

**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

**KENNETH MACQUEEN HILL,
Solicitor, Messrs Stevenson &
Johnstone, Solicitors, Bank of
Scotland Buildings, Langholm**

1. A Complaint dated 22 April 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Kenneth MacQueen Hill, Solicitor, Messrs Stevenson & Johnstone, Solicitors, Bank of Scotland Buildings, Langholm (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 14 August 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 14 August 2008. The Complainers were represented by their Fiscal Mr Sean Lynch, Solicitor, Kilmarnock. The

Respondent was present and represented by Mr Macreath, Solicitor, Glasgow.

5. Mr Macreath indicated that the Respondent accepted the averments of fact and duty as specified in the Complaint and that he was guilty of professional misconduct as specified in the Complaint. No evidence required to be led.

6. The Tribunal found the following facts established

6.1 The Respondent is a Solicitor enrolled in Scotland. The Respondent was born on 10 September 1957. He was admitted as a Solicitor on 11th and enrolled in the Register of Solicitors on 17th both days of October 1994 . He carries on practice as the sole principal of the firm of Stevenson & Johnstone, Solicitors, Bank of Scotland Buildings, Langholm.

6.2 Richard James Barber Hill (hereinafter referred to as “Richard Hill”) is a solicitor who was born in 1928 and enrolled as a solicitor in 1952. He is the Respondent’s father. He was until 23 June 2006 a principal of Messrs Stevenson & Johnstone. On that date Richard Hill was found guilty of professional misconduct by the Scottish Solicitors Discipline Tribunal. The Tribunal directed that for a period of three years from and after 23 June 2006 any practising certificate held by the said Richard Hill would be subject to a restriction so that he could act only as a qualified assistant to an employer approved of by the Council of the Law Society of Scotland or their professional conduct committee.

6.3 Between 1 November 2005 and 23 June 2006 the Respondent carried on practice in partnership with Richard Hill, despite the fact that the said Richard Hill did not hold any practising certificate.

- 6.4 Between 24 June 2006 and 24 June 2007 the Respondent:-
- (a) employed Richard Hill as a solicitor without obtaining authority from the Council of the Law Society of Scotland as required by the direction from the Scottish Solicitors Discipline Tribunal condescended upon.
 - (b) designed Richard Hill's name on the firm's professional stationery so as to imply that he was a partner in the firm and latterly allowed him to be designed on the firm's professional stationery as a consultant despite the restriction condescended upon.
 - (c) employed the said Richard Hill as a solicitor despite the fact that the said Richard Hill did not hold any practising certificate.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- 7.1 his carrying on practice in partnership with Richard Hill despite Richard Hill not holding a practising certificate;
- 7.2 his employing Richard Hill as a consultant without obtaining the requisite authority from the Council of Law Society of Scotland, contrary to the decision reached by the Scottish Solicitors Discipline Tribunal on 23 June 2006;
- 7.3 his designation of Richard Hill on the firm's professional stationery to infer that he was a partner in the firm and his allowing Richard Hill to be named in the firm's professional stationery laterally as a consultant, despite Richard Hill being restricted to practising as an assistant solicitor by the Scottish

Solicitors Discipline Tribunal on 23 June 2006 and having no practising certificate in force at the time;

7.4 his employing Richard Hill despite the fact that Richard Hill did not have a valid practising certificate.

8. Having heard the Solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14 August 2008. The Tribunal having considered the Complaint dated 22 April 2008 at the instance of the Council of the Law Society of Scotland against Kenneth MacQueen Hill, Solicitor, Messrs Stevenson & Johnstone, Solicitors, Bank of Scotland Buildings, Langholm; Find the Respondent guilty of Professional Misconduct in respect of his carrying on practice with Richard Hill despite Richard Hill not holding a practising certificate, his employing Richard Hill as a consultant without obtaining the requisite authority from the Council of the Law Society of Scotland, contrary to the decision reached by the Scottish Solicitors Discipline Tribunal on 23 June 2006, his designation of Richard Hill's name on the firm's professional stationery to infer that he was a partner in the firm and his allowing Richard Hill to be named in the firm's professional stationery laterally as a consultant, despite Richard Hill being restricted to practising as a assistant solicitor by the Scottish Solicitors Discipline Tribunal on 23 June 2006 and having no practising certificate in force at the time, and in relation to his employment of Richard Hill despite the fact that Richard Hill did not have a valid practising certificate; 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 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 £14.00;

and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

David Coull

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

Mr Macreath indicated that the Respondent accepted the averments of fact and duty as specified in the Complaint and that he was guilty of professional misconduct as specified in the Complaint. Accordingly there was no need for evidence to be led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch stated that the background to this matter was as set out in Article 2 of the Complaint. The Respondent's father was found guilty of professional misconduct on 23 June 2006 and was made subject to a restriction for a period of three years. The Tribunal ordered that any practising certificate held by Mr Hill Senior during that period be subject to a restriction to acting only as a qualified assistant to a firm approved of by the Council of the Law Society of Scotland. Mr Lynch stated that shortly thereafter a complaint was made to the Law Society by a Mr and Mrs A regarding the firm of Stevenson and Johnstone. This complaint was investigated by the Law Society and found to be entirely without merit and no findings were made against the firm. However, Mr Lynch advised that in the course of the investigation of the complaint, the Case Manager became aware of the circumstances now set out in this Complaint. It emerged that Mr Hill Senior had ceased being a partner of the firm in October 2005 as far as the Law Society was concerned and had no practising certificate. On further investigation, the matters set out in Article 3.2 of the Complaint came to light and resulted in this Complaint being brought before the Tribunal.

Mr Lynch indicated that he was grateful to the Respondent for tendering a plea which had prevented evidence having to be led. Mr Lynch also indicated his gratitude to Mr Macreath and Mr McCann for their essential cooperation in this matter. Mr Lynch advised that he was not aware of any previous findings in relation to the Respondent.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath stated that the Respondent was one of seven children brought up by his father after his mother's early death. He was first qualified as a quantity surveyor but returned to the Borders with his wife to work with his father in his legal practice and

to ensure an improved quality of life for his family. He completed his Law Society exams then his Diploma and following a waiver from the Law Society entered into a training contract with Messrs Haddon & Turnbull, the firm where his father was a partner. The Respondent's father had been running the Langholm practice for the firm under the name of Stevenson and Johnstone for many years. This was the only firm in Langholm and the name had been retained for good-will purposes. The Respondent and his father were well regarded by local people as men of business. Later the Respondent's father resigned from the practice of Haddon & Turnbull and carried on practising on his own account as Stevenson and Johnstone intending to pass his business onto his son.

Mr Macreath advised that the Respondent's father is almost 80 years old and has a very strong personality. His work has been his life. He did not tell his son of the Complaint against him in 2006 or what happened as a result of that Complaint. Mr Macreath advised there was no local publicity and the Respondent still maintains it was a shock when he heard of his father's appearance before the Tribunal. Mr Macreath advised that to Mr Hill Senior's credit he reimbursed the client involved personally without claiming against the Guarantee Fund.

Mr Macreath advised that the Respondent's father was in complete control of the practice at this time and opened all the mail personally having collected it from the Post Office at 7 o'clock each morning.

Mr Macreath advised that Mr Lynch has now obtained a stringent undertaking that Mr Hill Senior will retire immediately from the profession.

Mr Macreath advised that the Respondent has confirmed that he was unaware that his father had not renewed his practising certificate. When the matter came to light, the Respondent went to see the Law Society about the matter. Even then, his father did not tell him about the restriction and has confirmed to Mr Macreath that he was secretive.

Mr Macreath advised that the Respondent is now in control of all matters in the practice and that his father is no longer involved.

Mr Macreath asked the Tribunal to be as lenient as possible in disposing of this matter. He stated that the Respondent has an unblemished record as a solicitor and struggled to deal with the events which gave rise to this Complaint because of his father's position in the firm and because of his unique relationship with his father. Mr Macreath stated that the firm has a sound financial footing and that the Respondent wishes to continue to provide a quality legal service to the people of Langholm. Mr Macreath stated that the firm has a fine reputation and that there would be a significant impact on that from the necessary Censure and publicity alone.

DECISION

The Tribunal took account of the Respondent's unblemished career in the profession and had sympathy for the difficult position which the Respondent had found himself in. However, the Tribunal considered that it was the Respondent's responsibility as a partner of the firm to ensure that all solicitors providing legal services on behalf of the firm had practising certificates and were complying with any conditions imposed by the Tribunal on their practising certificates. The Tribunal was aware that the publicity arising from this case would have a negative impact on the Respondent's practice and considered that it was not appropriate in all the circumstances to impose a financial penalty. The Tribunal accordingly Censured the Respondent and made the usual order with regard to publicity and expenses.

Vice Chairman