

**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

**ROBERT THOMAS, Solicitor, of
Messrs Robert Thomas & Caplan,
Solicitors, 365 Victoria Road,
Glasgow**

1. A Complaint dated 22nd November 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Robert Thomas, Solicitor, of Messrs Robert Thomas & Caplan, Solicitors, 365 Victoria Road, Glasgow (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. A preliminary plea of res judicata was intimated on behalf of the Respondent.
3. In terms of its Rules the Tribunal appointed a preliminary hearing to be fixed on 2nd December 2004 and notice thereof was duly served on the Respondent.

4. At the hearing on 2nd December 2004 the Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and was represented by Herbert Kerrigan QC and by his solicitor, David Sievwright, Solicitor, Glasgow.
5. Having considered submissions on behalf of the Respondent and having heard the Fiscal on behalf of the Complainers the Tribunal dismissed the Respondent's preliminary plea of res judicata and adjourned the hearing of the Complaint to a future date to be fixed.
6. In terms of its rules the Tribunal appointed the Complaint to be heard on 23rd March 2006 and notice thereof was duly served on the Respondent.
7. The Complaint was heard on 23rd March 2006. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was present and was represented by his solicitor, David Sievwright, Solicitor, Glasgow.
8. Mr Reid moved to withdraw the Complaint dated 22nd November 2004 and lodged an amended Complaint dated 22nd March 2006 together with a Joint Minute admitting the facts, averments of duty and averments of professional misconduct contained in the amended Complaint. Various productions were lodged which the parties agreed to be admitted into evidence.
9. The Tribunal found the following facts established
 - 9.1 The Respondent was born on 11th May 1948. He was admitted as a solicitor on 2nd September 1977. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 16th September 1977. The Respondent was as a Partner with the firm of Robert Thomas & Caplan, Solicitors, 365 Victoria Road, Glasgow, from 4th May 1982 until 31st October 2003.

Since 1st November 2003 he has remained with that firm as an employee.

9.2 Mr A

Mr A formerly resided at Property 1. He was a client of the Respondent. On or about 9th April 1998 Mr A was arrested by police alleged to be involved with the importation of controlled drugs to the UK. He was charged with two other persons at the instance of the Lord Advocate on an Indictment which libelled the following charge:-

“between 11th March 1998 and 9th April 1998, both dates inclusive, at Durban, South Africa on the vessel Dal Calahari then on the high seas between Durban, South Africa and the port of Tilbury, Essex, England at Tilbury Docks, Essex, England at the premises occupied by London Freight International at Didcot, Oxfordshire, England, at Allport Installations, Langley House, March Warf, St Mary’s Road, Langley, Slough, England at Allport Installations, Lang Road, Linwood Industrial Estate, Linwood, Renfrewshire, at the premises occupied by Burger King, Hillington Industrial Estate, Glasgow, at French Street, Renfrew, at the house occupied by you, Mr A at Property 1 and elsewhere in Great Britain you Mr A were in relation to goods, namely a quantity of cannabis, knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug under Section 3(1)(a) of the Misuse of Drugs Act 1971: Contrary to the Customs & Excise Management Act 1979, Section 170(2)”.

9.3 The prosecution involving Mr A eventually came to trial in October 1998 at the High Court of Justiciary in Glasgow. At the conclusion of the trial on 9th October 1998 Mr A was found guilty of the aforesaid charge and sentenced to a period of six years imprisonment. The circumstances of the offence were

that in early 1998 a large machine was shipped into the UK from South Africa. It was examined by customs officials who discovered a substantial amount of cannabis contained therein. The customs officers removed the cannabis and thereafter continued to monitor the machine's further movements. It was transported in the first instance to Oxford from where it was carried to a depot in Linwood, Paisley. Mr A was seen to pick up the machine at the depot in Linwood and to put it within a hire van. He drove off in the van and was subsequently apprehended and charged. Mr A marked an appeal against his conviction. The appeal was heard before the High Court of Justiciary on 27th July 2001. The decision of the appeal court is reported at 2002 SLT 349. Having heard submissions advanced on behalf of Mr A the appeal was allowed and his conviction was quashed.

9.4 When Mr A was convicted in October 1998, the Crown served on him a document known as a Prosecutor's Statement in terms of the Proceeds of Crime Act 1995. In terms of that Prosecutor's Statement the Crown gave notice to Mr A that it was their intention to confiscate assets belonging to him on the premise that these assets had been secured by him as a consequence of his ill-gotten gains from his criminal conduct. At the time he received the Prosecutor's Statement Mr A was the owner or had an interest in two separate heritable properties being Property 2 and a home which he shared with his girlfriend, Ms B at Property 1. The Respondent had acted on behalf of Mr A when he originally purchased the property at Property 2. One of the Respondent's partners had acted on behalf of Mr A and Ms B in the purchase of property at Property 1.

9.5 After the arrest of Mr A, Customs Officers carried out further investigations regarding his criminal enterprise. In the course

of these investigations the Respondent was interviewed by Customs Officers then acting in the course of their enquiries. In or about early July 1998 contact was made with the office of the Respondent by Customs Officers who were advised that the Respondent dealt with the affairs of Mr A and would be on holiday until 13th July 1998. On 13th July 1998 the Customs Officer telephoned and spoke with the Respondent. She explained to the Respondent that Mr A, his client, had been arrested and charged with attempting to import a substantial quantity of controlled drugs into the U.K. She explained to the Respondent that she was carrying out enquiries regarding the identification of assets for the purposes of confiscation. The Respondent refused to provide any information to the Customs Officers citing the grounds of legal privilege and confidentiality. Given the Respondent's refusal to provide information on a voluntary basis the Customs Officer advised the Respondent that she would seek a Production Order to allow them to secure this information. The Respondent made it clear to the Customs Officer that he was well aware as to his obligations in terms of the Money Laundering Regulations and that he had recently been involved with a colleague of the Customs Officer in connection with a separate investigation regarding Money Laundering by another client. On 16th July 1998 the Customs Officer telephoned the Respondent again to advise that she was in the course of obtaining the Production Order. Once again during this conversation the Respondent mentioned that he was assisting an enquiry being made of him from another Customs Officer and provided to the Customs Officer who had telephoned him information to be passed to the other Customs Officer in connection with a separate enquiry. On 21st July 1998 the Customs Officer, having obtained a Production Order, attended at the offices of the Respondent. Files relating to the purchase and sale of heritable property owned by Mr A were produced by the Respondent to the

Customs Officer. During the period in which the Customs Officer was within the office premises of the Respondent, the Respondent made it clear to the Customs Officer that he was well aware of Money Laundering issues and kept himself up to date with Money Laundering guidelines issued by the Complainers. The Respondent was well aware that his client, Mr A was being investigated for drugs offences.

9.6 Mr A was the owner of the heritable property situated at Property 2. He originally consulted the Respondent when he purchased the property. From Gateside Prison, Greenock, whilst he was serving his sentence awaiting the appeal, Mr A issued instructions to the Respondent requesting that he transfer his interest in the heritable property at Property 2 to his brother Mr C for nil consideration. No money was exchanged. The Respondent accepted these instructions and a transfer of the property was effected from Mr A to Mr C on 1st February 1999. Thereafter the property at Property 2 was sold to an independent third party at a price of £28,000. The net free proceeds of sale were paid to Mr C and thereafter dissipated. The Complainers believe the transfer of interest and the subsequent sale of the property was a deliberate attempt by Mr A to dissipate his assets thereby preventing their confiscation by the Crown in terms of the Proceeds of Crime Act 1995.

9.7 In or about August 1999 Mr A issued instructions to the Respondent again from Gateside Prison, Greenock. On this occasion he requested the Respondent prepare a Disposition in relation to the heritable property at Property 1. The instructions to the Respondent were to transfer the interest of Mr A in that heritable property to his brother Mr C. At this time the title of Property 1 was in the joint names of Mr A and his girlfriend, Ms B. Accordingly the ownership of the property would transfer from Mr A and Ms B to Mr C and Ms B. No financial

consideration was exchanged. The transfer was effected for good and onerous causes. In consideration of the transfer of title Mr C accepted joint and several responsibility along with Ms B for the loan secured over the property. Said loan was approximately £80,000. The Respondent acted on behalf of all parties involved in the transaction. The conveyancing documentation, including a Disposition and Deed of Variation of an existing Standard Security were forwarded by the Respondent to the Land Register of Scotland, arriving at the office of the Land Register on 16th September 1999. Having been alerted to the dissipation of assets by Mr A, the Crown, then acting in terms of the Proceeds of Crime Act obtained an Interlocutor from the Lord Ordinary dated 14th September 1999 in terms of which Mr A, Ms B and Mr C were interdicted from intromitting with the property at Property 1. The Interlocutor and its import were brought to the attention of the Respondent by the Crown, the Cheltenham & Gloucester Building Society and agents acting on behalf of the Cheltenham & Gloucester Building Society shortly after being granted.

9.8 Further, in the course of the inquiry custom officers recovered a letter from the Respondent dated 4th October 2000 which was addressed to the said Ms B at Property 1 in which the Respondent stated:

“We confirm that we successfully transferred the title to yourself and Mr C. The difficulties is due to the fact that the Order was served on both you and Mr A. The transfer has resulted in an exclusion of the indemnity with respect to yourself. You may be aware when we received instructions in the matter the instructions were to safeguard Mr A’s title but as the Customs & Excise have involved you in the matter the result has left your title at risk. We wonder if you could possibly give our Mr Thomas a telephone call to discuss the matter.”

The Respondent was aware that, as at 21st July 1998 the Crown was considering proceedings to confiscate assets belonging to Mr A. The Respondent was aware that, as at 21st July 1998 the Crown was endeavouring to identify the assets of Mr A with a view to confiscation proceedings. By acting in the fashion that he did the Respondent assisted Mr A in his efforts to dissipate his assets to defeat the efforts of the Crown.

10. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of his conduct not being in accordance with the principles set out in the articles of the Law Society's Code of Conduct for Solicitors Holding Practising Certificates, in particular, Article 5(a) of that Code, in that he assisted a client to dispose of assets which the Crown was seeking to confiscate as being the alleged proceeds of crime.

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

Edinburgh 23rd March 2006. The Tribunal having considered the Complaint dated 22nd March 2006 at the instance of the Council of the Law Society of Scotland against Robert Thomas, Solicitor, of Messrs Robert Thomas & Caplan, Solicitors, 365 Victoria Road, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his conduct not being in accordance with the principles set out in the articles of the Law Society's Code of Conduct for Solicitors Holding Practising Certificates, in particular, Article 5(a) of that Code, in that he assisted a client to dispose of assets which the Crown was seeking to confiscate as being the alleged proceeds of crime; Censure the Respondent and Fine him in the sum of £5000 and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that with effect from 23rd June 2006, 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 and be supervised by such employer or

successive employer as may be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland for a period of five years; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal in relation to this and the preliminary hearing, 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 both this decision and the previous decision and that this publicity should include the name of the Respondent.

(signed)

Alistair Cockburn

Chairman

12. 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**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid advised that there had been a Complaint to which Answers were lodged and that following the Court of Session appeal he had had discussions with the Respondent and had agreed changes to the Complaint. He then prepared an amended Complaint dated 22 March 2006, which he has lodged today with the Tribunal. He moved to withdraw the original Complaint. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct contained in the amended Complaint. Mr Reid invited the Tribunal to find that professional misconduct has been established as set out in the amended Complaint..

Mr Reid indicated that there were two inventories of productions lodged marked second inventory of productions and third inventory of productions. This was despite the fact that no first inventory of productions was ever lodged.

Mr Reid indicated that the Respondent had, on his calculation, been in the profession for 29 years. Mr Reid advised that the Respondent did not act for Mr A in relation to his criminal case.

Mr Reid advised that Maureen Callaghan of Customs & Excise spoke to Mr Thomas on 13th July 1998 and advised him that his client, Mr A, had been charged with drug trafficking. In the course of this conversation Mr Thomas said that it was inappropriate for him to divulge any information regarding his client. There was then a further telephone call on 16th July 1998 by the same Customs Officer to the Respondent and as a result of a lack of co-operation by the Respondent she intimated to him that she would be obtaining a Production Order. The Production Order was then sought by the Customs & Excise. Mr Reid submitted that the significance of these calls were two-fold. Firstly they gave the Respondent notice of the investigation by Customs & Excise into Mr A's affairs and secondly, during the course of these conversations the Respondent expressed a familiarity with the Money Laundering Regulations and Procedures.

Mr Reid stated that the Production Order was served and Customs & Excise attended on 21st July 1998 and served it on the Respondent. Mr Reid referred the Tribunal to the Production Order which is item 1 in the Third Inventory. He stated that it was quite specific and it says that Mr A is involved in drug trafficking and that there were reasonable grounds to obtain documentation from his solicitor. Files and documents were delivered to the Crown Office in accordance with the Production Order.

Mr Reid referred to the sale of a property known as Property 2 and referred the Tribunal to the copy of the disposition which is found at item 7 of the Second Inventory of Productions. He stated that the Respondent accepted these instructions and that the conveyancing was completed. Mr Reid referred to production 8 of the said inventory, a copy disposition prepared by the Respondent. Mr Reid submitted that this was a clear move by Mr A to defeat the efforts of the Crown to confiscate his assets. Mr Reid stated that the Respondent was well aware of the Crown's investigation and that his client, Mr A was in jail serving a prison sentence.

Mr Reid then referred to the sale of the property at Property 1. He referred the Tribunal to a copy of the disposition of that property prepared by Mr Thomas, which is production 5 of the Second Inventory of Productions. That disposition was from Mr A to his brother Mr C. Mr Reid stated that a Deed of Variation was also prepared in relation to the security over the property. He referred to the form 2, which is production 23 of the Second Inventory. Mr Reid stated that the Crown got an Interlocutor days after these transfers. Mr Reid stated that the excerpt from the letter set out in article 2.7 of the amended Complaint is of considerable significance. Mr Reid invited the Tribunal to read from the following sentence from the Respondent's letter of 4 October 2000 to Ms B that the Respondent was well aware that he was instructed to attempt to defeat the efforts of the Crown.

“....You may be aware that we received your instructions in the letter. The instructions were to safeguard Mr A's title but as the Customs & Excise have involved you in the matter the result has left your title at risk...”

Mr Reid invited the Tribunal to find that professional misconduct had been established as the Respondent accepted instructions from Mr A while in prison and,

despite repeated contact with Customs & Excise, continued with both of the transactions.

SUBMISSIONS FOR THE RESPONDENT

Mr Sievewright indicated that the Respondent is 57 years of age and was admitted as a solicitor in 1977 having been an apprentice at Renfrew Council prior to that. He moved into private practice in 1978 and has been in private practice since then. In 1982 he formed the firm of Robert Thomas & Caplan along with Mervin Caplan which operated in the south side of Glasgow. It is still operating in the south side of Glasgow now from premises in Victoria Road. Mr Caplan retired in 1995 and two new partners were assumed. Between 1995 and 2003 the Respondent was the Senior Partner. The firm was concerned mainly in the field of domestic conveyancing. The Respondent dealt mainly with domestic conveyancing, some small-scale commercial conveyancing and wills and executries. Mr Sievewright stated that the Respondent has had no previous disciplinary proceedings before the Tribunal in over 20 years in practice. In relation to the criminal proceedings referred to in the preliminary plea he was acquitted. Mr Sievewright stated that the criminal proceedings commenced on 27th November 2000 and were not concluded until 4th March 2003 when he was acquitted in Glasgow Sheriff Court having been on indictment before a Sheriff and jury. Mr Sievewright submitted that the proceedings were extremely stressful for his client and led to his decision to resign as a partner from Robert Thomas & Caplan on 31st October 2003. Mr Sievewright advised that his client has not acted as principal since that date and is now an employee of Robert Thomas & Caplan on a part-time basis. He works five mornings a week doing solely domestic conveyancing. In addition, he also does some ad-hoc work for another firm but this work is just technical conveyancing and he has no client contact at that firm. Mr Sievewright submitted that the Respondent believes that he has formed a relationship of trust with his peers and referred to the references produced in the Respondent's Inventory of Productions which show that he is held in high regard by fellow members of the profession with whom he has had a lengthy professional relationship. Mr Sievewright drew the Tribunal's attention to the fact that one of the testimonials is from a former President of the Law Society

Mr Sievewright stated that Mr Reid had given a fair narration of the factual background of the case. He submitted however that he wished to make several points on behalf of the Respondent. Firstly in accepting what is stated in Articles 2.1, 2.2 and 2.3 the Respondent had no personal knowledge of these matters. He had no knowledge of the Prosecutor's Statement as this was not served on him. Mr Sievewright stated that his client first became aware of the investigation when he was contacted by Customs & Excise in July 1998. He was not aware of the prosecution of Mr A but does accept that he knew that Mr A was in custody. Mr Sievewright stated that crucially the Respondent does accept that the Production Order was served on him on 21st July 1998 and so clearly at that time he was aware that Customs & Excise and the Crown Office were carrying out enquiries with a view to confiscation procedures. He was then aware that Mr A had been charged with drug trafficking. The Respondent was not involved in the prosecution of Mr A. Mr Sievewright submitted that against this background the timescale of the two transactions is important. The transaction in relation to Property 2 was carried out between November 1998 and February 1999 and the transaction in relation to Property 1 was carried out between August 1999 and September 1999.

Mr Sievewright stated that clearly the Property 2 transaction was carried out within a short time of the Production Order being served. However, by the time the Respondent got the instructions regarding Property 1, a little over a year had passed since the Production Order. Mr Sievewright made reference to paragraph 2.7 of the Respondent's Answers to the original Complaint. The Respondent wrote to Customs & Excise asking for release of his files and for confirmation that proceedings had been finalised. There was no reply and the Respondent failed to follow this up. The Respondent accepts that this was a crucial error, as he did not have a response before he sold Property 1. Mr Sievewright submitted that there was no restraining order disclosed as part of the routine searches in relation to the sales of this property but accepted that against the background he should have made further enquiries.

Mr Sievewright drew the Tribunal's attention to the fact that in relation to the sale of Property 1 it was not true that consideration was nil. The consideration was Mr C accepting responsibility for half of the loan on the property. However he accepted

that there was a gratuitous element to the transaction as there was equity in the property.

In relation to the letter from the Respondent to Ms B regarding her title referred to by Mr Reid, Mr Sievwright stated that her title was now less good than when the transaction started. Mr Sievwright submitted that Respondent's position was that he was told that the purpose of the transaction was to avoid the property being repossessed because Mr A couldn't pay the mortgage. Mr Sievwright pointed out that there was a copy of the letter sent to Ms B on the file and there was therefore no attempt to hide what had been done. The Respondent was aware from previous dealings with Customs & Excise that they could take the file at any time if they wanted.

The Respondent accepted that the timetable was as set out in the Complaint. The Order had been intimated to the Respondent after the disposition was lodged with the Land Register. However, there was no suggestion that anything improper was done by the Respondent on receipt of the Order. The Respondent was not under an obligation to get the deeds returned. Mr Sievwright submitted that this part of the Complaint was left in because it was factually accurate. However, he submitted, that it does not form part of the case of professional misconduct. He stated that the Respondent had obtained an opinion from Professor Rennie indicating that a solicitor cannot withdraw a deed from the Land Register without his client's instructions.

Mr Sievwright accepted that the Respondent was indifferent to the possible motives of his client when these should have been apparent to him. The Respondent accepts that if he had properly applied his mind he would have come to the conclusion that Mr A was attempting to commit a criminal offence by dissipating assets in terms of the Proceeds of Crime Act. Mr Sievwright stated that the Respondent accepts that his conduct can properly be described as serious and reprehensible. Mr Sievwright stated that there is no suggestion that the Respondent benefited in carrying out these transactions beyond the firm's normal fee for the conveyancing. Mr Sievwright submitted that had the Respondent received any additional payments, that that would have been an aggravation, but that it was not a factor in this case.

Mr Sievwright stated that the Respondent's decision to accept Mr A's instructions is one which the Respondent bitterly regrets for a number of reasons. This led to criminal proceedings and placed him in a very stressful position before he was ultimately acquitted.

Mr Sievwright submitted that at the present time these proceedings, now three years on from the end of the criminal proceedings, are also very stressful and that the Respondent feels that both sets of proceedings have damaged his professional reputation. This led to his decision to prematurely retire from the firm.

Mr Sievwright asked the Tribunal to take account of the fact that the Respondent was prepared to sign a Joint Minute and accepts that the averments contained in the amended Complaint amount to professional misconduct. Mr Sievwright asked the Tribunal to consider imposing a penalty which would allow the Respondent to continue in practice, albeit as an employed solicitor.

In response to a question from the Tribunal in relation to at what point after the service of a Production Order would it be open to a solicitor to carry out such transaction, Mr Reid replied that in his view that would be only after carrying out further enquiries regarding the lawfulness of their instructions. In response to another question from the Tribunal, Mr Reid stated that the Crown knew of the existence of the properties but not that they were being transferred. In response to a further question from the Tribunal, Mr Reid indicated that the sale of Property 2 came to the attention of the authorities by means of a policeman passing the property and noticing that it was being upgraded. He then contacted the authorities and the Crown moved to prepare the Restraint Order.

DECISION

Having regard to the terms of the amended Complaint, the productions and the submissions made by both parties the Tribunal found the Respondent guilty of professional misconduct. The Tribunal took the view that any solicitor going to see a client in prison would ask the reason why he was in custody. The Tribunal considered that a solicitor in these circumstances must have thought that what he was being asked

to do was attempting to assist someone in the commission of a crime and therefore must amount to professional misconduct in terms of the Sharp Test.

Taking everything that was said by both parties into account, the Tribunal considered that that this was a grave offence in that the Respondent proceeded either with knowledge of what he was doing or with recklessness as to the consequences. The Tribunal was of the view that for a solicitor to attempt to assist a client to commit a criminal offence is extremely reprehensible conduct. Against this background the Tribunal consider that the sentence imposed reflects the serious view which it took of the matter.

The Tribunal made the usual order for publicity and found the Respondent liable for the expenses of both hearings.

Chairman