviction on the grounds that he had not been adequately represented by the Respondent. Mr Macreath explained that there was a conflict of interest situation because Mr B had incriminated Mr A and the Respondent had a continuing professional duty to respect Mr B's confidence. This meant that the Respondent was compromised because he could not disclose confidential instructions given to him by Mr B and could not advise Mr A with regard to incrimination of Mr B. The Lord Justice Clerk had made it clear that there was a conflict of interest situation in these circumstances. Mr A's position was that he had just been an overnight guest and knew nothing of the drugs. Both Mr B and Mr D, who were in

the flat, ought to have been incriminated as all three were present in the flat when the Drugs Squad arrived. Mr Macreath advised that there would be a professional indemnity civil claim arising from the circumstances. Mr Macreath submitted that although there was a conflict of interest in this situation, it was not a stark conflict and the circumstances were very complex. Mr Macreath advised that the Law Society had not made any finding of inadequate professional service in respect of the incident.

Mr Macreath advised the Tribunal that the impact of what had happened on the Respondent was significant and emphasised that the Respondent was contrite and distressed by what had happened. This matter had been ongoing for a number of years. The Respondent had some health difficulties and was soon to retire from practice. A younger partner was being introduced into the firm.

In response to a question from the Tribunal, Mr Macreath stated that the Respondent, by acting for Mr B, had access to confidential information and would have required Mr B's consent to disclose this to Mr A. This put him in an untenable position.

DECISION

The Tribunal considered that the Respondent had acted in a conflict of interest situation and that his conduct did amount to professional misconduct. The Respondent owed a continuing professional duty to respect Mr B's confidence. He was not free to disclose to Mr A, the confidential instructions that he had been given by Mr B and accordingly he could not properly advise Mr A in connection with whether or not Mr B should be incriminated. The Respondent is therefore clearly in breach of the Law Society's Code of Conduct for Criminal Work. It is clear from the background evidence that the Respondent had doubts with regard to whether or not he should have acted for Mr A. It is unfortunate that he did not act on his doubt and decline to act. The Tribunal however took account of the fact that the conflict in this case was complex and successive. The Respondent was not acting for two co-accused at the same time because the first co-accused's case had already been completed. The Respondent however had a successive duty of confidentiality to Mr B especially because of the incrimination of Mr A when acting for Mr B and he still had the ongoing knowledge. The Tribunal considered that the Respondent had made an unfortunate error of judgement in this case. The Tribunal was impressed by the fact

that the Respondent has taken steps as set out in the letter from Caird Vaughan, to put in place measures to ensure that this situation will not arise again. The Tribunal also took account of the Respondent's guilty plea and the references lodged. The Respondent was clearly contrite and has to date had an unblemished career. The Tribunal however has to take account of the fact that from the point of view of the public there was a conflict of interest and this is damaging to the reputation of the profession. The Respondent is an experienced solicitor and should have known better. The Tribunal accordingly imposed a Censure plus a fine of £2500. The Tribunal made the usual order with regard to publicity and expenses.

Chairman