

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

D E C I S I O N

in Complaint

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND

against

JAMES JOHNSTON MCINTYRE, Solicitor,
sometime of HM Prison, Saughton, Edinburgh
and now residing at 15/2 Regent Square, Linlithgow.

1. Following on a Complaint dated 24th September 1998 made under the provisions of Section 53(1)(b) of the Solicitors (Scotland) Act 1980, at the instance of the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") against James Johnston McIntyre, Solicitor, HM Prison, Saughton, Edinburgh (hereinafter referred to as "the Respondent") the Scottish Solicitors Discipline Tribunal, having regard to the conviction of the Respondent in relation to a contravention of Section 1(1)(a) and (b) of the Firearms Act 1968, as amended and his sentence on 10th November 1997 to a term of imprisonment of three years, pronounced an Interlocutor dated 20th January 1999 inter alia censuring the Respondent. The relative Findings of the Tribunal set forth the circumstances of the conviction and the reasons for the decision.

2. A Petition of Appeal was presented by the Complainers in respect of the decision to censure the Respondent, and the Court of Session pronounced an Interlocutor in the following terms:-

Edinburgh 7th May 1999. The Lords having considered the Petition and Answers as adjusted, and having heard Counsel for the parties thereon, recall the Order of the Scottish Solicitors' Disciplinary Tribunal dated 20th January 1999 and decern: remit the Complaint at the instance of the Council of the Law Society of Scotland against the respondent to a differently constituted Tribunal for consideration, make no award of expenses in respect of this Petition and Answers.

McCluskey
IPD

3. The Hearing on the remit was set down for 23rd June 1999 and was adjourned to 12th July 1999.
4. The Hearing took place on 12th July 1999. The Complainers were represented by Mr R.F. Macdonald QC instructed by Mr D.C.W. Pyle W.S., Edinburgh as Fiscal and the Respondent by Mr R.E. Henderson QC. No evidence was led and Mr Macdonald and Mr Henderson addressed the Tribunal.
5. Having considered the submissions for the parties and the whole circumstances as directed by the Court, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 12th July 1999. The Tribunal, in respect that the Court of Session by Interlocutor dated 7th May 1999, recalled the previous decision of the Tribunal dated 20th January 1999 and having considered the whole circumstances as directed by the Court, in respect that the Respondent

was convicted in relation to a contravention of Section 1(1)(a) and (b) of the Firearms Act 1968 as amended and sentenced on 10th November 1997 to a term of imprisonment of three years, order that the name of the Respondent, James Johnston McIntyre, be struck off the Roll of Solicitors in Scotland; Direct in terms of Section 53(6) of the Solicitors (Scotland) Act 1980 that the order shall take effect upon the intimation of this decision; make no order in relation to the expenses of the Hearing on this date; and Direct that publicity to include the name of the Respondent, be given to this decision.

(signed) JOHN W. LAUGHLAND

Chairman

6. A copy of the foregoing Interlocutor together with a copy of this Decision certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 26th August 1999.

Chairman

NOTE

This Complaint had been 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 was convicted at the High Court of Justiciary sitting in Edinburgh of a charge of contravening the Firearms Act 1968, in respect of which he had been sentenced on 20th November 1997 to a term of imprisonment of three years.

The original decision of the Tribunal had been to censure the Respondent. It was this decision that had been recalled and the Court remitted the Complaint to a differently constituted Tribunal for consideration. In making this direction, the Court observed

.... it was abundantly clear that the Tribunal which determined this matter on 20 January 1999 was not placed in possession of all the facts which were, or might well be considered by the Tribunal to be, relevant to a determination of the appropriate course to follow in exercising their powers under section 53 of the Act. At best, they had a lopsided account of the facts. In this case, and it may well be that the same can be said of other such cases, there was ample material available which could and should have been placed before the Tribunal before it was called upon to exercise its section 53 powers. In particular, the relevant parts of the judge's charge could and should have been made available. Similarly, the observations made by the judge in imposing a sentence of three years imprisonment should have been laid before the Tribunal, if only to explain the apparent discrepancy between the severity of the sentence and the explanation advanced on behalf of the respondent as to how he came to be guilty of the offence. A copy of the indictment should also have been laid before the Tribunal. The precise terms of the section infringed should have been placed before the Tribunal.

In these circumstances, the court was satisfied that the Tribunal was asked to determine this matter upon an insufficient and unsatisfactory basis of fact. Important and material facts which should have been laid before the Tribunal were not so laid.

Reference was made to Rule 14 of the Discipline Tribunal Procedure Rules 1989 which sets out that

Where information is received by the (Law) Society from which it appears that a solicitor or former solicitor has, whether before or after enrolment, been convicted by any court of an act involving dishonesty, or sentenced to a term of imprisonment of not less than two years the Society shall as soon as may be, submit the information to the Tribunal so that they may take such action, if any, as they think proper under Section 53(1)(b) of the Act of 1980.

and the Court added

We do not read that Rule as excluding reference to the full circumstances of a conviction. There may be cases in which the conviction speaks for itself so clearly that nothing more need be referred to: but in a case like the present, the conviction is not self-explanatory, and its significance cannot be fully understood and assessed without information as to the precise circumstances. The petitioners will no doubt wish to reconsider what steps require to be taken in order to place before the Tribunal full information relevant to the conviction and sentence to enable the Tribunal to exercise properly its jurisdiction under section 53.

Prior to the Hearing on the remit, there had been lodged with the Tribunal the Appendix which had been before the Court. This Appendix contained inter alia a copy of the original indictment, a copy of the charge to the jury on 30th October 1997 and a copy of a letter from the Deputy Crown Agent containing the statement made by the Trial Judge upon pronouncing sentence.

At the commencement of the Hearing on 12th July 1999, Mr R.F. Macdonald QC, Counsel for the Complainers sought leave to lodge a transcript of the address to the jury by the Advocate Depute and Counsel for the Respondent (Mr R.E. Henderson QC). This motion was opposed by Mr Henderson; and having regard to the whole circumstances, the Tribunal refused the motion in hoc statu. On the motion of Mr Henderson, the Tribunal then adjourned the proceedings for an hour to enable Mr Henderson to peruse these shorthand notes. No application was made by either party thereafter for these notes to be placed before the Tribunal.

In addressing the Tribunal, Mr Macdonald made particular reference to that part of the indictment upon which the Respondent had been found guilty namely

On 30th August 1996 at Manse Road at its junction with Back Station Road, "P.2", Union Road, all Linlithgow and elsewhere in Linlithgow, you did have in your possession firearms and ammunition to which Section 1 of the Act aftermentioned applies, namely two pistols and nine rounds of .22 calibre rimfire ammunition, without holding a firearm certificate in force at the time: CONTRARY to the Firearms Act 1968, Section 1(1)(a) and (b) as amended by the Firearms Amendment Act 1988;

Mr Macdonald explained that at about 6.30am on 30th August 1996, a girl "A" who had been on her way to a paper round, had seen the Respondent at the junction of Manse Road and Back Station Road in Linlithgow. Initially she had thought that the Respondent had a mobile telephone but then realised that he had a gun in his possession. She told her parents and they alerted the police; and the Respondent was subsequently identified by the girl both at an identity parade and at the trial. Later, on the basis of the description which the girl had provided, the police attended on the house of the Respondent's girlfriend where he was residing, and after a search, found two .22 pistols wrapped in clothing in a drawer in a chest of drawers in the garage adjacent to the house. One gun was loaded with five rounds of ammunition. Two further rounds were found in Union Road, Linlithgow, one round was found under the passenger seat of the girlfriend's BMW motor car of which the Respondent had virtually exclusive use, and one round was in the Respondent's hip pocket.

Mr/

Mr Macdonald added that on the evening previous to the Respondent's arrest, his car had been stolen and subsequently abandoned. The Respondent gave evidence at his trial to the effect that early in the morning of 30th August 1996, Mr "B", a client and also a personal friend of the Respondent, had given the guns and ammunition to the Respondent with the request that he hand them into the police. (There had been a Firearms amnesty earlier that year but it had ceased at the end of June 1996). The Respondent had taken the guns back to the house where he was residing. He had taken an item of clothing out of the tumble-drier in the garage, he had wrapped up the guns and put them in an adjacent chest. The Respondent stated to the Court that he intended to hand the guns over when the police station opened that morning. Mr Macdonald pointed out that when the Respondent was originally questioned by the police, he had denied all knowledge of the firearms, and it was only in April of the following year that he provided an explanation which involved Mr "B". Mr Macdonald explained that at the trial, Mr Henderson had endeavoured unsuccessfully to establish that the Respondent did not have "legal possession" of the weapons but his submission on this aspect was not accepted by the Trial Judge. Mr Macdonald pointed to the passage at page 63D of the Appendix where the Trial Judge had explained in his charge to the jury

... even if you were to accept the evidence of the Accused in its entirety, it seems to me that on the directions in law which I have given you, you would have no alternative but to convict the Accused of having been in possession of the two firearms, the two pistols. I say that because, on his own evidence, he was aware of the existence of these guns and he had control over them. Indeed, he was the only person who had control over them while they were either on his person en route to "P.1" or in the drawer in the garage at "P.2"

The Trial Judge had then added (at page 66A)

It is always possible for a jury to add a rider to its verdict recommending leniency and, if you were to accept that the Accused was genuinely intending to hand over the guns to the police on the same day on which they were discovered or very shortly afterwards perhaps, then it would be appropriate and helpful that you add that rider to any guilty verdict which you return. Now, It would be sufficient for you simply to say "and

the jury recommend leniency". You don't have to say anything else. If you did that, your verdict would be construed as meaning that, although in possession of the guns, the Accused did intend that day or very shortly afterwards to hand them in to the police.

Mr Macdonald informed the Tribunal that the jury came to an unanimous verdict to the effect that the Respondent was guilty as libelled in the charge referred to above and that no rider was added - implying that the jury unanimously rejected the Respondent's account of events and in particular his claim that he had only taken possession of the weapons with a view to handing them over to the police.

In passing sentence, Lord Marnoch had said the following

Being in the possession of lethal firearms and ammunition of which the only possible use is the furtherance of crime cannot be other than a very serious matter, and you, as an officer of the Court, must have been very well aware of that. I note also that in the present case you were at some stage in possession of these items in various public streets in Linlithgow and that, when the firearms were discovered, one was found to be loaded. In all the circumstances, - and despite everything said on your behalf by Mr Henderson, - I am quite satisfied that only a custodial sentence is appropriate and that will be one of 3 years imprisonment backdated to 30 October.

In the public interest I wish to add that, although your account of matters was clearly rejected by the Jury, it should not be assumed from anything said at your trial that it is any part of a solicitor's function to convey illegally held firearms to the police on behalf of criminals; at all events where the result is said to be that the police are thereby disabled from enquiring further as to their provenance because of alleged client confidentiality.

Mr Macdonald particularly referred to the conclusion in relation to "the possession of lethal firearms and ammunition", that "the only possible use is the furtherance of crime" and that the possession was "in various public streets in Linlithgow"; and he explained that as the sentence was to a term of imprisonment of more than 30 months, the conviction was excluded from benefit under the Rehabilitation of Offenders (Scotland) Act 1974 by reason of Section 5(1)(b) of that Act. An appeal was taken on behalf of the Respondent against both conviction and sentence and had been partially heard before the Court adjourned for lunch. Mr Macdonald

observed that the Court was apparently not receptive to the submissions being made on behalf of the Respondent, and that after the adjournment, the Respondent instructed his Counsel to abandon his appeal both in respect of conviction and sentence.

Mr Macdonald summarised the various courses of action open to the Tribunal. He referred to the English case In re Weare [1893 2QB 439 and suggested that the first question for the Tribunal was whether the conviction makes the Respondent unfit to remain a member of the solicitors' profession. It was only if the answer to that question was in the negative that the Tribunal had to exercise its discretion regarding the other courses of action which were open to it.

The Appendix had contained a copy of a decision of the Tribunal on 9th November 1983 where a solicitor, James Wright had been convicted of having in his possession an automatic pistol and a quantity of ammunition and a shotgun with a shortened barrel, contrary to the Firearms Act 1968. In that case, the Tribunal had merely censured Mr Wright. Mr Macdonald pointed out that the Court had only imposed a fine of £500, but that since 1983, there had been tragedies at Hungerford and Dunblane which had caused a material change in the public attitude towards firearms offences.

In reply, Mr Henderson pointed out that the Respondent's possession of the particular firearms was only struck at because he did not hold a firearms certificate. Social Mores had changed since the case of In re Weare had been decided. He suggested that the case involving James Wright was roughly analogous, but he claimed that the weapons possessed by Mr Wright were much more dangerous, and that the condition of the ammunition possessed by the Respondent was such that it had not been capable of being used. The Respondent had originally been

indicted on six charges and Mr Henderson set out the background which had resulted in five of the charges being withdrawn. He also pointed out that other sections of the Firearms Act refer to more serious offences than the offence of which the Respondent had been convicted.

The Respondent claimed that the firearms had been handed to him by a Mr "B", a client who was also a personal friend and that the Respondent had only had possession of the same for about 2 to 2½ hours. There had been an amnesty for weapons which had come to an end in June 1996. The Respondent had been aware of this, but his principal interest had been to hand in the articles to the Police. The weapons had been put in the garage but they had not been hidden in any way. Mr Henderson emphasised that the Respondent provided the only explanation of what had occurred and that no alternative version of events had been given at his trial.

Mr Henderson did not accept that the decision of the jury not to add a rider necessarily implied that they had rejected the Respondent's evidence; and Mr Henderson suggested that the jury might have believed the Respondent but had declined to add a rider recommending leniency because they had disapproved of his actings. Mr Henderson pointed out that the particular firearms were not automatic weapons. The Respondent had made no attempt to use the weapons and although it was stated that one of the guns was loaded, it was not capable of being fired. The ammunition was in a highly decayed state. The Respondent had not been charged with possession of the firearms in the furtherance of a crime as would have been open to the Prosecution under Section 18 of the Firearms Act. There had been no dishonesty on the part of the Respondent, no breach of trust, no improper dealing with clients' funds and no complaint by any client.

Mr Henderson added that prior to his conviction, the Respondent had conducted a successful practice and he has already had substantial punishment for what was an isolated incident. Since his release from prison, the Respondent has married and has accepted responsibility for his wife's three children. Mr Henderson refuted any suggestion that the Respondent had attempted to resume practice.

This matter comes before the Tribunal under the provisions of Section 53(1)(b) of the Solicitors (Scotland) Act. The essential facts are that the Respondent was charged in the High Court of a serious offence, he was found guilty as libelled of that offence with the jury making no recommendation for leniency, and he was sentenced to a term of imprisonment of three years. The jury which found the Respondent guilty of that charge, and the trial judge who passed sentence, heard all the evidence at the trial, and if the mitigating circumstances had warranted it, it would have been open to the jury to have recommended leniency or for the trial judge to have imposed a lesser sentence. Indeed the Respondent did take the matter to appeal and it was his decision to abandon the appeal both in regard to conviction and sentence.

The Tribunal has carefully considered the Respondent's account of the relevant matters but it is not for the Tribunal to conduct a retrial or necessarily to determine the precise sequence of events which occurred. The starting point for the Tribunal is the precise charge in respect of which the Respondent was found guilty, but in accordance with the opinion of the Court in the Appeal from the previous decision of the Tribunal, the present Tribunal was also referred to the trial judge's charge and his observations on passing sentence. It was clear from the charge to the jury that the trial judge gave the jury ample notice of their entitlement to amend the charge, or to recommend leniency, but the jury did not take up either opportunity; and the gravity of the Respondent's conduct was particularly reflected in the statement by the Trial Judge/

Trial Judge upon passing sentence to the effect that "Being in the possession of lethal firearms and ammunition of which the only possible use is in the furtherance of crime cannot be other than a very serious matter".

It is with the background of these circumstances that the Tribunal is required to determine the appropriate sanction. Recent events have raised the public awareness of any offence involving a breach of the Firearms Acts. Moreover the public expects that members of the solicitors' profession shall maintain a high standard both in connection with their actings as a solicitor and in their private life. The criminal offence of which the Respondent was convicted was of a personally disgraceful character. In the opinion of the Tribunal, the public perception of the solicitors' profession would be materially diminished if it were to be seen that a solicitor who has been convicted of such an offence as that of which the Respondent was convicted and sentenced to a term of imprisonment for three years, were permitted to remain on the Roll. Also it is a significant aspect of the legal profession that there is a close working relationship among solicitors, and between solicitors and the Courts, frequently involving an element of trust and respect. Where a solicitor has been convicted of a serious offence such as that involving the Respondent, other solicitors would find it difficult to establish this type of relationship with such a solicitor: and it is with these considerations that the Tribunal considers that the Respondent is no longer a fit and proper person to remain on the Roll.

The Respondent had previously given an undertaking that he would not seek to practise pending the conclusion of the present disciplinary proceedings. There is accordingly no reason for any delay in the

present order coming into effect and accordingly the Tribunal has invoked Section 53(6) of the Solicitors (Scotland) Act 1980 which will result in the Respondent's name being removed from the Roll upon intimation of this Decision.

Paragraph 19 of the Fourth Schedule to the Solicitors (Scotland) Act 1980 confers on the Tribunal power to make such order as it thinks fit as to the payment by the Complainer or by the Respondent of the expenses incurred by the other party and by the Tribunal. When this matter was originally before the Tribunal, the order which was made inter alia found the Respondent liable in the expenses of the Complainers and of the Tribunal as the same might be taxed. The Interlocutor of the Court dated 7th May 1999 recalled that order and made no award of expenses in relation to the Petition to the Court.

At the conclusion of proceedings on 12th July 1999, Counsel for the parties were invited to address the Tribunal on the matter of expenses. No motion for expenses was made by Counsel for either party; and it was noted by Counsel for the Complainers that in the absence of any order, the expenses incurred by the Tribunal would, in terms of paragraph 22 of the said Schedule, therefore fall upon the Law Society.

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

Chairman

COURT OF SESSION, SCOTLAND

In the Petition

The Scottish Solicitors' Discipline Tribunal for
rectification of a decision and interlocutor.

Edinburgh, 3rd December, 1999. The Lords having heard the Solicitor Advocate for the Petitioners, there being no appearance by or for the Respondent at todays Summar Roll hearing, grant the prayer of the petition and rectify the error in the Scottish Solicitors' Discipline Tribunal's interlocutor and decision each dated 12th July 1999, and that by deleting from the name of the party designed therein as Respondent the name "Joseph" and substituting therefor the name "Johnston" in each of the said interlocutor and decision; Direct the Clerk to the Scottish Solicitors' Discipline Tribunal to intimate to the Respondent the decision and interlocutor, as so rectified, and direct that the days of appeal in terms of section 54 of the Solicitors (Scotland) Act 1980, shall run from the date of such re-intimation; Find no expenses due to or by either party in respect of the Petition and Answers and todays hearing.

W.D. Cullen

IPD

A copy of the foregoing Interlocutor together with a copy of the Interlocutor of the Tribunal dated 12th July 1999 and the foregoing Decision as amended in accordance with the above interlocutor and certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 14th December 1999.

Chairman