

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

INTERLOCUTOR

in Complaint to the Scottish Solicitors' Discipline
Tribunal


by

THE COUNCIL OF THE LAW SOCIETY OF
SCOTLAND, Atria One, 144 Morrison Street, Edinburgh
(hereinafter referred to as "the Complainers")

and

ALLAN RICHARD MORISON STEELE, WS, 22 Forres
Avenue, Giffnock, Glasgow (hereinafter referred to as
"the Respondent")

By Video Conference, 12 October 2021. The Tribunal having heard submissions from both parties in relation to the Complaint at the instance of the Council of the Law Society of Scotland against Allan Richard Morison Steele, WS, 22 Forres Avenue, Giffnock, Glasgow; Grants Part I of the Motion for the Complainers and in terms of Rule 13(1) of the Scottish Solicitors' Discipline Tribunal Rules 2008 orders the Respondent to produce the documents referred to therein within 14 days of today's date; Continues the procedural hearing to 4 November 2021 at 12pm to proceed by way of video conference.



Kenneth Paterson
Vice Chair

NOTE

On 1 September 2021 the Tribunal continued this Complaint to a virtual procedural hearing on 12 October 2021 for the parties to address the Tribunal on further procedure. Prior to the procedural hearing, the Complainers lodged a motion with the Tribunal asking that the Respondent be ordered to produce various documents.

At the virtual procedural hearing on 12 October 2021, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Stuart Munro, Solicitor, Glasgow. The Fiscal confirmed he was insisting in Part 1 of his motion, the Respondent having already provided the information requested in Part 2. Mr Munro confirmed that the Respondent opposed this motion.

The Fiscal submitted that the Complainers had sufficient within the pleadings to support the recovery of these documents and referred to paragraph 3.6 of the adjusted Complaint. He explained that the Respondent was saying that he should not have been convicted and the reason he now gave for this was that his son's evidence was not properly understood or led. This raised a number of questions about the Respondent's son's evidence at the trial and raised the possibility of four, or possibly more, grounds of appeal. Was what the boy said to the Sheriff at the time a lie? Has the boy changed his evidence over time? Has influence been put to bear upon the son to change his evidence? Is this a case of defective representation? The six separate SCCRC referrals go to the credibility and reliability of the Respondent. It was the Fiscal's submission that his pleadings highlighted the importance of the Tribunal seeing what the Respondent had said in the past.

Mr Munro confirmed that the Respondent had already produced to the Fiscal the most recent application to the SCCRC which explained the Respondent's concerns regarding his conviction. These are set out in answer 3.2. The Respondent is not suggesting that his son lied or that he has changed his evidence over time. Nor is he suggesting that there has been any interference or influence put upon his son. The Respondent's position is that his son's evidence was misunderstood. The Court took steps not to cause a child witness further distress by giving evidence and so the evidence was limited in scope. The witness's evidence has since been clarified.

Mr Munro understood that the Complainers were relying upon the fact that the Respondent was convicted of an offence. Section 10 of the Law Reform Miscellaneous Provisions (Scotland) Act 1968 creates a rebuttable presumption that where a party has been convicted of an offence, the fact that they acted in that manner is presumed to be proved unless the contrary is proved. It therefore falls to the Respondent to prove that notwithstanding his conviction, he did not commit this offence. The documents requested are not necessary for this process. Nor is there a proper foundation for this in the Complainers' pleadings. Mr Munro submitted that this was a fishing diligence likely to bring the Tribunal into collateral issues.

Mr Munro directed the Tribunal to paragraph 3.6 of the answers where the Respondent admitted the averments referred to by the Fiscal. There is therefore no disputed fact for the Tribunal to determine, in relation to the applications to the SCCRC.

In response, the Fiscal disputed that his motion amounted to fishing diligence. He argued that the Respondent was challenging the conviction and therefore it was relevant to demonstrate that he had unsuccessfully tried this before. He submitted that it was reasonable to consider the documents referred to as adminicles of evidence.

The Tribunal drew Mr Munro's attention to paragraph 3.2 of the answers and he accepted that the Respondent had referred to his applications to the SCCRC. Mr Munro did not consider that this altered his earlier submission that the Complainers' averment stating that applications to the SCCRC had been made and were unsuccessful was admitted by the Respondent and therefore required no further proof.

The Tribunal had regard to the terms of Rule 13(1) of the 2008 Rules which allows the Tribunal, on the application of either of the parties, to make an order requiring the other party to "produce any document in their custody or under their control within such period as the Tribunal may determine, if it is of the opinion that it is necessary for the proper consideration of the complaint that the document should be made available".

The starting point for the Tribunal therefore was to consider whether the documents requested were, in the Tribunal's view, necessary for the proper consideration of the Complaint. The Complainers intended to rely upon the conviction of the Respondent described in the Complaint. The Respondent intended to prove that, notwithstanding the conviction, he did not commit this offence. The Respondent in his answers made reference to the applications to the SCCRC stating that he "raised a number of concerns". The Respondent

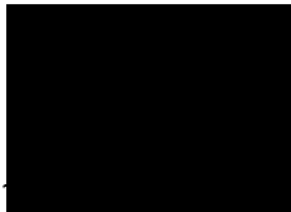
is inviting the Tribunal to draw some significance from this. Accordingly, the Tribunal concluded that this was not an attempt at a fishing diligence on the part of the Complainers and that the documents referred to were relevant and necessary for the proper consideration of the Complaint.

The parties indicated to the Tribunal that they had discussed what further procedure would be appropriate and made a joint motion for the case to be set down for a preliminary hearing to answer the specific question as to whether the Respondent has proved that he did not commit the offence i.e. that he had succeeded in overcoming the presumption in Section 10 of the 1968 Act. The Fiscal asked the Tribunal to make an order that the Respondent should lead at the preliminary hearing as it was the Respondent who required to overcome the presumption.

In response to a question from the Tribunal, the Fiscal confirmed that the outcome of the preliminary hearing may not be a conclusion to the Complaint itself.

The Tribunal gave careful consideration to the submissions. What was being suggested was that the Tribunal hear evidence in order to ascertain whether the presumption provided for in Section 10 of the 1968 Act had been rebutted by the Respondent. It appeared to the Tribunal, as currently advised, that regardless of the outcome of the preliminary hearing it was likely that the Tribunal would be faced with hearing the same evidence again. It was unclear to the Tribunal what was to be gained by such a preliminary hearing.

In all of the circumstances, the Tribunal considered it appropriate to continue the virtual procedural hearing to a further date for both parties to be given an opportunity to clarify the intended procedure to be followed at the preliminary hearing and, in particular, what the next steps following the preliminary hearing would be. The Tribunal requested that both parties lodge written submissions by close of business on 29 October 2021. The virtual procedural hearing was continued to 4 November 2021 at 12pm.



Kenneth Paterson
Vice Chair