

**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

**MARY-ROSE McLEAN, Solicitor,
Appartement 12, Bloc A2 Le
Roqueville, 20 Boulevard de
Princesse Charlotte, Monaco**

1. A Complaint dated 10th August 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Mary-Rose McLean, Solicitor, Appartement 12, Bloc A2 Le Roqueville, 20 Boulevard de Princesse Charlotte, Monaco (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 14th November 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 14th November 2007. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent

was not present but was represented by Ms Anne Benny, Solicitor, Glasgow.

5. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint. No evidence was led.

6. The Tribunal found the following facts established

6.1 The Respondent is a Solicitor who, until 31st October 2006, was enrolled in the Register of Solicitors in Scotland. She was born on 23rd September 1975. She was admitted as a solicitor on 9th January 2001 and enrolled on 12th January 2001. She was formerly employed by Biggart Baillie, Solicitors, Glasgow from January 2001 until June 2005. Thereafter she commenced employment with Trowers & Hamlins, Solicitors, London on 20th June 2005 until that employment terminated on 12th May 2006. Unknown to her on 6th September 2006 Biggart Baillie applied for and paid to the Complainers the relevant dues to enable her name to be retained on the Roll for the practice year commencing 1st November 2005. At her request her name has been removed from the Roll.

6.2 Trowers & Hamlins: By a letter dated 22nd June 2006 Mr A, a partner in the firm of Trowers & Hamlins, Solicitors, Sceptre Court, 40 Tower Hill, London wrote to the Complainers and in this letter he stated that on 6th June 2006 the Respondent had sent an e-mail to the said firm therein admitting that she had written two letters (dated 19th May 2006 and 30th May 2006) purporting to be from her doctor with a view to providing an explanation for an extended period of sick leave which had commenced on 2nd May 2006 and which was due to the end on 23rd June 2006. In this letter Mr A went on to state that the said firm had received written confirmation from the doctor's surgery that neither of these two letters had emanated from the

surgery nor had they been signed by any of the doctors who worked there. Following receipt of this letter the Complainers embarked upon their normal process of investigation. The Respondent co-operated fully with this and in the course of same she admitted to the Complainers that she had created these two fictitious letters in the irrational and deluded belief that she had an illness which she did not in fact have. The letter dated 19th May 2006 falsely held out to Trowers & Hamlins that the Respondent had been diagnosed with Stage 182 carcinoma of the cervix, that she was receiving a combination of radiotherapy and chemotherapy and that the chemotherapy treatment was making her unfit for work. The Respondent went on to acknowledge to the Complainers that her behaviour was inexcusable and that she took full responsibility for it. She explained that she had been on sick leave and that she had terminated her employment with Trowers & Hamlins as a result of what she described as a “mini breakdown”. She further explained that she had been very depressed as a result of a combination of factors. She admitted to having become delusional about having a serious illness after and as a result of having been affected by all of these factors.

7. Having considered the foregoing circumstances and having heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
 - 7.1 her preparing and sending to her employer, two letters purportedly from her doctor which gave a completely false account of her medical condition as well as a false explanation for a period of sick leave.

8. Having heard the solicitor for the Respondent in mitigation and having noted the medical evidence lodged, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14 November 2007. The Tribunal having considered the Complaint dated 10 August 2007 at the instance of the Council of the Law Society of Scotland against Ms Mary-Rose McLean, Appartement 12, Bloc A2 Le Roqueville, 20 Boulevard de Princesse Charlotte, Monaco; Find the Respondent guilty of Professional Misconduct in respect of her preparing and sending to her employer two letters purportedly from her doctor which gave a completely false account of her medical condition as well as a false explanation for a period of sick leave; 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)

Kenneth Robb
Vice 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

Vice Chairman

NOTE

A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint. It was accordingly not necessary for any evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir expressed his appreciation for the co-operation of the Respondent in entering into Joint Minute. Mr Muir explained that the Respondent's name had been on the Roll of Solicitors in Scotland at the time of the offence but she was unaware of this. Her name was, however, no longer on the Roll and accordingly the powers of the Tribunal was limited in that the Tribunal could only fine or Censure.

SUBMISSIONS FOR THE RESPONDENT

Ms Benny explained that her client had intended to be present at the Tribunal hearing despite the fact that she presently lived in Monaco. The Respondent had booked a flight to come to Scotland yesterday but had missed her flight due to a car pile up on the motorway on the way to the airport. Ms Benny emphasised that the Respondent felt that it was important to be present to show her concern with regard to the matter. Ms Benny explained that the Respondent was unaware that her name was still on the Roll. She had worked for Biggart Baillie in Glasgow and then moved to London where she had been told that she did not need to remain on the Roll of Solicitors in Scotland. Biggart Baillie thought that she had forgotten to renew her practising certificate and accordingly did it for her. Ms Benny referred the Tribunal to the reference from Biggart Baillie and advised that when the Respondent left Biggart Baillie she was very highly regarded. Ms Benny stated that the Respondent was ashamed with regard to what had happened and since it had come to light she had fully co-operated both with her employers in London and with the Law Society. Miss Benny explained that at the time that the two letters had come to light, the Respondent did not believe that her GP had not written them. She truly believed that she was suffering from cancer at that time. Ms Benny, referred the Tribunal to the psychiatric opinion which showed that the Respondent was actually suffering from severe

depression at the time. Ms Benny explained that the Respondent had had a lot of stress factors in her life within a period of eight months and it was the multiple stress factors outlined in detail for the Tribunal by Ms Benny, which had resulted in her illness. The Respondent had recognised that she was unwell and in April 2006 she had sought to resign from her job. The Respondent, however, at this time had thought that she was suffering from cancer rather than the severe depression which had made her delusional. Ms Benny referred the Tribunal to certain aspects of the psychiatrist's report where it was indicated that repetition of the behaviour would be unlikely. The Respondent had dealt with matters once they came to light and had received treatment for her depression. She was not presently working within the legal field as she felt that it would be unfair on any future employer while this matter was still ongoing. Ms Benny asked the Tribunal to consider a Censure in the particular circumstances of this case. She advised the Tribunal with regard to the Respondent's current employment circumstances in France.

DECISION

Given that the Respondent accepted that she had prepared two false letters, her conduct clearly amounts to professional misconduct. She used fake letters to mislead her employer which is totally unacceptable conduct for a solicitor. The Tribunal, however, found that the circumstances of this case were unusual. It was clear from the detailed report from the Respondent's psychiatrist that she did not realise what she was doing at the time that she prepared the letters. The Tribunal considered that the medical evidence lodged in connection with the Respondent's state of mind both before and at the time of writing the letters substantially mitigated the misconduct. The Tribunal is also satisfied that it is unlikely that anything similar to this will happen again. The Tribunal was also impressed by the fact that once matters came to light the Respondent dealt with them, she got treatment from her doctor and co-operated with her firm and the Law Society. In the whole circumstances, the Tribunal considered that a Censure would be sufficient penalty. The Tribunal made the usual order with regard to publicity and expenses.

Vice Chairman