

**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

**DAVID GEORGE ROBERTSON,
Solicitor, 34 Rhannan Road,
Glasgow**

1. A Complaint dated 21 November 2006 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, David George Robertson, Solicitor, 34 Rhannan 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. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 13 February 2007 and notice thereof was duly served on the Respondent.
4. The hearing took place on 13 February 2007. The Complainers were represented by their Fiscal Walter Muir, Solicitor, Ayr. The Respondent was present and represented himself.

5. A Joint Minute was lodged admitting the facts, 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 enrolled in the Register of Solicitors in Scotland. The Respondent was born on 16 July 1968. He was admitted as a Solicitor on 14 December 1993 and enrolled in the Register of Solicitors on 16 December 1993. He was formerly employed by Carswell, Kerr, Mackay & Boyd from 24 January 1993 until 31 July 1993 and by McLeish Carswell from 1 August 1993 until 31 December 1998. He became a partner of McLeish Carswell on 1 January 1999 and remained a partner of that firm until 27 August 2003.

Mrs A deceased and Mrs B

6.2 The late Mrs A (who was 100 years of age when she died sometime in September 2005) was a long standing client of the firm of McLeish Carswell and its predecessor Carswell, Kerr, Mackay & Boyd. She granted a Power of Attorney in favour of the Respondent which was extant on 27 April 1999. She was then residing in a nursing home and her close friend, Mrs B, attended to her needs which necessitated her visiting the offices of McLeish Carswell at 29 St Vincent Place, Glasgow from time to time. It was on that date that Mrs B went to these offices. She then sustained an injury whilst entering the premises in which these offices are situated. The Respondent accepted instructions from Mrs B to act for her in a claim for reparation. McLeish Carswell was at that time predominately a chamber practice firm and the Respondent then had little experience in reparation work. He allowed the claim to become time barred for the purpose of raising court proceedings. The claim became time barred on 26 April 2002. When he discovered this and, without obtaining the late Mrs

A's consent, he took the sum of £10,000 from funds belonging to her which were then under his control and, sometime in July 2003, he paid this sum to Mrs B. He then advised Mrs B that this sum was a payment which was in full and final settlement of her reparation claim. Mrs B accepted the sum on the basis of this advice.

Miss C deceased

6.3 The Respondent acted for the late Miss C who died on 26 February 2003. On 28 June 1999 she signed a Will which the Respondent had prepared for her on the basis of her instructions to him. In this Will Miss C bequeathed a legacy of £5000 to the Respondent. The Respondent has not received payment of this legacy following Miss C's death.

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

7.1 His misappropriation of £10,000 from his client, the late Mrs A.

7.2 His knowingly misleading his client Mrs B by giving her the false impression that he had settled her reparation claim in the sum of £10,000 when this was not the case

7.3 His preparation of a Will on behalf of his client the late Miss C, in which she conferred a significant monetary benefit on him.

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

Edinburgh 13 February 2007. The Tribunal having considered the Complaint dated 21 November 2006 at the instance of the Council of the Law Society of Scotland against David George Robertson, Solicitor, 34 Rhannan Road, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his misappropriation of £10,000 from his client, his misleading another client by giving her the false

impression that he had settled her reparation claim in the sum of £10,000 when this was not the case and his preparing a Will on behalf of another client in which a significant monetary benefit was conferred on him; Order that the name of the Respondent, David George Robertson be struck off the Roll of Solicitors in 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 a solicitor and client indemnity basis in terms of Chapter Three of the last published 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)

Alistair Cockburn

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

Chairman

NOTE

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

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir explained that matters came to light in connection with Mrs A and Mrs B in 2003 when the Respondent was on holiday and Mrs B's file was examined. The Respondent did not return to work and there was a meeting between him and the partners where he confessed that he had taken the £10,000 from Mrs A's funds to pay Mrs B. In connection with Miss C, Mr Muir emphasised that the Law Society was not alleging that the Respondent had exerted any undue influence over Miss C in connection with the legacy. His understanding was that Miss C had insisted that the Respondent act for her, prepare her Will and had also insisted that she leave him the legacy. It was however well settled that a solicitor must not prepare a Will if it includes a legacy to himself. Mr Muir stated that the Law Society appreciated the Respondent's cooperation in entering into a Joint Minute.

SUBMISSIONS FOR THE RESPONDENT

The Respondent advised the Tribunal that he had not intended to come to the Tribunal because he had no intention of continuing to practise law. He explained that he was very ashamed with regard to what had happened. The Respondent stated that at the time the incidents occurred a friend had committed suicide and he was very involved with his friend's family. His work and his marriage suffered as a result. The Respondent stated that he was suffering from ill health at the time but did not recognise that he needed help. There were a lot of pressures at work. He was splitting his time between two offices and he did not know which way to turn. The Respondent explained that he did not feel that he could turn to his partners for help. He stated that he did not know what had possessed him to act in this way. The Respondent advised that he felt that he deserved to be caught otherwise he could have destroyed the file. The Respondent emphasised that he had had this matter hanging over him for the last three and a half years and it had been very difficult to live with.

The Respondent stated that he had not worked much during the last six months. He indicated that he was very apologetic to Mrs A. In connection with Miss C, in response to a question from the Tribunal, he explained that she was a spry and forthright lady who insisted that he prepare her Will and include a legacy in it to himself. The Respondent explained that he thought that because there was a bequest in it, it would be invalidated and he had no intention of ever taking the money bequeathed to him.

DECISION

The Tribunal appreciated the fact that the Respondent had taken the trouble to appear before the Tribunal and explain the circumstances surrounding what had happened. The Tribunal also took account of the fact that the Respondent had fully cooperated with the Law Society and entered into a Joint Minute. The fact remains however that the Respondent embezzled £10,000 of clients money and it was only discovered when his partners found out. The essential and absolute qualities of a solicitor are honesty truthfulness and integrity. The public must be able to trust their solicitor to act honestly. In this case the Respondent breached the trust of his client Mrs A by misappropriating £10,000 of funds belonging to her. He also misled his client Mrs B by giving her the false impression that he had settled her reparation claim when he had not. The Tribunal considered it extremely unfortunate that the Respondent did not feel he was able to talk to his partners about the difficulty that he found himself in when the reparation proceedings became time barred. The Tribunal accepted that the Respondent did not exert any undue influence over his client Miss C in connection with the legacy but the Tribunal has made it clear on a number of occasions that solicitors must not prepare a Will on behalf of a client which confers upon them a significant monetary benefit. In all the circumstances the Tribunal considered the only option open to it was to strike the Respondent's name from the Roll of Solicitors in Scotland. The Tribunal noted the Respondent's financial position. The Tribunal however did not consider that it could depart from the usual practise of awarding expenses against a Respondent where there is a finding of professional misconduct made. The Tribunal made the usual order with regard to publicity.

Chairman