

THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

## FINDINGS

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY  
OF SCOTLAND

against

JAMES JOHNSTON MCINTYRE, Solicitor,  
HM Prison, Saughton, Edinburgh

1. A Complaint under the provisions of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") requesting that James Johnston McIntyre, HM Prison, Saughton, Edinburgh (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 they might think right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged.
3. In terms of their Rules, the Tribunal appointed the Complaint to be heard on 9th December 1998 and Notice thereof was duly served upon the Respondent. On 9th December 1998, the Respondent did not appear and was not represented and the Tribunal resolved to continue the matter to Wednesday 20th January 1999.

4. The Hearing took place on 20th January 1999. The Complainers were represented by Mr D.C.W. Pyle, W.S., Edinburgh as Fiscal and the Respondent by Mr R.E. Henderson Q.C. instructed by Mr W.H.S. McIntyre, Solicitor of Messrs Russell & Aitken, Denny. In respect that the material averments in the Complaint were admitted, no evidence was led and the Tribunal found the following facts established:

- (1) The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He is 42 years of age. From about 12th July 1993 until December 1997, he was a partner in the firm of Messrs McIntyre Anderson, Solicitors, Glasgow.
- (2) At the High Court of Justiciary sitting at Edinburgh, the Respondent was convicted of a charge of contravention of Section 1(a) of the Firearms Act 1968. The Respondent's address was stated to be 13, Beechwood, Linlithgow. On 20th November 1997, the Respondent was sentenced to a term of imprisonment for three years in respect of said conviction.
- (3) The circumstances of the offence were that the Respondent possessed two guns and ammunition, contrary to the said Act, being .22 pistols which were found in the garage of his home in Linlithgow in August 1996.

5. Having considered the foregoing circumstances and the submissions by Counsel for the Respondent, the Tribunal found that Section 53(1)(b) of the Solicitors (Scotland) Act 1980 applied to the circumstances of the said conviction and pronounced an Interlocutor in the following terms:-

Edinburgh 20th January 1999. The Tribunal having considered a Complaint dated 24th September 1998 at the instance of the Council of the Law Society of Scotland against James Johnston McIntyre, Solicitor, HM Prison, Saughton, Edinburgh and made under the provisions of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 regarding a conviction of the Respondent on a charge of contravention of Section 1(a) of the Firearms Act 1968 in respect of which the Respondent was, on 20th November 1997, sentenced to a term of imprisonment for three years, Censure the Respondent, Find the Respondent liable in the expenses of the Complainers and of the Tribunal as the same may be taxed by the Auditor of the Court of Session on an agent and client basis on the scale of the detailed charges allowed for the normal case in Chapter Six of the Law Society's Table of Fees for general business together with a reasonable sum for posts and incidental outlays; and Direct that publicity to include the name of the Respondent will be given to this decision.

(Signed) G. FRASER RITCHIE

Vice Chairman

6. A copy of the foregoing Interlocutor together with a copy of the Findings certified by the Clerk to the Tribunal as correct was duly sent to the Respondent by recorded delivery service on 9<sup>th</sup> February 1999.

IN NAME OF THE TRIBUNAL

Vice Chairman

NOTE

This Complaint was made to the Scottish Solicitors' Discipline Tribunal under the provisions of Section 53(1)(b) of the Solicitors (Scotland) Act 1980 which provides for the Tribunal exercising certain statutory powers where

A solicitor has .... been convicted by any court of an Act involving dishonesty or has been sentenced to a term of imprisonment of not less than 2 years.

It was not disputed that the Respondent had been convicted at the High Court of Justiciary sitting in Edinburgh of a charge of contravention of Section 1(a) of the Firearms Act 1968 in respect of which he had been sentenced on 20th November 1997 to a term of imprisonment for three years.

The whole circumstances of the offence as stated in the Complaint were that:

The Respondent possessed two guns and ammunition contrary to the said Act, being .22 pistols which were found in the garage of his home in Linlithgow in August 1996.

In his submission to the Tribunal, the Fiscal referred to the conviction as being for a serious offence but he acknowledged that there had been no suggestion of any dishonesty.

The further background information came entirely from Counsel for the Respondent, Mr R.E. Henderson Q.C., who explained that he had also appeared on behalf of the Respondent at his trial.

The undisputed evidence as set out by Mr Henderson was that at the material time, the two guns and four rounds of ammunition were in a drawer of a chest of drawers in the garage adjacent to the house where the Respondent was residing. There was no lock on the chest of drawers and the garage door was broken, and therefore open.

Mr Henderson explained that on the previous evening, the Respondent had permitted his car to be driven by a client, Mr "A" who had also been a personal friend. The car had been involved in an accident and the Respondent called at Mr "A's" house early on the following morning. The Respondent's evidence to the Court had been that he had received the pistols from Mr "A" at that time with the request from Mr "A" for the firearms to be handed to the police. There had been a general amnesty for firearms and the Respondent knew that this had ended about two months previously. It was known to the Respondent that "B" Police Station was not open on a twenty-four hour basis and the Respondent walked home with the pistols, intending to hand them into the Police Station later that morning. In the course of walking home, the Respondent had examined each of the guns to find out if there was anything in the barrel. This incident was witnessed by a girl who was walking on the other side of an adjacent canal. She went to the police and gave the police directions which enabled the Respondent to be traced. Mr Henderson added that the Respondent only had the guns for about two or three hours namely between about 8.30am when he had seen Mr "A" and 10.30am when the police called upon the Respondent at the house where he was residing.

Mr Henderson provided the Tribunal with a precise description of the two weapons. The smaller gun was of the derringer type with a half inch barrel which had been made to fire blanks but which had been adapted to use .22 ammunition. The larger gun was also relatively small, of Spanish origin and intended for sporting use. It had a three inch barrel and had also been altered to take .22 ammunition. The particular .22 rounds were in poor condition from decay and dampness and would have been incapable of being fired in that condition.

Mr Henderson produced a copy of the original Petition which disclosed that the Respondent had been the subject of six charges and he explained that lack of evidence had caused the Prosecution to drop four of the charges prior to the Respondent's trial. A new indictment was laid before the jury with two charges. At the conclusion of the prosecution evidence at the trial, the Court accepted that there was no case to answer in relation to one charge. However the Court refused to accept that possession of the firearms for the purpose of handing them over to the police, was a valid defence to the remaining charge. It was held that the particular provision fell to be interpreted on the basis of strict liability and the Respondent was accordingly convicted. Prior to sentence, the Court called for a social enquiry report which contained a recommendation of a probation order with community service, but the Trial Judge rejected this recommendation and imposed a sentence of three years imprisonment. Mr Henderson pointed out that the charge in respect of which the Respondent had been convicted related to mere possession, and that the charge did not contain any additional phrase such as "with intent to ..." However he made reference to the recent events at Dunblane and implied that the public concern may have contributed to the serious view of the facts as taken by the Judge and the severe sentence which was imposed.

In answer to a question from a Member of the Tribunal, Mr Henderson disclosed that the Respondent had appealed both in relation to conviction and sentence. Mr Henderson had again appeared for the Respondent. However he explained that his submissions in relation to conviction were not sympathetically received and over lunch, and at a time when the Court had still not come to the matter of sentence, the Respondent instructed Mr Henderson to abandon the appeal as a whole.

Mr Henderson provided the Tribunal with information regarding Mr McIntyre's family and personal circumstances. The Respondent had commenced his own business in 1993. The Respondent was particularly hardworking and his fee income substantial; and the effect of the conviction and sentence was a loss of income to the Respondent in excess of £100,000.

It was pointed out by Mr Henderson that when the provisions of Section 53(1)(b) (which contains the reference to a term of imprisonment of not less than two years) were enacted, the maximum term of imprisonment which could have been imposed by a Sheriff was two years - and at that time the maximum period of remission was one third. However since 1995, a Sheriff may now impose a term of imprisonment of up to three years and the period of remission is one half. In inviting the Tribunal to take a lenient view, Mr Henderson emphasised that there was no question of any dishonesty in this case, there had been no breach of trust and no defalcation of clients funds; also the Respondent had not been the subject of any complaint by a third party, the circumstances of the conviction did not involve any violence nor was the Respondent involved in any disorderly conduct.

In considering this particular case, it is significant that whereas Section 53(1)(a) provides that the Discipline Tribunal may take certain sanctions if professional misconduct is established, there is no similar requirement to establish professional misconduct in relation to cases which come under Section 53(1)(b) and the Tribunal is therefore required to look directly at the conviction. In considering such a case, the object cannot simply be to impose a penalty on the solicitor, as that has already been effected by the relevant Court before the matter is reported to the Tribunal. This view is reinforced in that the Tribunal has substantial power to impose a fine in the event of professional

misconduct being established but there is no similar power in relation to a Complaint under Section 53(1)(b). These factors tend to confirm that the purpose of Section 53(1)(b) is to enable the Tribunal to consider a solicitor's continuing position as a member of that profession in the light of the particular conviction. Solicitors are expected to have a high standard of financial propriety and it is therefore not surprising that any conviction whatsoever, involving an act of dishonesty, has to come before the Tribunal. However in contrast to convictions involving dishonesty, it is only convictions for other offences which result in a term of imprisonment of more than two years which come before the Tribunal under Section 53(1)(b) implying that the Discipline Tribunal should look differently at a conviction which involves a matter other than that of dishonesty.

Section 53(1)(b) requires the Tribunal to have regard to the conviction. It is therefore not open to the Tribunal to look behind the conviction; and indeed Counsel did not make any suggestion that the Respondent had been other than properly convicted. It is widely known that it is an offence to possess firearms without a licence, and the Tribunal regards any conviction of a matter involving firearms as a serious matter. Mr Henderson referred to a previous case before the Tribunal where a solicitor had similarly been convicted of a firearms offence. In that matter the solicitor had not been sentenced to a term of imprisonment, but in any event, the Tribunal is of the view that any case involving a Complaint under Section 53(1)(b) should be considered on its own merits and that the Tribunal should not be influenced by the disposal of another case on a previous occasion.

A solicitor has a duty to conduct himself in a manner consistent with his membership of this profession and the expectations of a solicitor are concisely set out by Lord Donaldson in United Bank of Kuwait v Hammond and Others [1988] 3 All E.R. 418 at 430:-

I say nothing about the position of members of the Bar as being immaterial for present purposes, but the solicitors' role is much wider than this. They are, to use an old-fashioned expression, "men of affairs". The public would be wise to consult them, and does consult them, when faced with unusual problems which may or may not have hidden legal aspects and which do not clearly raise issues within the special expertise of some other profession. The great, and perhaps unique, value of the professional advice of solicitors is to be found in a combination of factors which those who consult them are entitled to expect, and usually get: total independence, total integrity, total confidentiality, total dedication to the interests of the client, competent legal advice and competent other more general advice based on a wide experience of people and their problems, both in a personal and in a business context. The need to maintain this enviable situation is, of course, the reason and justification for the unforgiving attitude adopted by the profession towards those of their number, and there will inevitably be few, who fall below the standards required by them.

In this case, the Respondent has not only disgraced himself by being convicted of a serious offence, but he has also suffered the shame and embarrassment of a custodial sentence, embarrassment which is shared by other solicitors in having a fellow member of their profession serving a term of imprisonment.

In disposing of the present a case, it is open to the Tribunal to censure the solicitor, suspend him or to strike him from the Roll. Indeed where a solicitor is convicted of any offence involving dishonesty, it is rare for the Tribunal to make any order other than to strike the name of that person from the Roll. However as was pointed out by Counsel and acknowledged by the Fiscal, no question of dishonesty arises in the present case. The offence was unrelated to the Respondent's practice as a solicitor. No client was affected and there was no prejudice to any third party. Having regard to the whole circumstances, it is extremely unlikely that there will ever be any repetition of the offence by the Respondent. The question for the Tribunal is the Respondent's suitability as a member of the profession

of solicitors. Reference has been made to the embarrassment of having a solicitor serving a term of imprisonment, but the custodial sentence has to be put in context as it is only because the term of imprisonment is for a period of not less than two years, that the matter comes before the Tribunal under the relevant statutory provision. The Respondent is presently paying a heavy penalty both as regards his liberty and financially as a result of his conduct. It is proper that the Tribunal should stigmatise the Respondent's conduct, but the circumstances giving rise to the conviction, namely the possession of firearms, were unrelated to the Respondent's practice and do not have a direct bearing on the Respondent's capacity as a solicitor, and it is with these considerations that the Tribunal has limited the penalty to that of a censure rather than the more severe penalties of suspension or striking off which would have had the effect of excluding the Respondent from the profession for definite or an indefinite period.

The Tribunal also gave consideration to the possibility of adding to the censure a direction under Section 53(5) of the Solicitors (Scotland) Act 1980 which would have had the effect of restricting any Practising Certificate which might be held by the Respondent but the Tribunal considered that such restriction would be inappropriate - for the same reasons as it has been decided not to suspend the Respondent or strike him from the Roll.

No circumstances were disclosed which might have caused this Tribunal to exercise its limited discretion regarding publicity and accordingly publicity, to include the name of the Respondent, will be given to 's decision.

Vice Chairman