

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

**F I N D I N G S**

**in Complaint**

**by**

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

**against**

**JAMES BUCHANAN DONALD, 10  
Sandlewood Drive, Inverness**

1. An undated Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that James Buchanan Donald, residing at 10 Sandalwood Drive, Inverness (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 appointed the Complaint to be heard on 6<sup>th</sup> May 2008 and notice thereof was duly served upon the Respondent.
4. The Hearing took place on 6<sup>th</sup> May 2008. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The

Respondent was present and represented by his Solicitor, David Burnside, Aberdeen.

5. It was clarified that the Respondent was pleading guilty to the averments of fact, averments of duty and averments of professional misconduct in the Complaint, subject to certain explanations which were accepted by the Complainers.

6. The Tribunal found the following facts established

6.1 The Respondent was born on 16<sup>th</sup> September 1971. He was admitted as a solicitor on 28<sup>th</sup> April and enrolled on 8<sup>th</sup> May both months of the year 2000. The Respondent is a partner in the firm of R & R Urquhart LLP, Royal Bank of Scotland Buildings, 20 High Street, Nairn.

6.2 On or about 9<sup>th</sup> February 2006 the Respondent commenced acting on behalf of Mr A in relation to his marital separation. Mrs. B raised proceedings, and an initial writ seeking divorce residence order, exclusion order, interim interdict, power of arrest, periodical allowance and interim aliment was served upon Mr. A on 6<sup>th</sup> October 2006. Interim orders in favour of Mrs. B were made on 13<sup>th</sup> October 2006. In accordance with the instructions given to him by Mr. A the Respondent defended the action. Information was obtained by the Respondent in connection with evidence which might be given by Ms. C, an existing client, as a witness on behalf of Mr. A. Following a meeting with Ms C, The Respondent prepared an affidavit for signature by Ms. C. At the meeting which the Respondent had with Ms C he had gone over the Affidavit with her in some detail. On 16<sup>th</sup> November 2006

the Respondent wrote to Ms. C. He enclosed an affidavit. The Respondent's letter contained the following statements:-

“I enclose affidavit statement that I have prepared based on your comments and would remind you that by signing this you are swearing to the whole truth of the statements in submission to the court.

I would be grateful if you could read though the whole terms of the affidavit and if there is (*sic*) any points that require to be amended, then I would be happy to forward a fresh statement to you.

If all seems in order however please sign where indicated at the foot of each page and return it to me at your earliest convenience.”

- 6.3 When the Respondent wrote to Ms C on 16<sup>th</sup> November 2006 he reminded her of the fact that by signing, she was swearing to the whole truth of the matters in the document. The Respondent asked Ms C to telephone him if there was any point about which she was uncomfortable and that he would make any necessary alteration. The Respondent was aware that Ms C worked full time and found it difficult to make time to meet within office hours. When Ms C returned the document she had signed it but had had the Affidavit witnessed by her boss which was clearly inappropriate. The Respondent deleted the signature of Ms C's boss and notarized the document. He did so because of his familiarity with the signature of Ms C and to save her the difficulty and inconvenience of returning to the office.

- 6.4 On 4<sup>th</sup> December 2006 the Respondent lodged the Affidavit of Ms C as a production in the court action. The purpose of doing so was in order that the Affidavit might be considered by the Court at a Child Welfare Hearing on 11<sup>th</sup> December 2006 at which time a *curatrix ad litem* was appointed to the children of the marriage and the interim contact order was amended. The situation relating to the Affidavit was not disclosed to the Court but the Respondent did not refer to the Affidavit in the course of his submissions to the Court and it was not relied upon by the Sheriff to influence any decision made by the Sheriff at the Hearing.
- 6.5 Although the affidavit was signed by Ms C and purported to be notarised by the Respondent, the Respondent was not present when Ms C exhibited her signature. No oath was administered to the said Ms C by the Respondent. The Respondent added his own signature purporting to notarise the document without the presence of Ms C whom he did not meet in connection with the notarising of the affidavit. None of this was disclosed to the court on 11<sup>th</sup> December 2006.

**Mr D deceased**

- 6.6 On or about 29<sup>th</sup> January 2007 the Respondent accepted instructions from Mrs E, who was the executrix of the late Mr D, to wind up Mr. D's estate. On 11<sup>th</sup> May 2007 Mrs. E met the Respondent to exhibit her signature on a docquet on an extract of Mr. D's will. Mr D's estate was a simple one consisting of three bank accounts but with sufficient funds in total to require Confirmation. The Respondent's office was extremely short staffed at that time and there was a two month gap between the

Respondent's dictation of the Confirmation and it being typed. The Respondent's firm had only one machine in the office which had executry packages and the Respondent's secretary had to find time to obtain the use of that machine. The Respondent was embarrassed because of the delay and apologised to Mr. D's daughter when he met her to sign the Confirmation and docquet on the Registered Will. The Respondent's secretary had put a docquet on each of the two pages on the bound Registered Will from the Books of Council and Session. The Respondent believed that that was incorrect in that only one page had to be docqueted and signed and accordingly he advised Mr. D's daughter, as Executrix of the deceased to sign on the first page having first confirmed that she was satisfied that it was indeed her late father's Will referred to in the declaration within the Confirmation. The Respondent submitted an application to the Sheriff Clerk for Confirmation together with the Will bearing the docquets signed by Mrs. E. The papers were returned to the Respondent by the Sheriff Clerk by letter dated 15<sup>th</sup> May 2007 with a request that the executor sign and docquet the other page of the extract Will in a similar fashion to the way in which the first page of the Will had been docqueted and signed. That information from the Sheriff Clerk turned out to be incorrect in that the second signature was not required. The Respondent did not wish to delay matters further and was embarrassed about having to ask the client to come in again to sign a further page of the document. The Respondent thereafter forged the signature of Mrs. E on a docquet drawn on the second page of the Will. By letter dated 17<sup>th</sup> May 2007 he returned the docquet bearing the signature to the Sheriff Clerk. He thus uttered the signature which he had previously forged.

7. Having considered the foregoing circumstances and having heard submission from both parties, the Tribunal found the Respondent guilty of professional misconduct in respect of
- (a) his purporting to notarise the Affidavit of Ms C outwith her presence and his tendering the same as evidence in a Sheriff Court Case
  - (b) his forging and uttering the signature of Mrs E.
8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 6<sup>th</sup> May 2008. The Tribunal having considered the undated Complaint at the instance of the Council of the Law Society of Scotland against James Buchanan Donald, 10 Sandalwood Drive, Inverness; Find the Respondent guilty of professional misconduct in respect of his purporting to notarise the Affidavit of a client outwith her presence and his tendering the same as evidence in a Sheriff Court Case and his forging and uttering the signature of an Executrix; Censure the Respondent; Fine the Respondent £5000 to be forfeit to her Majesty and Direct in terms of Section 53 (5) of the Solicitors (Scotland) Act 1980 that any practising certificate held or to be issued to the Respondent shall be for an aggregate period of 3 years subject to (One) a condition that he not act as a Notary Public and (Two) subject to such restriction as will limit him to acting as a qualified assistant to (and to being supervised by) such employer or successive employers as may be approved by the Council of the Law Society of Scotland or the Practising Certificate Committee of the Council of the Law Society of Scotland; 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 an agent 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)**

**Kenneth Robb**  
**Vice-Chairman**

9. A copy of the foregoing Interlocutor together with a copy of the Findings certified by the Clerk to the Tribunal as correct was duly sent to the Respondent by Recorded Delivery Service on

**IN THE NAME OF THE TRIBUNAL**

**Kenneth Robb  
Vice-Chairman**

**NOTE**

It was clarified that the Respondent admitted the averment of professional misconduct. The Fiscal stated that the Complainers accepted the explanations contained in the Respondent's Answers as being correct.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch advised that the matters came to light when the Respondent voluntarily disclosed the circumstances to the Law Society. Mr Lynch stated that he had had full cooperation from the Respondent and his representative from the start.

**SUBMISSIONS FOR THE RESPONDENT**

Mr Burnside clarified that matters were not known at all outside the firm and came to light during discussions in the office and the Respondent advised his colleagues of what had happened. Mr Burnside stated that the Respondent's firm had a high reputation in Scotland and took their professional responsibilities very seriously. They decided that it was appropriate to self-report to the Law Society. Mr Burnside submitted that this was of credit to the firm and the Respondent.

In connection with the facts of the case, Mr Burnside stated that it was accepted that it was important for Notaries Public to take the Office seriously because if a document was Notarised it carried certain legal weight. Mr Burnside however pointed out that in this case Ms C was an established client of the Respondent and was known to the Respondent. She had sworn an Affidavit on 5<sup>th</sup> July 2006 in connection with another matter. Ms C called to see the Respondent in connection with the Affidavit in Mr A's case and a meeting was held at which the information to be contained in the Affidavit was obtained. The Respondent was aware that Ms C was in employment and it was difficult for her to get time off. His motivation in writing to her with the Affidavit was to save her the trouble of taking time off work to come into the office and sign it. He

referred to the meeting in the letter and asked her to check the content of the Affidavit and only sign it if satisfied with it.

In connection with Mr D deceased, Mr Burnside explained that the Respondent was over-stretched at this time. He had broadened his experience and was doing conveyancing, executry work and court work. He had recently become a salaried partner and there were difficulties with a typing backlog in the office. Mr Burnside explained that it was not uncommon for twelve or so tapes to be piled up and the urgent ones were prioritised which resulted in this one being left for a period of two months. A meeting was held for Mr D's daughter to sign the docquet on the Will. The secretary had marked the docquet on each of the two pages but the Respondent thought only the first page required to be signed. The document was returned by the Sheriff Clerk stating that both pages required to be signed. The Respondent still thought that this was wrong but he did not wish to delay matters and did not want to have to ask the client to come in again given the history of the case. This resulted in him replicating the signature which was foolish and naïve.

Mr Burnside stated that it was accepted that on the face of it both matters were very serious but they had to be considered in context. They had not been done with a view to personal gain or advantage over an opponent. In connection with Mr A, the Respondent was trying to save the client time. In connection with Mr D, the Respondent did not wish the client to be further embarrassed and a second signature was not in fact required. Mr Burnside pointed out that what the Respondent did, did not alter the proceedings in either case. Mr Burnside submitted that the Respondent was working under time pressure and the Firm had acknowledged that they were expecting too much of him at that stage in his career. He did not have sufficient back up. The Respondent had suffered from a chest complaint which had required his emergency attendance at Nairn Hospital within the four month period that both incidents took place.

Mr Burnside advised that the Respondent's firm were supportive and the Senior Partner and the firm's Financial Controller had both attended the Tribunal. Mr Burnside referred the Tribunal to various letters of reference and submitted that these showed that the

Respondent was held in high esteem. Mr Burnside indicated that it was hoped that the Tribunal would not feel it necessary to restrict the Respondent's Practising Certificate as there was now in place a mechanism whereby the Senior Partner would keep an eye on him. The Respondent's conduct since the incidents has been good. Mr Burnside advised the Tribunal of the Respondent's personal and financial situation. In response to a question from the Tribunal, Mr Burnside confirmed that the incidents took place within 4 months of each other and this was the time when the Respondent was under the most pressure. The pressures had now reduced and the difficulties had been resolved. Mr Burnside confirmed that the Respondent was not to be prosecuted in connection with the criminal act of Uttering. Mr Burnside was not aware whether or not the matter had been reported to the Clerk to the Notaries.

Mr Whittle, Senior Partner of the Respondent's firm then gave evidence to the Tribunal. He advised that as a firm they did not condone what the Respondent had done and that was why they had sought the direction of the Law Society with regard to what to do. It was recommended that a full disclosure be made and this was done. Mr Whittle stated that in connection with the lack of support for the Respondent, he had been unaware of it at the time but these matters had now been addressed. Mr Whittle stated that the Respondent had been extraordinarily naïve and had taken the easy option. Mr Whittle submitted however that the Respondent now understood how stupid he had been, had pulled himself together and had had the humility to admit that he was wrong. In Mr Whittle's opinion the Respondent had learnt his lesson and would not repeat the mistakes made. Mr Whittle stated that he believed the Respondent had potential in the future to re-establish himself and to prove to the partnership that he was fit for a full equity role.

## **DECISION**

The Tribunal was extremely concerned by the Respondent's conduct. The Respondent had committed two dishonest and illegal acts in a four month period. This is totally contrary to the core values expected of a solicitor. The essential qualities of a solicitor are honesty, truthfulness and integrity. The Respondent's actions in forging a signature

and purporting to notarise an Affidavit and tendering the same as evidence to the Court are totally contrary to the standards expected of a solicitor. The public cannot have confidence in the legal profession if solicitors cannot be trusted to act honestly and not knowingly misrepresent facts. The Respondent's conduct in this case goes to the root of what is expected of a solicitor and brings the profession into disrepute. The Respondent knowingly disregarded the responsibilities of his profession and made dishonest representations to a court. It would appear that the Respondent did this to avoid being embarrassed in front of a client but this is totally unacceptable behaviour. The Tribunal considered striking the Respondent's name from the Roll but took into account the fact that the Respondent's firm had made a voluntary disclosure of the Respondent's actions and the fact that the Respondent's firm is still supportive of the Respondent. The Tribunal also noted that the Respondent had fully cooperated with the Fiscal and entered into a joint Minute. The Respondent's self referral indicates that he has some insight into the seriousness of his faults and accordingly on this occasion the Tribunal stopped short of striking his name from the Roll. The Tribunal was concerned to ensure that the Respondent, having abused his position as a Notary Public was not able to act as a Notary Public. The Tribunal also consider it appropriate that the Respondent work under supervision for a three year period to ensure that he maintains the appropriate standards. Given the serious view that the Tribunal take of the Respondent's conduct, the Tribunal also imposed a fine of £5000. The Tribunal made the usual order with regard to publicity and expenses.

**Vice Chairman**