

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

DECISION

in Appeal under Section 42A(7) of
the Solicitors (Scotland) Act 1980

by

HAMILTON BURNS & CO
SOLICITORS, Carlton Buildings,
63 Carlton Place, Glasgow

Appellants

against

THE COUNCIL OF THE LAW
SOCIETY OF SCOTLAND
26 Drumsheugh Gardens, Edinburgh

The First Respondents

and

Mr A

The Second Respondent

1. An Appeal was lodged with the Scottish Solicitors' Discipline Tribunal under the provisions of Section 42A(7) of the Solicitors (Scotland) Act 1980 by Messrs Hamilton Burns & Co., Carlton Buildings, 63 Carlton Place, Glasgow ("the Appellants") against a finding by the Council of the Law Society of Scotland ("the Law Society") dated 7 February 2008 that the Appellants had provided an Inadequate Professional Service in relation to their client, Mr A ("the Lay Complainer") and a Direction that the Appellants pay £3000 by way of compensation to the Lay Complainer.
2. In accordance with the Rules of the Tribunal the Appeal was formally intimated to the Law Society and the Lay Complainer and Answers were lodged on behalf of the Law Society.

3. The case was set down for hearing on 15 May 2008 and notice thereof was served on the parties. When the case called on 15 May 2008 the Law Society were represented by their Fiscal Jim Reid, Solicitor, Glasgow. The Appellants were not present or represented. The Lay Complainer was not present or represented. A Joint Motion by the Law Society and the Appellants was made to sist the appeal so the matter could be reconsidered by the Law Society. This was agreed.
4. The case was then scheduled for a procedural hearing on 18 November 2009 and notice thereof was duly served on the Appellants, the Law Society and the Lay Complainer.
5. When the case called on 18 November 2009, the Law Society were represented by their fiscal, Jim Reid, Solicitor, Glasgow. The Appellants were represented by their Solicitor, Ewen Campbell, Solicitor, Glasgow. The Lay Complainer was not present or represented.
6. After hearing submissions on behalf of the Law Society and the Appellants, the Tribunal pronounced an Interlocutor in the following terms:

Edinburgh 18 November 2009. The Tribunal having considered the Appeal by Messrs Hamilton Burns & Co. Solicitors, Carlton Buildings, 63 Carlton Place, Glasgow (“the Appellants”) against a finding of Inadequate Professional Service dated 7th February 2008 by the Council of the Law Society of Scotland (“the Law Society”) in relation to Mr A (“the Lay Complainer”) and a Direction that the Appellants pay a sum of £3000 by way of compensation to the Lay Complainer; Find that the Decision of the Law Society dated 7 February 2008 has been wholly supplanted by the second Decision made by the Law Society on 24 March 2009 and further Find that accordingly all rights flowing from the first Decision fall and there is no longer any valid Appeal before the Tribunal and accordingly nothing for the Tribunal to rule on; Make a finding of no expenses due to or by any party and Direct that publicity be given to this Decision and that this publicity shall include the name of the Appellants.

(Signed)
David Coull
Vice Chairman

7. A copy of the foregoing together with a copy of the Decision certified by the Clerk to the Tribunal as correct were duly sent to the Appellants by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Vice Chairman

NOTE

The Appeal was intimated to the Law Society and the Lay Complainer. The Law Society lodged answers. The Lay Complainer did not lodge answers. The case was scheduled for hearing on 15 May 2008. The Tribunal was asked on Joint Motion of the Appellants and the Law Society to sist the matter. The Lay Complainer did not attend the hearing on 15 May 2008. The Appellants and the Law Society then requested that the Tribunal fix a procedural hearing to recall the sist and grant the Appeal with no expenses due to or by either party. The Lay Complainer then entered the process by sending an email dated 10 November 2009 with attachments. The Appellants and the Law Society both attended the hearing on 18 November 2009 but the Lay Complainer was not present or represented. The Tribunal indicated that there may be difficulties in agreeing to the terms of the Joint Minute as it was not being agreed to by all the parties to the Appeal. The Tribunal then heard submissions from the Law Society and the Appellants.

SUBMISSIONS FOR THE APPELLANTS

Mr Campbell clarified that the Appellant's motion was now that the Appeal be dismissed with no expenses due to or by any party. Mr Campbell explained that as representations had been made by the Lay Complainer matters were complicated in respect of the Joint Minute. Mr Campbell explained that the Law Society first made a decision in February 2007 which was then reconsidered and it issued its decision on 7 February 2008 and upheld issues 1 and 2 and made a finding of inadequate professional service against the Appellants and awarded compensation of £3000 to be paid to the Lay Complainer. This Determination was appealed by the Appellants to the Tribunal. Subsequent to this it was agreed between the Law Society and the Appellants to sist the Appeal and refer the matter back to a different reporter and a different client relations committee to reconsider the matter. This was done and further representations were received from the Lay Complainer. The Law Society made a fresh decision on 24 March 2009 and only upheld one issue and awarded £550 compensation to the Lay Complainer. This compensation had been paid to the Lay Complainer and had been accepted by the Lay Complainer. There had been no appeal against this decision by any of the parties. Mr Campbell explained that in light of this

reconsideration the Law Society had indicated that they would not oppose the Appeal but it appeared that the Lay Complainer was still opposing the Appeal. Mr Campbell stated that it would appear that the Lay Complainer wanted the Tribunal to uphold the original Committee decision. Mr Campbell submitted that there was no longer a live Appeal as the first decision had been reconsidered and replaced by another decision. Mr Campbell submitted that once the first decision had been reconsidered, it ceased to have the effect and there was nothing left to be determined. Mr Campbell referred the Tribunal to its previous Section 42A Appeal Decision in A C White Solicitors. Mr Campbell stated in response to a question from the Tribunal that he did not feel it made any difference to the validity of the Appeal that in this case the Lay Complainer was not present.

SUBMISSIONS FOR THE LAW SOCIETY

Mr Reid pointed out that the Lay Complainer made representations in respect of the March 2009 decision. The new decision included a third matter which had not been included in the first decision and the Law Society Committee only upheld inadequate professional service in respect of the third matter. Mr Reid indicated that the Lay Complainer's representations dated 10 November 2009 seemed to be referring to Hamilton Burns lying about having received the Reasons for Refusal letter and Mr Reid pointed out that this was only relevant in relation to issue 3 and was not relevant in relation to the subject matter of the current Appeal. Mr Reid accordingly submitted that the Lay Complainer's submissions were in any event irrelevant and accordingly if the Tribunal took the view that this case was not on a par with the A C White Solicitors case and there was still a live appeal to consider the Tribunal should give effect to the Joint Minute upholding the Appeal. In response to a question from the Tribunal with regard to the competency of the Law Society reconsidering their decision, Mr Reid pointed out that both parties had consented to the reconsideration.

DECISION

The Tribunal noted the terms of the Joint Minute which had been lodged by the Appellants and the Law Society asking the Tribunal to grant the Appeal and recall the Determination and Direction of the Law Society and find no expenses due to or by

any party. The Tribunal also noted however that the Lay Complainer's representations made it clear that he did not consent to the terms of the Joint Minute. The Tribunal also noted that it appeared that the first decision of the Law Society had now been replaced by the second decision. The decision of the Committee of the Law Society dated 24 March 2009 was lodged with the Tribunal and it was clear to the Tribunal from reading this decision that it entirely replaced the original decision of 7 February 2008 which was the decision that had been appealed to the Tribunal. It was also clear to the Tribunal from the submissions made that the Lay Complainer had made representations in respect of the decision of 24 March 2009 and had also been paid the sum of £550 by way of compensation. There was no information available to the Tribunal to suggest that the Lay Complainer had challenged the decision of the 24 March 2009 by taking the matter to the Ombudsman. The Tribunal has already considered the issue of validity of an appeal when a decision of the Law Society has been reconsidered and replaced by a second decision. This was in the case of A C White Solicitors. The Tribunal accordingly finds that as the second decision on the same issues wholly supplants the first decision all rights flowing from the first decision are no longer in existence. The Tribunal accordingly consider that there is no live appeal before it and it is accordingly not possible for the Tribunal to make a decision in respect of an appeal that no longer exists. The Tribunal had some concerns about the validity of the procedure of the Law Society reconsidering its own decision in a case where there had been no recommendation by the Ombudsman to do so. However in this case the Tribunal was presented with a second decision which had been made and had not been challenged by any of the parties. The Tribunal also considered that the Lay Complainer's email of 10 November 2009 was mainly irrelevant to the issues which would have been the subject matter of the current appeal had it still been live and accordingly if the first decision had not been supplanted by the second decision the Tribunal would have found it appropriate to interpose authority to the Joint Minute which had been agreed between the Appellants and the Law Society.

The Tribunal made an order of no expenses due to or by any party and as this is a decision of the Tribunal publicity requires to be given to this decision.

Vice Chairman