

**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

**DAVID MCLEAN WATT,
Solicitor, Tau Ceti, Kilduskland
Road, Ardrishaig, Argyll**

1. A Complaint dated 31 May 2002 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, David McLean Watt, Solicitor, Tau Ceti, Kilduskland Road, Ardrishaig, Argyll (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 Complaint was dealt with by the Tribunal on 20 April 2005 when the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 20th April 2005. The Tribunal having considered the Complaint dated 31 May 2002 at the instance of the Council of the Law Society of Scotland against David McLean Watt, Solicitor, Tau Ceti, Kilduskland Road, Ardrishaig, Argyll; Find the Respondent guilty of Professional Misconduct in respect of his preparation of a Codicil for his father in terms of which his father conferred upon him a significant financial benefit to the disadvantage of other members

of his family and his failure to notify his Trustee in sequestration of the existence of the Codicil and his beneficial entitlement thereunder; the Tribunal Censured the Respondent and Fined him in the sum of £5,000 to be forfeit to Her Majesty and Directed in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of ten years any practising certificate held or issued to the Respondent shall be subject to such Restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council 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 Law Society's Table of Fees for general business; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

3. These findings were appealed by the Respondent to the Court of Session. The Court of Session issued an Interlocutor on 11 July 2008 in the following terms:-

Recall the interlocutor of the Scottish Solicitors' Discipline Tribunal dated 20th April 2005 to the extent that it found the Petitioner guilty of professional misconduct, in respect of his failure to notify his Trustee in Sequestration of the existence of the Codicil of 28th October 1984 and his beneficial entitlement there under, and accordingly, his attempts to mislead his Trustee as to the full extent of his assets, imposed a penalty upon him in respect thereof and directed publicity to be given to the decision; Affirm the Scottish Solicitors' Discipline Tribunal's said interlocutor insofar as:

- a. It found that there was no professional misconduct by the Petitioner in relation to the delay in the winding up of his father's estate nor in relation to his response to

reasonable requests made to him by the Respondent for return of files;

- b. It found the Petitioner guilty of professional misconduct with regard to the making of the codicil; and
- c. It found the Petitioner liable in the expenses of the proceedings before the Tribunal at first instance;

Quoad ultra, Remit the question of:-

- a. alleged professional misconduct on the part of the Petitioner in respect of the Petitioner's failure to notify his Trustee in Sequestration of the existence of the Codicil of 28th October 1984 and his beneficial entitlement there under and accordingly, his attempts to mislead his Trustee as to the full extent of his assets, and
 - b. sentence to a freshly constituted Tribunal and Direct that new Tribunal to proceed as accords and Decern.
4. Following the remit from the Court of Session, the case called before a freshly constituted Tribunal on 3 September 2008. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented by Iain Mitchell, Advocate.
5. Walter Muir on behalf of the Complainers indicated that the Complainers did not wish to proceed with the allegation of professional misconduct in respect of the Respondent's failure to notify his Trustee in Sequestration of the existence of the Codicil of 28 October 1984 and his beneficial entitlement thereunder or his attempts to mislead his Trustee as to the full extent of his assets. The Tribunal accordingly did not consider this matter further.
6. Mr Muir on behalf of the Complainers and Mr Mitchell on behalf of the Respondent made submissions to the Tribunal with regard to the appropriate sentence in respect of the remaining finding of professional misconduct relating to the making of the Codicil.

7. Having considered these submissions, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 3 September 2008. The Tribunal having considered the remit from the Court of Session in respect of the Complaint dated 31 May 2002 by the Council of the Law Society of Scotland against David McLean Watt, Solicitor, Tau Ceti, Kilduskland Road, Ardrishaig, Argyll; Censure the Respondent in respect of the finding of professional misconduct made by the Tribunal on 20 April 2005 in respect of his preparation of a Codicil for his father in terms of which his father conferred upon him a significant financial benefit to the disadvantage of other members of his family; 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)

David Coull
Vice 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

Vice Chairman

NOTE

A Complaint dated 31 May 2002 was considered by the Tribunal on 20 April 2005 when the Tribunal found the Respondent guilty of professional misconduct in respect of two of the matters in the Complaint. The Tribunal at that time Censured him, fined him in the sum of £5000 and imposed a restriction on his practising certificate for a period of ten years. These findings were then appealed by the Respondent to the Court of Session. On 11 July 2008 the Court of Session upheld the Tribunal's Interlocutor in respect of the finding of no professional misconduct in relation to the delay in winding up his father's estate and in relation to his response to reasonable requests made to him by the Law Society for return of files, upheld the Tribunal's finding of professional misconduct with regard to the making of the Codicil and upheld the Tribunal's finding of expenses. The Court of Session remitted the question of alleged professional misconduct on the part of the Respondent in connection with notifying his Trustee in Sequestration of the existence of the Codicil and attempts to mislead his Trustee and also the matter of sentence in connection with the making of the Codicil to a freshly constituted Tribunal.

The Tribunal accordingly assigned a procedural hearing in respect of the matter. When the case called for the procedural hearing, parties indicated that they would prefer if the Tribunal dealt with the matter as a substantive hearing and disposed of the matter. It was clarified that neither of the parties had any objection to the Tribunal as constituted dealing with the substantive hearing.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir outlined the history of the case. He explained that the Complaint had been raised in May 2002, a preliminary hearing had been held on 21 September 2002 where the Respondent's preliminary pleas had been dismissed. The Complaint then proceeded to a substantive hearing over a number of days and the Complainers were successful in respect of two out of the four heads of Complaint. Mr Muir explained that on the first day of the proof on 21 June 2003, the Respondent's solicitor had arrived late and lodged copious Productions and raised a number of additional preliminary pleas. On this date the fiscal had moved the Tribunal to amend two errors

in the Complaint which concerned the date when the Respondent made disclosure of his assets to his Trustee in Sequestration. Due to the number of preliminary pleas raised at the same time by the Respondent's agent, this amendment was never dealt with and the Complaint remained in its original terms. This resulted in the findings in fact made by the Tribunal containing the wrong dates. Mr Muir explained that the Law Society took the view that the conviction was unsafe and that it would not be sensible to go through the Court of Session procedure especially taking into account the issue of expenses. Mr Muir explained that as matters had occurred such a long time ago and there had been no further issues in relation to the Respondent and given that the Respondent was presently working as an assistant for a firm of solicitors with no difficulties and given his age, it had been agreed between the parties that the Tribunal be invited not to proceed to deal with the allegation of professional misconduct in respect of the Respondent's failure to notify his Trustee in Sequestration of the existence of the Codicil of 28 October 1984 and his beneficial entitlement there under and accordingly his attempts to mislead his Trustee as to the full extent of his assets. Mr Muir stated that in the circumstances, the Law Society's position was that they would invite the Tribunal to quash this finding that had been remitted by the Court of Session and further to quash the fine and ten year restriction imposed by the previous Tribunal as the making of the Codicil alone would not merit any more than a Censure. Mr Muir clarified that the Law Society's position was that they accepted that the Codicil had been revoked a few weeks after it had been made. Mr Muir clarified that it was agreed between the parties as was set out in the Court of Session Interlocutor that the previous finding of expenses made against the Respondent would remain undisturbed. Mr Muir advised that it was also agreed between the parties that there would be no award of expenses made due to or by either party in respect of this hearing.

SUBMISSIONS FOR THE RESPONDENT

Mr Mitchell indicated that he was grateful to the Law Society's fiscal for the open and candid account given. He explained that the Respondent made a Codicil which was followed a few weeks later by a revocation. This meant that when he disclosed matters to his Trustee, he did not have any beneficial entitlement. However as he had forgotten about the revocation at the time, the Tribunal had taken the view that he

thought he had an entitlement and accordingly should have disclosed it but if he had done, it would in fact have been incorrect. Mr Mitchell stated that the Court of Session Interlocutor left it open to the Tribunal to revisit the issue of professional misconduct in respect of the failure to disclose the Codicil to his Trustee but the fiscal had invited the Tribunal not to proceed with that head of Complaint. Mr Mitchell explained that the Respondent was from a small tight family unit with a mother, father and three siblings. The Respondent made a Will for his father who was suffering from Parkinsons. At the time the Respondent was supporting his brother and parents and he foolishly and unthinkingly drew up the Codicil without realising that he should not have done it. Over the following weeks he realised the position and had his father revoke the Codicil. Mr Mitchell emphasised that no actual harm was done and the matter was put right. Mr Mitchell stated that the Respondent regretted it at the time and has not come to the attention of the Law Society since. The Respondent was presently working as an assistant. Mr Mitchell asked the Tribunal to consider refraining from giving publicity to the decision in terms of Section 14A of Schedule 4 to the Solicitors (Scotland) Act 1980 on the basis that it would be prejudicial to the partners of the firm in which he was presently working. Mr Mitchell stated that there is a scarcity of solicitors working in that area and that the firm was anxious to maintain public confidence. Mr Mitchell pointed out that when the events occurred, the Respondent had his own firm and had no connection with the firm of solicitors for which he is now working. Mr Mitchell pointed out that the partners concerned were not partners of Respondent and accordingly were not covered by Section 14A(b).

DECISION

Given that the Fiscal had asked the Tribunal not to consider further the issue of alleged professional misconduct in respect of the failure to notify the Trustee in Sequestration of the existence of the Codicil or his attempts to mislead his Trustee, the Tribunal did not consider this matter and made no finding in respect of it. In connection with the making of the Codicil, the Tribunal considered that in normal circumstances, this would be viewed very seriously. Solicitors have a duty not to take instructions to act in preparation of a Codicil to a Will if the Codicil contains a significant benefit to that solicitor. This case however was very unusual. The Tribunal took account of the fact that the making of the Codicil occurred over twenty years ago

and was revoked only a few weeks later. The Tribunal also took account of the fact that since the previous Interlocutor of the Tribunal, the Respondent had been working as an assistant and there had been no further issues which had come to the attention of the Law Society. The other peculiarity in this case was that the fiscal had asked the Tribunal only to Censure the Respondent. In the whole circumstances, the Tribunal considered that a Censure was a sufficient penalty.

The parties requested that there be no finding of expenses due to or by either party and this was agreed. The finding of expenses made in the previous Tribunal findings will stand. The Tribunal considered the Respondent's representative's motion in connection with refraining from giving publicity. It will only be in very exceptional circumstances that the Tribunal will refrain from giving publicity to a decision. The Tribunal was not persuaded that there was any merit in departing from the usual practice. The Tribunal noted that there may already have been publicity in respect of the Court of Session decision. The Tribunal further noted that as there was a scarcity of solicitors in the area, it was not likely that the firm would lose clients as a result of the publicity in this case. The Tribunal accordingly ordered publicity in the usual way.

Vice Chairman