

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

INTERLOCUTOR

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

by
MESSRS PETER T. McCANN & Co, Solicitors,
Gordon Chambers, 90 Mitchell Street, Glasgow.
APPELLANTS

against

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND
FIRST RESPONDENT

and

MRS "A",
"P.1"
SECOND RESPONDENT

Edinburgh 30th July 1997. The Tribunal having considered the motion for the Appellants, Messrs Peter T. McCann & Co, Solicitors, Gordon Chambers, 90 Mitchell Street, Glasgow in their Appeal against a finding of inadequate professional services by the Council of the Law Society of Scotland in relation to Mrs "A", "P.2" and a determination that the Appellants should make a payment to Mrs "A" or £100 by way of compensation, grant leave to the Appellants to withdraw their appeal; Find the Appellants liable in the expenses of the Council of the Law Society and 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 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 Appellants be given to this decision.

Vice Chairman

NOTE

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 Peter T. McCann & Co ("the Appellants") against a finding by the Council of the Law Society of Scotland ("The Law Society") that the Appellants provided inadequate professional services in relation to their client Mrs "A" ("Mrs A") and a determination that the Appellants should make a payment to Mrs "A" of £100 as compensation.

In accordance with the provisions of the Rules of the Tribunal, the Appeal was formally intimated to the Law Society and Mrs "A" and Answers were lodged on behalf of the Law Society. It was stated on behalf of Mrs "A" that she did not intend to lodge separate Answers.

Having considered the Appeal with the Answers for the Law Society, the Tribunal resolved to set the Appeal down for Hearing and appointed that the Appeal should be heard on 11th June 1997. There was insufficient time for the Tribunal to hear the Appeal on 11th June 1997 and the Tribunal appointed that the Appeal be heard on 30th July 1997. Prior to that date the Appellants applied to the Tribunal for leave to withdraw the Complaint. The Tribunal resolved to hear parties on 30th July 1997 on the matter of expenses.

On 30th July 1997, the Appellants were represented by the now sole practitioner of the firm, Mr Peter T. McCann and the Law Society was represented by Mr I.L.S. Balfour S.S.C., Edinburgh.

Paragraph 26 of the Procedure Rules provides that

No appeal shall be withdrawn after it has been received by the clerk to the Tribunal except by the special leave of the Tribunal. In granting leave to withdraw, the Tribunal may attach such terms as to expenses or otherwise as they shall think fit.

Paragraph 19 of the Fourth Schedule to the said Act of 1980 as qualified by paragraph 23 to the same Schedule provides that

.... the Tribunal may make in relation to any appeal such order as it thinks fit as to the payment by the appellant of the expenses incurred by the other party and by the Tribunal or a reasonable contribution towards those expenses.

Paragraph 22 of the same Schedule further provides that

The expenses of the Tribunal so far as not otherwise defrayed shall be paid by the (Law) Society as part of the expenses of the Society.

At the Hearing on 30th July 1997, Mr Balfour did not oppose the motion for the Appeal to be withdrawn but he invited the Tribunal to make an order on an indemnity basis which would result in no loss to the profession and he also drew the Tribunal's attention to the provisions contained in paragraph 14 of the Fourth Schedule in relation to publicity.

Mr McCann initially opposed an award of expenses but in the course of the submissions, he conceded a liability for expenses up to 19th June when his firm had given notice of intention to withdraw, and coincidentally, intimation had also been given for the new Hearing. Mr McCann addressed the Tribunal at some length in regard to the background circumstances of the Appeal. Mr McCann also asked that there should be no publicity on the basis that he was now precluded from responding to what had been previously stated by Mrs "A". Mr Balfour explained that upon intimation of the Appellants' motion, it was necessary for him to take instructions and it was only by the Hearing on 30th July 1997 that the matter of expenses could be resolved.

The Tribunal has carefully considered the respective submissions on the matter of expenses but in this case finds no circumstances which would justify proceeding at variance with the normal practice whereby the unsuccessful party bears the expenses of the proceedings. It was the Appellants' decision to proceed with this Appeal, incurring expenses to both the Law Society and the Tribunal. The Appellants have now taken the decision to withdraw the Appeal. The matter of expenses was the only item in dispute and it was necessary for the Tribunal to consider the same on 30th July 1997 and it is with these considerations that the Tribunal has found the Appellants liable for the whole expenses on an indemnity basis.

The Tribunal understands Mr McCann's concern regarding the matter of publicity in that there has been no opportunity to consider and adjudicate on the whole merits of the Appeal. However paragraph 14 of the said Fourth Schedule is mandatory on the Tribunal in that it states

Every decision of the Tribunal shall be signed by the chairman or other person presiding and shall, subject to paragraph 14A, be published in full.

There was no suggestion that any of the exceptional provisions set out in paragraph 14A applied. In the opinion of the Tribunal, the procedure under paragraph 26 of granting leave to withdraw the Appeal and the resolution of the matter of expenses constituted a "decision" of the Tribunal and the Tribunal is therefore obliged to order publicity in terms of paragraph 14.

Vice Chairman