

**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**

**against**

**LEONARD JAMES  
BURKINSHAW, Solicitor of Town  
House, Broad Street, Peterhead**

1. A Complaint dated 22 January 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Leonard James Burkinshaw, Solicitor, Town House, Broad Street, Peterhead (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.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 22 April 2004 and notice thereof was duly served on the Respondent.

4. The hearing took place on 22 April 2004. The Complainers were represented by their Fiscal Mr Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Mr James McCann, Solicitor, Glasgow.
5. Answers were lodged in which the Respondent accepted that he had been convicted by a court of an act of involving dishonesty and that the application was properly and relevantly submitted to the Tribunal in terms of Section 53 (1) (b) of the Solicitors (Scotland) Act 1980.
6. The Tribunal found the following facts established:-

On 29<sup>th</sup> April 2002 the Respondent appeared for trial on a summary complaint in the sheriff court at Aberdeen. After trial the Respondent was convicted in the following terms:-

1. Between 7<sup>th</sup> February 1996 and 3<sup>rd</sup> December 1999 at the premises occupied by Peterhead District Court, 72 St. Peter Street, Peterhead, the premises of Aberdeenshire Council, Law and Administration Department, St. Leonards, Sandyhill Road, Banff, both Aberdeenshire or elsewhere you Leonard James Burkinshaw did while in the employment of said Aberdeenshire Council, Law and Administration Department, embezzle £923.50 of money.
2. On 22<sup>nd</sup> December 1999 at the premises occupied by Aberdeenshire Council Law and Administration Department, St. Leonards, Sandyhill Road, Banff, Aberdeenshire, you Leonard James Burkinshaw did pretend to Mr A, Head of Law and Administration employed by Aberdeenshire Council Law

and Administration Department that you had on 3<sup>rd</sup> December 1999 travelled from Banff to Peterhead using your own motor car registration mark N89 CSP, to attend the District Court held at 72 St Peter Street, Peterhead, Aberdeenshire a return journey of 73 miles and did submit a travel and subsistence expenses claim form in relation to this journey, which form you had signed and did thus pretend that you had incurred said expenses as part of your employment and did thus induce said Mr A Head of Law and Administration to authorise payment of £25.62 of money into your bank account, the truth being as you well knew that you did not attend the District Court, St. Peter Street, Peterhead, Aberdeenshire on said date and did thus obtain £25.62 in money by fraud.

In relation to the first charge, the circumstances were that the Respondent's duties as an employee of Aberdeenshire Council included acting as Depute Clerk of Peterhead District Court. The sums in respect of which the Respondent was convicted of embezzlement were fines which were collected by the Respondent over the period of three years and ten months brought out in the charge. In relation to the last such sum of money to have gone missing in the period brought out in the charge it was accepted by the Respondent that he had fabricated a court minute which purported to show that a Justice of the Peace had remitted the fine. In relation to the second charge there was no sitting of the district court at Peterhead on the date in respect of which the Respondent made his claim.

3. The Respondent was ordered to perform 100 hours community service in respect of the convictions condoned upon.
4. No appeal was marked against conviction or sentence and the time for any appeal has now elapsed.

5. The Respondent's position at all stages, from the time of first questioning about the matter, and in his instructions to his solicitor and Counsel, and in his evidence on oath in court was that he was innocent of all charges.
7. Having considered the foregoing circumstances and submissions on behalf of the Respondent the Tribunal found that Section 53 (1) (b) of the Solicitors (Scotland) Act 1980 applied to the circumstances of this Complaint and pronounced an Interlocutor in the following terms:-

Edinburgh 22 April 2004. The Tribunal having considered the Complaint dated 22 January 2004 at the instance of the Council of the Law Society of Scotland against Leonard James Burkinshaw, Solicitor, Town House, Broad Street, Peterhead and the conviction of the Respondent of an act involving dishonesty; Censure the Respondent and Direct in terms of Section 53 (5) of the Solicitors (Scotland) Act 1980 that for a period of three 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 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.

(signed) Peter W Rockwell  
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**

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 that the Tribunal exercise certain statutory powers where a solicitor has been convicted of any act involving dishonesty.

It was not disputed that the Respondent had been convicted after trial at Aberdeen Sheriff Court on 29 April 2002 of embezzling £923.50 and obtaining £25.62 in money by way of fraud, and that this conviction was an act involving dishonesty within the meaning of the said Section 53 (1) (b).

Mr McCann on behalf of the Respondent sought to lodge the note by Counsel which narrated the evidence and the Sheriff's comments and gave advice to the Respondent that he should not appeal the conviction. Mr Lynch did not object to the lodging of this note. The Tribunal considered that in light of the opinion delivered by Lord McCluskey in the Petition by the Council of the Law Society of Scotland against James Johnston McIntyre dated 7 May 1999, that this evidence should be admitted as it was the best record available of what had taken place at the Respondent's trial. This had been prepared by a member of the faculty of Advocates giving the Respondent objective advice with regard to whether or not to appeal his conviction.

## **SUBMISSIONS FOR THE COMPLAINERS**

Mr Lynch advised the Tribunal that the Law Society had brought the matter before the Tribunal in terms of Rule 14 of the Tribunal Rules which state that the Law Society shall submit information to the Tribunal in such cases. The Law Society accordingly did not have a discretion as to whether or not to bring the matter before the Tribunal. Mr Lynch stated that the precise terms of the Respondent's conviction were set out in the Complaint and that the circumstances of the case, so far as known to the Law Society, were set out in Article 2.2 of the Complaint. Mr Lynch stated that the note from the Respondent's Counsel gave more detail. Mr Lynch stated that it was accepted that the Respondent has consistently denied his guilt.

## **SUBMISSIONS FOR THE RESPONDENT**

Mr McCann emphasised that although the Respondent had consistently contended his innocence, and still did so, it was accepted that the Tribunal could not look behind the conviction. Mr McCann explained that when the problems had come to light there was a disciplinary hearing with regard to the missing fines but it had been found that there was a reasonable doubt as to whether or not the Respondent was responsible. The expenses irregularities then came to light and the Respondent was dismissed as a result of these. Mr McCann however pointed out that in respect of these expenses irregularities the Respondent had been found not guilty by the Sheriff. Mr McCann referred the Tribunal to the numerous references provided by people who knew the Respondent well and trusted him. The Respondent started working for Mr McRitchie in July 2000, shortly after he was dismissed from the council. He has been employed by Mr McRitchie ever since and there was a long letter of reference from Mr McRitchie in support of the Respondent. Mr McCann pointed out that in connection with the remission of fines it is common practice for clerks of court to do the paperwork and have the Justice sign these. Mr McCann also stated that the fines had lain overnight in the office on many occasions. The incidents happened between February 1996 and 1999 and at this time the Respondent had no financial pressures and had been newly married. There was accordingly no motive for him to embezzle money. Mr McCann took the Tribunal through the numerous references provided on the Respondent's behalf, all stating that he was professional and trustworthy. Mr McCann also advised the Tribunal that the Law Society had considered whether or not the matter should even have been sent to the Tribunal but decided that there was no discretion in terms of the legislation and the matter had to be referred. In response to a question from the Tribunal, Mr McCann confirmed that the Respondent was handling around £8000 to £9000 of fines during the period in question. Mr McCann asked the Tribunal to consider dealing with the matter by way of a restriction on the Respondent's practising certificate.

## **DECISION**

Although the Respondent still insisted on his innocence at the hearing before the Tribunal, in view of the terms of Section 53 (1) (b) of the Solicitors (Scotland) Act

1980 the Tribunal is precluded from looking behind the conviction. However in view of Lord McCluskey's comments in the McIntyre case, the Tribunal did look at the full circumstances surrounding the conviction. In cases where Section 53 (1) (b) apply, the penalties open to the Tribunal are limited to Censuring the solicitor with or without an accompanying restriction on his practising certificate, suspending him or striking him from the Roll. A conviction of embezzlement represents a serious departure from the high standards expected of a solicitor. In this case the Respondent had abused his position as clerk of the court. The Tribunal however took into account the sums involved and that the Respondent was not sentenced to imprisonment by the Sheriff. The Tribunal also took account of the numerous supportive references provided on behalf of the Respondent. The Respondent has been working for an employer since 2000 in a trustworthy and professional manner. It is now over five years since the incident and there have been no further problems. In view of all this the Tribunal stopped short of striking the Respondent's name from the Roll or imposing a period of suspension which would normally be appropriate for offences involving dishonesty. The Tribunal considered that the public would be adequately protected by a restriction on the Respondent's practising certificate to prevent him acting as a principal solicitor for the next three years. The usual order was made with regard to expenses and publicity.

Vice Chairman