

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

RONALD McKENZIE, Solicitor,
care of Legal Direct, PO Box 642,
Dundee

1. A Complaint dated 23rd December 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Ronald McKenzie, Solicitor, c/o Legal Direct, PO Box 642, 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. No answers were lodged by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 1st March 2006 and notice thereof was duly served on the Respondent.
4. The hearing took place on 1st March 2006. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was not present or represented.

5. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the Complaint were admitted. A faxed letter of mitigation was submitted on behalf of the Respondent. No evidence was led.

6. The Tribunal found the following facts established: -

6.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 11th September 1962. He was admitted as a solicitor on 3rd June 1997 and enrolled on 5th June 1997. From 30th June 1997 until 31st October 1999 he was the sole principal in the firm of McKenzie & Co and then practiced from premises at 29 Exchange Street, Dundee. From 1st November 1999 until 31st October 2000 he was a Consultant to the firm of Anderson, Solicitors, Dundee. From 1st May 2001 until 31st October 2002 he again practiced as the sole principal of McKenzie & Co at the same address as before. On 28th March 2003 he was suspended from practice in terms of Section 40 of the Solicitors (Scotland) Act 1980. He was sequestrated on 19th May 2003.

6.2 Mr A

Sometime in or about October 2001 Mr A consulted the Respondent in connection with matters arising from separation from his wife. Mrs B had by that time executed a Disposition in favour of Mr A of her equity in the former matrimonial home at Property 1 and the Disposition had been delivered to Messrs Paul Anderson who were acting for Mr A before he consulted the Respondent. The title to the property was in the joint names of Mr A and Mrs B on an equal basis. All that required to be done by the Respondent was to complete the application process for registration of the title to the property into the sole name of Mr A. By October 2001 there was an urgency in having this work done. The Respondent accepted instructions from Mr A to do it and in a letter to Mr A dated 9th October 2001 he confirmed that he

saw it as a priority to have the work associated with the transfer of the title completed as soon as possible. By about the middle of November 2001 the Respondent had in his possession all of the title documents which were required for the registration process to be completed. By letter dated 15th November 2001 the Respondent wrote to Mr A advising him that all of the documentation had been completed in connection with the application for registration and enclosed a note of his fee and outlays. The total amount claimed was £549.30 inclusive of VAT. The Respondent made it plain to Mr A in this letter that he required to be fully funded before he proceeded any further with the application process. Mr A paid the said sum to the Respondent in two installments. He paid the first installment of £299.30 by cheque sometime on or about 18th December 2001 and he paid the second installment of £250 by cheque sometime on or about 22nd January 2002. Notwithstanding that the Respondent was fully funded by Mr A, the application process was not completed. Mr A did not obtain sole registered title to the property. It was not until about the beginning of 2003 that Mr A learned that the title of the property was still in the joint names of himself and his wife according to the Registers. In the event, Mrs B changed her mind about conveying her equity in the property to Mr A by the end of 2003 when she consulted solicitors for the first time following receipt of a letter from him in connection with the transfer of the title.

7. The Tribunal, having considered the terms of the Complaint and the submissions from the fiscal and notwithstanding the terms of the Joint Minute admitting professional misconduct, found the Respondent not guilty of professional misconduct and having heard the fiscal for the Complainers on the subject of expenses, pronounced an Interlocutor in the following terms :-

Edinburgh 1st March 2006. The Tribunal having considered the Complaint dated 23rd December 2005 at the instance of the

Law Society of Scotland against Ronald McKenzie, Solicitor,
c/o Legal Direct, PO Box 642, Dundee; Find the Respondent
not guilty of Professional Misconduct, Find no expenses due to
or by either party 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

8. 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 facts, averments of duty and averments of professional misconduct in the Complaint. No evidence was led. The Respondent was not present or represented but had lodged mitigation on his behalf. Despite the fact that the Respondent had admitted professional misconduct, the Tribunal still had to be satisfied beyond reasonable doubt that the Respondent's conduct amounted to professional misconduct.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir stated that he appreciated the co-operation of the Respondent and his agent in entering into a Joint Minute. He referred the Tribunal to the Complaint and stated that there was no doubt that there was a chronic delay in the Respondent completing the conveyancing in a situation where he knew that there was a matter of urgency in carrying out the work. Mr Muir stated that although the Complaint only involved a single issue, the Respondent's failure to carry out work caused problems for Mr A when it emerged that the title had not been put into his sole name. Mr Muir indicated that he had no comments to make with regard to the mitigation put forward on behalf of the Respondent. In response to a question from the Chairman, Mr Muir confirmed that after Mr A paid the second instalment of money due on the 22nd January there was no contact between the Respondent and Mr A as the Respondent was then out of practice. Mr Muir also confirmed that an inadequate professional service finding had been made against the Respondent in connection with the same circumstances. In response to another question from the Chairman with regard to whether or not the delay would amount to professional misconduct if it was inadvertent, Mr Muir stated that the Respondent had asked Mr A for the money, Mr A had paid the money and then the Respondent delayed in carrying out the necessary conveyancing and this could not be inadvertent.

DECISION

The Tribunal noted the terms of the Joint Minute where the Respondent admitted professional misconduct. The Tribunal however had to consider whether or not it was

satisfied that the Respondent's conduct was serious and reprehensible enough to amount to professional misconduct. In this case there was a single instance of failure on the part of the Respondent to carry out an item of work. There were no averments in the Complaint that Mr A had complained about the delay and no averments that the Respondent had misled Mr A by indicating in response to a query from Mr A that he had been doing work when he had not. The Tribunal accept that it is unsatisfactory that the Respondent received money from his client to do work which he then did not do for a period of one year. The Tribunal however, in the circumstances of this case, was not satisfied that the Respondent's delay was not inadvertent. If the delay was caused by inadvertence the omission was not professional misconduct. In the whole circumstances the Tribunal could not be satisfied beyond reasonable doubt that the Respondent's conduct amounted to professional misconduct in terms of the Sharp Test [Sharp-v-Council of the Law Society of Scotland 1984 SC 129 pg 134]. The Respondent's conduct was however unsatisfactory.

Mr Muir asked the Tribunal to make a finding of expenses against the Respondent as the Tribunal had expressed the view that the Respondent's conduct was unsatisfactory. The Tribunal considered that the Respondent had no-one but himself to blame for having been charged with professional misconduct and accordingly the Tribunal resolved that there should be no liability for expenses due to or by either party.

As this is a decision in terms of paragraph 14 of Schedule 4 to the Solicitors (Scotland) Act 1980 publicity must be given.

Chairman