

**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**

**LOUISE RANEE  
KOULAOUZOS, Solicitor,  
Torridon House, Almondvale  
Boulevard, Livingston**

1. A Complaint dated 13<sup>th</sup> August 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society, 26 Drumsheugh Gardens, Edinburgh (hereinafter referred to as "the Complainers") requesting that, Louise Rane Koulaouzos, Solicitor, Torridon House, Almondvale Boulevard, Livingston (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. No answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 7<sup>th</sup> November 2007 and notice thereof was duly served on the Respondent.

4. The hearing took place on 7<sup>th</sup> November 2007. The Respondent was present and represented by her solicitor, Mr McMenemy, Solicitor-Advocate. The Complainers were represented by their fiscal, Walter Muir, Solicitor, Ayr.
5. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint and also agreeing averments of fact not contained in the Complaint.
6. No evidence was led.
7. The Tribunal found the following facts established
  - 7.1 The Respondent is a Solicitor enrolled in the Register of Solicitors in Scotland. She was born on 10<sup>th</sup> February 1971. She was admitted as a Solicitor on 25<sup>th</sup> April 1995 and enrolled as a solicitor on 27<sup>th</sup> April 1995. She is at present employed by KW LAW at Torridon House, Almondvale Boulevard, Livingston.
  - 7.2 By letter dated 23<sup>rd</sup> October 2006 Mrs A, mother of the late Mr B who died on 7<sup>th</sup> September 2006, wrote to the Complainers and therein intimated that the Respondent had prepared a Will on behalf of the late Mr B wherein she was made the sole residuary legatee. After inquiry the Complainers established that the late Mr B instructed the Respondent to prepare a Will for him and that the Respondent had proceeded to do so. He signed the Will on 28<sup>th</sup> August 2002. At that time he and the Respondent had been in a relationship with each other since about April 1996. The Respondent and the late Mr B became engaged to be married sometime in July 1996. The Respondent and the late Mr B began cohabiting with each other sometime in August 1998 and their cohabitation endured from then until

they separated sometime in December 2003 when their relationship ended. The Respondent and the late Mr B recommenced a relationship with each other sometime in November 2005 and their relationship endured from then until he died. The Respondent and the late Mr B did not cohabit with each other after December 2003. In the Will he appointed the Respondent as his executor and he bequeathed to her the residue of his estate provided that she survived him for one calendar month after the date of his death. When he died he was survived not only by his mother but also by a brother and a sister. The estate of the late Mr B has been wound up and as at 28<sup>th</sup> September 2007 the Respondent is entitled to receive a payment of £78,672.19 in her capacity as residuary legatee in terms of his Will.

8. Having heard submissions from the fiscal and from the solicitor on behalf of the Respondent, the Tribunal, by a majority decision, found the Respondent guilty of professional misconduct in respect of her preparation of a Will on behalf of the late Mr B in which he conferred upon her a significant monetary benefit.
  
9. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 7 November 2007. The Tribunal having considered the Complaint dated 13<sup>th</sup> August 2007 at the instance of the Council of the Law Society of Scotland against Louise Rane Koulaouzos, Solicitor, Torridon House, Almondvale Boulevard, Livingston; Find the Respondent guilty of Professional Misconduct in respect of her preparation of a Will on behalf of a client which conferred upon her a significant monetary benefit; Censure the Respondent; 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**

10. 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 admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint. The Joint Minute also contained agreement with regard to averments of fact which were not contained in the Complaint.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Muir expressed his appreciation of the Respondent's cooperation in entering into a Joint Minute. Mr Muir submitted that complaints like this one, fell into two categories, one where a solicitor accepts instructions to do a Will and the client insists on including a legacy to the solicitor. The Tribunal had previously held that this amounted to professional misconduct. The second situation was where a close relative instructed the solicitor to prepare a Will and a benefit was conferred which was disadvantageous to other family members. Mr Muir submitted that this case did not fall into either of these categories. Mr Muir stated that it would not be misconduct if the Will was prepared for a spouse or a member of the close family so as long as there was no material disadvantage to other family members. Mr Muir advised that the Code of Conduct was amended in 2006 to take account of the Civil Partnership Act. Civil partners were now equivalent to spouses. Mr Muir, however, pointed out that cohabitees were not included. Mr Muir submitted that the difference between being married or being in a civil partnership and being a cohabitee or civil partner was that marriage and civil partnership had legal status. Mr Muir made it clear that the Law Society were not asserting that the Respondent exerted any undue influence on Mr B and stated that Mr B became a client after the Respondent's relationship with him had commenced. Mr Muir stated that when the Will was signed the couple were living together. Mr Muir stated that it was accepted that the Respondent was in a lengthy and close and loving relationship with Mr B in August 2002 when the Will was prepared. Mr Muir, however, submitted that her conduct still amounted to professional misconduct as it was a clear breach of principle to accept instructions to prepare a Will where a significant benefit to her was in reasonable contemplation. Mr Muir advised that as the Respondent was a sole legatee, Mr B's mother, brother and sister had been prejudiced.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr McMenamain stated that his view was that the Respondent did not fall into either of the two exceptions to the Code of Conduct and accordingly, there was no basis in law that justified an exception in this case. Mr McMenamain advised that there was complete reciprocity with regard to the Wills and that the Respondent and Mr B left their whole estates to each other.

## **DECISION**

Although the Respondent had plead guilty to professional misconduct the Tribunal had to consider whether or not they were satisfied that the conduct did indeed fall to be described as Professional Misconduct. The Tribunal were divided in their view and by a majority of three to two found the Respondent guilty of Professional Misconduct.

The starting point for the reasoning of the majority was the code of conduct.

The code of conduct in force at the time when the Respondent prepared the Will states that Solicitors are not generally permitted to prepare a Will for a client if the Solicitor is to receive anything more substantial than a token legacy and certainly not a fortioriae a share of the Estate. The majority also took into account the passage in Smith and Barton, procedures and decisions of the Scottish Solicitors' Discipline Tribunal at Page 81 where the Tribunal had previously stated:-

“The rule that a Solicitor should not take instructions to prepare a Will containing a substantial benefit in his own favour, is long established and from time to time the Profession has been reminded of the importance of involving another Solicitor in the whole process from the point when the instructions are taken through to the execution of the Will itself.

“There are two recognised exceptions. It is accepted that a solicitor may ordinarily make a Will for his Spouse, his parents or children and perhaps his collaterals on the understanding that any potential beneficiary is not materially disadvantaged but this Tribunal would be slow to accept that this exception might apply to more remote

relations or those for whom there is no direct family connection.” That decision appears to have been one that was taken in 1989. The Tribunal noted that the code of conduct for Scottish Solicitors was amended in 2006 and now suggests that a Solicitor may make a Will for his Spouse or Civil Partner in which the Solicitor is the sole or main beneficiary. The majority considered that it was important that there was a legal status attaching to marriage and civil partnership. In essence they took the view that it was serious and reprehensible conduct for the Respondent to draw up the Will in which she was the residuary legatee because it was contrary to the code of conduct in place at the time and because the Respondent either knew or ought to have known that what the code of conduct dictated was a proper course of acting for a Solicitor in such circumstances and that in consequence she should not have prepared the Will which conferred a significant benefit on her. It was the accepted situation that the Respondent’s conduct did not fall within either of the exceptions which the Tribunal had acknowledged to exist in previous cases.

The minority examined the matter from the point of view as to whether the conduct could be said to amount to serious and reprehensible behaviour. They bore in mind the code of conduct as existed at the time of the conduct complained of and the passage at page 81 of *Smith and Barton*. They also bore in mind that the Society had given Civil Partnerships equivalence to marriage in this area. The minority were of the view that the type of conduct complained of was generally serious and reprehensible because it was likely to occasion in the minds of the public the perception that the Solicitor had been motivated by self interest. A solicitor should not by his conduct put his personal integrity in doubt. That public perception and the consequent opprobrium are absent when there is a marriage. The minority was of the view that the perception and opprobrium were absent because the making of a Will in accordance with the wishes of a loved one is seen as something that flows normally from the very terms of the relationship. Similar reasoning applies in a situation where a solicitor would draw up the Will say of a parent as long as the request either to the solicitor or spouse did not disadvantage siblings or did not favour his children at the expense of nieces and nephews. If they are merely obtaining a like share as others of equal rank then there can be no appearance of undue influence and no criticism of the conduct would arise.

The minority therefore considered whether given the ready acceptance that the relationship between the parties spread rapidly to engagement to marry and was then followed by almost six years of co-habitation before the Will was drawn up would have a material effect in today's society on public opinion as to the conduct complained of. The minority were of the view that society has changed since 1989. They reasoned that if the Civil Partnership Act by its passing could render what previously would have been prescribed conduct for a solicitor then to be unchallengeable it had to be on the basis that Society was recognising that such relationships are just as loving and stable as marriages. The minority were of the view that the nature and extent of the relationship between the Respondent and the Deceased at the time the Will was prepared could also be described as a loving and stable relationship and on that basis were not prepared to describe the conduct complained of as serious and reprehensible. The minority would emphasise however that where in any respect the code of conduct is departed from there must always be a material risk that the conduct will be regarded as professional misconduct and would commend that it be followed in order to avoid what occurred in this case.

## **MITIGATION**

Mr McMenemy stated that the Respondent was presently employed by him at KW LAW and was an associate in the firm with responsibility in the conveyancing department. He stated that she was a valued and trusted member of staff and that she had no outstanding matters apart from this one. Mr McMenemy advised the Tribunal that the Respondent was highly regarded as a solicitor and he referred the Tribunal to the various references lodged. He explained that the Respondent had had a long and loving relationship with Mr B, they had lived together for a number of years like a married couple and the Respondent had provided some funding for Mr B's business. Mr B had a heart attack in 2000 and after this they discussed making Wills. They made Wills leaving everything to each other and these were finalised in August 2002. Mr McMenemy stated that the Respondent explained to Mr B the laws of intestacy and she canvassed with him specifically whether he wished to leave anything to other family members. The Will was signed by Mr B with a friend as a witness. In December 2003, the Respondent moved out as things were not going well in the relationship. The Respondent and Mr B continued to have regular contact in 2004 and



2005 and in June 2005 their relationship developed again. Mr B had kept the Wills from 2003 for 2 years and in August 2005 he gave them to Keegan Walker which was the previous name of KW LAW. In November 2005, the relationship between the Respondent and Mr B was restored and they were discussing moving in together again. However, unfortunately in September 2006 Mr B died. Mr McMenamain stated that one of the reasons that the Respondent and Mr B did not get married was due to Mr B's fear that he might die. Mr McMenamain stated that the Respondent had made an error, she had thought that as they were a couple it was alright for her to do Mr B's Will. Mr McMenamain emphasised that the Respondent's relationship was genuine and was ongoing at the time of Mr B's death. The Will was valid and reflected Mr B's wishes. Although the Respondent had failed in her professional obligations, it was due to a mistake and there was no sinister purpose. The Respondent was very upset by Mr B's death and very distraught with regard to the proceedings before the Tribunal. Mr McMenamain asked the Tribunal to be lenient in the whole circumstances.

## **PENALTY**

The Tribunal has found by a majority decision that the Respondent's conduct was serious and reprehensible and amounted to professional misconduct. However, it was clear that at the time the Will was made the Respondent was in a long term relationship with Mr B and they were living together. It is also clear that the Will reflected Mr B's wishes and that the Respondent did not exert any undue influence over him. The Respondent had made an unfortunate error of judgment in preparing the Will. The Tribunal considered that in all the circumstances a Censure would be a sufficient penalty.

Mr McMenamain asked the Tribunal to consider refraining from publishing the decision because the Respondent's conduct occurred out with the normal solicitor/client relationship and publication would be disproportionate and might unnecessarily undermine client confidence in the Respondent. The Tribunal took account of Mr McMenamain's comments but having regard to the terms of Section 14A of Schedule 4 to the Solicitors (Scotland) Act 1980, the Tribunal considered it had no alternative but to publish the decision including the Respondent's name. The Tribunal is not entitled to take into account any adverse effects that the publicity

would have on the Respondent. In most cases dealt with by the Tribunal, publicity will possibly undermine client confidence in a Respondent solicitor. This case is not exceptional in this regard. The Tribunal accordingly made the usual order with regard to publicity and the usual order was made with regard to expenses.

**Alistair Cockburn**

**Chairman**