

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

DECISION

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND, 26
Drumsheugh Gardens, Edinburgh
Complainers**

against

**THOMAS H MURRAY,
Canelecchia, Location 1,
Molazzama, Brucciano, Lucca,
5020, Italy**

Respondent

1. A Complaint dated 26 February 2014 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Thomas H Murray, Canelecchia, Location 1, Molazaama, Brucciano, Lucca 5020, Italy (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Complaint was made on behalf of the Secondary Complainer, Mrs Sarah P Young, Flat 12, 83 High Street, Tillicoultry.
3. In accordance with the Rules of the Tribunal, the Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent together with a motion requesting that a preliminary hearing be fixed to consider a number of preliminary issues.

4. Having considered the motion for the Respondent, the Tribunal ordered that the case call for a procedural hearing on 12 June 2014, in order to ascertain what procedure would be required to deal with the preliminary issues raised by the Respondent. At this hearing, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself.
5. The Fiscal for the Law Society confirmed that he was in a position to deal with matters at a diet of debate and that he would not require to lead any evidence. The Respondent indicated that he considered he would require to lead evidence. In particular, he indicated he would require a recording of the BBC broadcast complained of to be available to play to the Tribunal in order to further his argument. Accordingly, a preliminary hearing was ordered to take place on 19 August 2014 at 12 Noon.
6. At the hearing on 19 August 2014, the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. The Respondent confirmed to the Tribunal that he would not be leading evidence and that he would be proceeding on the basis of submissions alone. It was agreed that the case would be adjourned until 1:30pm so that the Respondent would be able to make his submissions, uninterrupted.
7. At that stage, the Tribunal heard detailed submissions from both parties in relation to the preliminary matters raised by the Respondent. The Respondent lodged and referred to a Second Inventory of Productions. The Complainers lodged a List of Authorities.
8. After carefully considering all submissions and the documentation lodged, the Tribunal refused the Respondent's motions to dismiss the Complaint and ordered that a full hearing be fixed for 28 October 2014 at 10:30am.

9. The Tribunal accordingly pronounced an Interlocutor in the following terms:-

Edinburgh 19 August 2014. The Tribunal in respect of the Complaint dated 26 February 2014 at the instance of the Council of the Law Society of Scotland against Thomas H Murray, Canelecchia, Location 1, Molazaama, Brucciano, Lucca 5020, Italy; Refuse the Motion for the Respondent to dismiss the Complaint and Order that a hearing of the Complaint be heard on 28 October 2014 at 10:30am.

(signed)

Dorothy Boyd
Vice Chairman

10. 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 Respondent by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

Dorothy Boyd
Vice Chairman

NOTE

A Complaint dated 26 February 2014 was lodged with the Tribunal alleging that the Respondent was guilty of professional misconduct. The Respondent lodged Answers to the Complaint, together with an application for a preliminary hearing to be fixed to consider a list of 9 preliminary issues. The Tribunal fixed a procedural hearing for 12 June 2014 to allow parties to make submissions on what further procedure was appropriate. The Respondent lodged a List of Productions.

At the procedural hearing on 12 June 2014 the Fiscal for the Law Society lodged a Note of Argument for the Complainers which he said was a basic summary of his responses to some of the preliminary issues raised. The Respondent indicated to the Tribunal that he might require to lead evidence in support of his preliminary issues. In particular he suggested he would want to be in a position to play a recording of the BBC documentary complained of to the Tribunal. Given the parties' submissions, it was considered appropriate to continue the case to a preliminary hearing for a debate and any evidence thought to be appropriate to be led on the 19 August 2014 at 12 Noon.

When the case called on 19 August 2014, the Respondent indicated to the Tribunal that he did not intend to lead any evidence. He confirmed that there was a copy of the BBC broadcast available, if the Tribunal felt it was necessary to see it. He explained that he would deal with the 9 issues in groups with issues 1 and 2 being argued together, 3 and 4 argued together, 5, 7 and 8 argued together and 6 argued alone and only brief reference made to issue number 9. Given the time of day, the Respondent was asked whether he wished to begin his submissions at that stage or whether he would prefer the matter to be adjourned to 1:30pm so that he could make his submissions uninterrupted. Both parties submitted that it would be preferable if the arguments could commence at 1:30pm.

SUBMISSIONS FOR THE RESPONDENT

The Respondent stated that his starting point would be issues 1 and 2 dealt with together. He submitted that an individual has a right to a fair trial before an impartial

and independent Tribunal both at common law and by statute under the European Convention on Human Rights. He submitted that his right in these terms had been prejudiced by a television programme broadcast by the BBC on 15 January 2014 entitled “Lawyers Behaving Badly”. That programme had been designed to show that the Law Society and the Scottish Solicitors Discipline Tribunal (“SSDT”) had failed to regulate the profession. The programme had argued that the Law Society and/or the SSDT had failed to strike off certain solicitors who had come before them charged with disciplinary offences. Additionally the programme set out to show that they failed to take further measures against solicitors who had been struck off but had continued to hold themselves out as solicitors. The television programme had lasted 30 minutes and 17 minutes of the programme were concerned with the Respondent in these proceedings.

The programme had sought to highlight historical cases previously brought against the Respondent before the SSDT where there had been no finding that Mr Murray should have been struck off. The BBC had sought to portray that the failure to do that was a travesty and an incorrect decision. The programme had put a panel of experts together made up of academics and legal professionals. These decisions were placed before the panel which concluded that Thomas Murray ought to have been struck off and that the outcomes were inadequate. Mr Murray submitted that the BBC had succeeded in creating the impression to any reasonable viewer that the failure to strike him off from the Roll of Solicitors had been a failure on the part of the Tribunal in its duties.

Additionally the BBC had interviewed Carole Ford who was the Convenor of the Regulatory Committee of the Law Society of Scotland. He submitted that comments made in this programme were highly prejudicial to the Respondent making a fair hearing before the SSDT an impossibility. The Respondent submitted that any member of the Tribunal who had seen this programme could not avoid being affected in particular by the criticism that the Respondent had not been struck off. This assertion that he should have been struck off may well influence any decision that the Tribunal might reach in this matter.

The Respondent submitted that it was his understanding that the Fiscal in his submissions would make reference to the proposition that the properly constituted SSDT could be assumed to be independent and impartial. Under normal circumstances he indicated that was not a matter with which the Respondent would take issue. However, he argued the fact that the programme criticised the Tribunal itself for failing to take proper steps in relation to the Respondent created a risk of prejudice to the Respondent. The Respondent referred to the case of Sinclair-v-HMA [2007] JCJAC27 where in paragraph 8 of that report it was stated “*contamination of a single juror was sufficient to contaminate the whole jury*”. He submitted that the Tribunal members could be substituted for the term “juror” in respect of this particular matter. He submitted that there was a real risk that the contamination of one or more members of the Tribunal could prejudice the Respondent. He submitted that none of the cases on the List of Authorities for the Complainers provided particular assistance in connection with his case. He stated that there was no comparable civil tribunal case law to the present circumstances. In relation to criminal matters, one of the questions that requires to be considered is whether the passage of time might lessen the impact of any prejudice. In this case, the Respondent refuted that the passage of time had lessened the prejudicial content of the programme because the comments complained of were not just in relation to the Respondent himself but were a criticism of the Tribunal in that they suggested the Tribunal had previously failed in its duties by not striking off the Respondent.

The Respondent submitted that additional comments made by Carole Ford created the risk of further prejudice. The Respondent referred the Tribunal to page 7 of Production 1 on his List of Productions. In that email Philip Yelland of the Law Society confirmed to the then solicitor for the Respondent that in the course of the programme Carole Ford made comments suggesting that the Respondent was residing in Italy in order to avoid paying compensation in relation to a disciplinary matter. Ms Ford was acting in her capacity as Convenor and spokesperson for the Law Society. The Respondent submitted that these comments were indicative of opinions held by the Law Society itself and clearly suggested a risk that these opinions had been transmitted to the Tribunal itself.

The Respondent indicated that that concluded his submissions in relation to points 1 and 2. He then indicated that he intended to move on to points 3 and 4. In this regard, a decision was taken by the Professional Conduct Sub Committee on 28 June 2012 in relation to the complaint by the Law Society and by the Secondary Complainer to appoint a prosecutor to bring a charge of professional misconduct against the Respondent and this decision was notified to the Respondent on 3 July 2012. The current Complaint is dated 26 February 2014 and was served upon the Respondent on or around that date. Neither of the Complainers has provided any detail within the averments of the complaint to explain the delay between the intimation of 3 July 2012 and 26 February 2014. The Respondent submitted that a delay of 20 months in bringing this Complaint was wholly unreasonable and inexcusable having regard to the rights of the Respondent to have any case against him brought within a reasonable period of time. That right is established both in common law and under statute under the provisions of the European Convention for the Protection of Human Rights under Article 6.1. There is nothing in the Complaint to suggest that there were any ongoing investigations taking place between 3 July 2012 and 26 February 2014.

The Respondent submitted that there was a direct connection between the broadcasting of the BBC programme on 15 January 2014 and the service of the complaint on 26 February 2014. At the end of the broadcast it was indicated that there was a further Complaint to be pursued against Mr Murray although the substance of that Complaint was not discussed. The Respondent would suggest that the service of this Complaint could be interpreted as an attempt by the Council of the Law Society to escape the criticisms of the BBC programme.

The Respondent indicated that he would refer to the case of The Council of the Law Society of Scotland-v-Hall [2002] SLT 989. In that case it was determined that it was appropriate to have regard to Article 6 (1) in relation to a right to a fair hearing within a reasonable time by an independent and impartial tribunal. (At this point in proceedings it became apparent that the Respondent was referring to the original findings in the case of The Council of the Law Society of Scotland-v-Hall rather than to the Inner House Appeal Decision. The Respondent did not have a copy of the report he was referring to).

In response to a question from the Chairman, the Fiscal for the Complainers confirmed that he accepted that Article 6 of the European Convention on Human Rights applied to the Tribunal proceedings.

The Respondent then referred to the case of Eckle-v-Federal Republic of Germany (1982) 5EHRR as referred to in the case of Burns-v-HMA [2008] UKPC63. The Eckle case was authority in criminal matters that the period of reasonable time referred to in Article 6 begins to run as soon as a person is charged. In that case charge was defined as the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence. In this case the Respondent would argue that the date he was given intimation by a competent authority was 3 July 2012. In the Burns case it was accepted that the guarantee of Article 6(1) is designed to avoid that a person charged should remain too long in a state of uncertainty about his fate. The Respondent submitted that 20 months between the Respondent being notified of the appointment of a fiscal and the service of the Complaint in February was too long.

In deciding how to deal with this period of delay, the Respondent suggested that the Tribunal ought to also have regard to the conduct of the Respondent, the Complainer and the complexity of the case. This case was not complex. There had been no action on the part of the Respondent that would contribute to the delay. The Respondent had been present at the hearings of the Tribunal on each occasion. That leaves the conduct of the Council of the Law Society. There were no pleadings explaining why the Complaint had not been served before 26 February 2014. The Respondent submitted that the Tribunal ought to have regard to the conduct of the Complainers prior to the period of delay complained of in assessing the period of delay. He referred the Tribunal to item 3 of First Inventory of Productions. This was a letter from the Scottish Legal Complaints Commission ("SLCC") intimating that they were of the view that the Law Society were outwith the SLCC's time limits for lodging a Complaint. Why had the Law Society taken 20 months in relation to this Complaint given the original delay?

The Respondent submitted to the Tribunal that if they accepted that there had been a contravention of Article 6(1) the Tribunal had to consider what remedy was available.

In normal circumstances the court would perhaps consider a reduction of sentence. In the Respondent's submission there was no such remedy available in this case and so the only course of action open to the Tribunal was to dismiss the Complaint. The Respondent urged the Tribunal not to hold that the Complaint could still proceed. In his submission the Law Society could have argued this Complaint before the BBC programme was broadcast in January 2014. The broadcast of that programme prevented this Complaint proceeding.

He invited the Tribunal to uphold points 3 and 4 of his issues and to dismiss the Complaint.

The Respondent then moved on to points 5, 7 and 8 in his preliminary issues.

With regard to point 5, the Respondent referred the Tribunal to item 2 of his First Inventory of Productions. Item 2(2) was a copy of the Gateway Recommendation of the SLCC. At paragraph 1.3 the SLCC states that the Respondent was within his rights to cite the Secondary Complainer in any format and serve this citation upon her in the manner that was chosen by him. This recommendation was made by two individuals – Ms A and Ms B. Mr Murray submitted that the SSDT Rules 2008 do not outline how a witness is to be cited. No form is given for the citation. No reference is made within the Rules to any other statutory provision.

Mr Murray then referred to his Second Inventory of Productions. At that point he asked for the Tribunal to allow the Second Inventory to be received.

Item 1 of the Second Inventory was an exchange of emails between the Respondent and the Clerk to the Tribunal dated between 1 and 9 July 2009. In an email from the Respondent to the Clerk dated 4 July 2009 he asked for advice on the method of citation of witnesses. In a response dated 7 July 2009 the Clerk referred the Respondent to the Tribunal Rules. Unfortunately, the Tribunal Rules do not provide any details with regard to the citation of witnesses. A subsequent email was sent to the Clerk dated 8 July 2009 to which the Clerk to the Tribunal responded by email of 9 July 2009 with a reference to the Solicitors (Scotland) Act 1980 Schedule 4 paragraph 12 stating that that paragraph sets out the procedure where there is difficulty in having

witnesses attend the Tribunal. The actual Tribunal did not proceed at that stage and a hearing was fixed for June 2010. The Respondent would emphasise that the Clerk in the email of 9 July 2009 does not say that Schedule 4 sets out the procedure that must be used in citing witnesses. The Clerk states quite specifically this is the method to be used where there is difficulty in having witnesses attend the Tribunal. The Respondent referred to item 3 of his Second Inventory which was a letter to the Respondent from the Tribunal dated 19 February 2010 where the Clerk again states that Schedule 4 of the Solicitors (Scotland) Act 1980 citation is normally only done when it is anticipated that a witness will be reluctant to attend the Tribunal. It was the Respondent's submission that it was difficult to reconcile these statements with the content of the current Complaint and in particular with Articles 6.5, 8.3, 8.4, 9.1 and 9.2. The only thing that is clear is that the Tribunal Rules 2008 do not contain any details of how witnesses are to be cited nor in what form the citation ought to be. For these reasons the current Complaint is frivolous, vexatious and wholly without merit.

The Respondent then moved on to point 6 of his list of preliminary issues. The Respondent had been notified by the Law Society and by the SLCC that these Complaints were not to be proceeded with. The Respondent was given no opportunity to respond to any subsequent representations made to the SLCC which subsequently led to the appointment of the prosecutor. This prejudiced the position of the Respondent and it was for the Tribunal to consider the effect of this breach of Rules particularly having regard to the conduct of the Complainers. The Respondent invited the Tribunal to dismiss the Complaint.

In relation to Article 9 on the basis that each of the parties mentioned therein had voluntarily recused themselves, he did not intend to address this point. If matters are to proceed then the Clerk will be a witness. The Chairman was in a similar position.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch referred the Tribunal to the previously lodged Note of Argument and indicated that his submissions would follow the scheme of that Note.

In his submission the jurisprudence in relation to prejudicial publicity has arisen in the context of trial by jury. The Court of Session has already determined that this Tribunal is an independent and impartial Tribunal compliant with the European Convention on Human Rights and where a right of appeal exists. There are no comparable authorities to the criminal cases in relation to Tribunal or civil case law. The Fiscal referred to the case of Pullar-v-United Kingdom 1996 SCCR755. In that case it was said that the presumption that a Tribunal was free of personal prejudice or partiality was long established in case law. The Fiscal submitted that the case of Beggs-v-Her Majesty's Advocate [2010] HCJAC27 clearly demonstrated the extremely high test in even criminal jury trials. The publicity in that case involved discussion of the facts of the actual case concerned and not just the accused. The press coverage was adopting a sensational approach. The rejections of the grounds of appeal in the Beggs case demonstrated the very rare circumstances where a court or tribunal would be in a position to hold that publicity would give a good basis for a plea in bar of trial. The Fiscal then referred to the case of Sinclair-v-HMA [2007] JCJAC27. That case approved the test of Sturman in relation to prejudicial publicity stating that this was the appropriate test for both common law and Article 6. In that case it was stated that the test was whether the risk of prejudice was so grave that no direction of the trial judge, however careful, could reasonably be expected to remove it. The court in Sinclair added to the Sturman test indicating that it was necessary to take into account safeguards inherent in the trial process itself and in the historical context in which it occurs including for example the discipline of the jury listening to the evidence adduced in court and any lapse of time between the publication in question and trial.

It was the Fiscal's submission that members of the Tribunal take an oath when appointed and even if there was a question of potential prejudice from the publicity the Tribunal was in a position to put it out of its mind according to the presumption of fairness.

Additionally, the Fiscal stated that there was nothing said or alluded to in the minute that was indicative of prejudice to the Respondent. He emphasised that Carole Ford was not part of the Tribunal and that the programme was nothing to do with this

particular Complaint. He emphasised that in the Beggs case the publicity was regarding the particular charges at hand and yet a plea in bar was not upheld.

With regard to the second part of the Respondent's submissions regarding delay, the Fiscal indicated that he had originally understood that Mr Murray's challenge was on the basis of common law alone. He appeared now to be making submissions in terms of Article 6. The Fiscal indicated that he was happy to also deal with the issue as an Article 6 one.

The Fiscal said he would begin by submitting to the Tribunal that in relation to Article 6 there was no room for the Tribunal to discontinue proceedings as there had been no delay of the kind that would even give rise to a reduction of penalty.

The Fiscal referred to the case of The Council of the Law Society of Scotland-v-Hall [2002] SLT 989. He submitted that this was a case that was binding on the Tribunal and indicated that for the purposes of Tribunal proceedings the time in relation to the question of article 6 commenced when the Council of the Law Society made the Complaint to the Tribunal itself. Mr Lynch stated that he recognised that the case of Hall was not always thought to have been correctly decided. Mr Lynch then went on to refer to the case of Burns-v-HMA [2008] UKPC 63 at paragraph 28 where it was stated that the interviewing of a person would not meet the test of amounting to a "charge" and the case O'Neill-v-HMA [2013] UKSC36 where at paragraph 36 the court stated that the question was whether the individual had been officially notified that they would be prosecuted or officially alerted to the likelihood of criminal proceedings against them as support for the proposition that the case of Hall had been correctly decided. Regardless, the Fiscal submitted that Hall was binding upon the Tribunal.

In respect to the common law approach to the question of trial within a reasonable time, the Fiscal stated that the approach to the question of delay had been governed by what was said in the case Tonner-v-Reiach and Hall [2007] CSIH48. That case raised the question of whether the courts in Scotland had an inherent power to put an end to proceedings where the proceedings had been raised competently within the prescriptive period. In that case it was said that the delay required to be "inordinate

and inexcusable” and that in addition to this delay there required to be an added element of unfairness. The Fiscal submitted that this was a high test to meet.

Mr Lynch stated that the Respondent had given no explanation as to what prejudice he had suffered as a result of the lapse of time.

Additionally, nor was the period of time between the 11 July 2012 and 26 February 2014 inordinate or inexcusable. After the Fiscal had received his papers in this case he had been obliged to carry out investigations with regard to those mentioned in the Complaint who could be Secondary Complainers. He had had to communicate with all of these potential Secondary Complainers. In particular there had been a lot of correspondence with one individual.

The Fiscal went on to draw the Tribunal’s attention to the case of The Council of the Law Society of Scotland-v-A.R Robertson 23 August 2007 where delay had been considered by this Tribunal. In that case the Tribunal had confirmed that the Prescription and Limitation (Scotland) Act 1973 did not apply to Tribunal proceedings. In its decision, the Tribunal had indicated that it could halt proceedings as a result of delay but only when it got to the point that justice could not be done because of the delay. In the current case before the Tribunal, the Respondent had given no indication of anything that would support such an assertion.

Mr Lynch went on to explain that in his submission the argument of delay in terms of Article 6 of the European Convention of Human Rights did not allow for dismissal of proceedings, as confirmed in the case of Spiers-v-Ruddy [2007] UKPCD2.

It was denied by the Fiscal that there was any connection between the broadcast of the television programme and the service of this Complaint, as had been suggested by the Respondent.

The Fiscal stated that Mr Murray had raised a miscellany of complaints relating to the relevancy and merits of the Complaint and had submitted that the Complaint was vexatious. The Respondent had relied upon the SLCC Gateway Recommendation for the submission. Mr Lynch contended that the comments in this document were of no

relevance to the current proceedings. Additionally, the Fiscal believed that the letter from the Law Society which formed Production 2.1 of the First Inventory of Productions for the Respondent did not in fact relate to the Gateway Recommendation which formed 2.2 of the Inventory.

The Fiscal submitted that it was quite clear that the author of the Gateway Recommendation had not understood the rules of citation as governed by Schedule 4 of the Solicitors (Scotland) Act 1980.

With regard to the Respondent's submissions relating to point 6 of his issues, the Fiscal argued that the Tribunal had no power to dismiss the case due to a failure by the Law Society or the SLCC to follow their own procedures. The proper course of action was to take a judicial review if the Respondent wanted to challenge the Law Society's decision to proceed with the Complaint. He drew support for this assertion from the case of The Council of Law Society-v-A.R.Robertson 23 August 2007.

The Fiscal indicated that there was little to say in relation to point 9 of the Respondent's issues given that de facto the parties concerned had recused themselves.

Mr Lynch asked the Tribunal to repel Mr Murray's pleas.

RESPONDENT'S SUBMISSIONS

The Tribunal invited Mr Murray to comment upon the Fiscal's submissions.

Mr Murray suggested that the cases of Sinclair and Beggs could be distinguished from the current case as it was not only prejudicial comments made about the Respondent in the programme but a particular criticism of the Tribunal itself. Ordinarily the Tribunal could be presumed to be fair, but not where criticism of the Tribunal in the programme might lead the Tribunal members to have the criticism in mind when considering their decision.

The Respondent suggested that the Hall case could be distinguished on the facts. In that case the delay was in making the original Complaint. The decision to prosecute

was taken in February 2000 and the Complaint itself was served in May 2000. In the present case there was delay on the part of the Law Society, not on the part of anyone making a Complaint.

The Respondent indicated that he would distinguish the case of Tonner on the basis that it related to a civil matter and the case of Spiers-v-Ruddy was a completely separate matter altogether.

DECISION

The Respondent had raised before the Tribunal several significant preliminary pleas under four headings. In each category the remedy the Respondent sought was for the Tribunal to dismiss the Complaint. These being the Respondent's pleas, the onus fell upon him to justify each one.

The first argument the Respondent put to the Tribunal was in relation to points 1 and 2 of the list of preliminary issues attached to the Respondent's motion. Both paragraphs were argued together in relation to the proposition that an individual has a right to a fair trial by an impartial and independent Tribunal, at common law and in terms of the European Convention on Human Rights.

The Respondent described the content of a television programme broadcast by the BBC in January 2014 entitled "Lawyers Behaving Badly". For the purposes of these submissions, the Tribunal was prepared to accept the Respondent's description of the content of the programme, without the necessity of viewing an actual recording.

It appeared to the Tribunal that the starting point for this submission was the presumption that a Tribunal such as this is impartial and independent.

Thereafter the appropriate test appeared to be that set out in the case of Stuurman, referred to in Sinclair-v-HMA [2007] JCJAC27. This test appeared to set a high standard to be reached: "Whether the risk of prejudice is so grave that no direction of the trial judge, however careful, could reasonably be expected to remove it."

The criticisms described by the Respondent, that had been made in the broadcast in relation both to himself and to the Tribunal, did not relate to the actual content of this particular Complaint.

These proceedings are before a statutory Tribunal the composition of which is compliant with the provisions of the European Convention on Human Rights. The cases referred to relating to prejudicial pre-trial publicity related to matters proceeding before a jury. In these cases the court had clearly stated that members of a jury can be appropriately directed to consider only the evidence before them. Clearly then this Tribunal would be in a position to direct itself appropriately to ignore extraneous information and influence.

Unlike the decision making process of a jury, the Tribunal process is open to scrutiny. Following any hearing the Tribunal is required to produce detailed reasoned findings and any decision of the Tribunal is open to appeal. Should the Tribunal have regard to any irrelevant matter then the Respondent has a right of appeal. The fact that the Tribunal itself may have been criticised in the broadcast did not significantly change the position, that an appropriately directed Tribunal could put aside the content of the broadcast in considering the merits of this Complaint.

Point number 2 of the Respondent's list of issues was a criticism of the comments made by Carole Ford. In putting forward this argument the Respondent had failed to have regard to the independence of the Tribunal from the Law Society of Scotland. The Tribunal is a body set up by statute, independent and separate from the Law Society of Scotland.

Accordingly, in the above circumstances, the Tribunal repelled the motions to dismiss in relation to points 1 and 2.

In the original list, point number 3 appeared to raise the common law plea of Mora, Taciturnity and Acquiescence. The Respondent made no submissions in relation to this proposition and did not refer to any authority to support it. In these circumstances, the Tribunal could not uphold the plea. In any event, the Tribunal did not accept that there had been an unreasonable delay in relation to the period

complained of by the Respondent (3/7/12 to 26/2/14) as the Fiscal for the Complainers had explained that the Fiscal appointed to prepare the Complaint had had to investigate and communicate with five potential Secondary Complainers.

Point number 4 of the list of issues related to a question of time bar. Again the Respondent made no oral submissions regarding this plea and produced no authorities. There is no statutory time limit for the raising of a Complaint before the Tribunal.

In his oral submissions under the heading of Points 3 & 4, the Respondent made submissions that an individual is entitled to a trial within a reasonable time both at common law and by statute in relation to Article 6 of the European Convention of Human Rights. The Fiscal for the Complainers indicated that he had no objection to the Respondent making these submissions.

With regard to any Article 6 argument the Tribunal took the view that it was bound by the case of Hall and that the appropriate starting point for any lapse of time was the lodging of the Complaint with the Tribunal, namely 26 February 2014, and not as argued by the Respondent, 3 July 2012. Once received, the Complaint required to go before the Chairman for authority to serve and thereafter be served upon the Respondent in Italy. Time is given to lodge Answers and then an appropriate date suitable to both parties identified for the case to call. The Respondent made no submission that this period of time was unreasonable, and the Tribunal would not have considered it so.

The only submissions with regard to the common law right to a trial within a reasonable time were made by Mr Lynch in relation to the delay in the progressing of a legal action, after its timeous inception. Clearly that argument is not applicable to the circumstances of this Complaint. Even if a question of a trial within a reasonable time extended beyond that period, the test requires that any lapse of time be an inordinate and inexcusable delay, including some other factor of unfairness. (See *Tonner-v-Reiach & Hall* [2007] CSIH 48) The lapse of time in this particular case was neither inordinate nor inexcusable. The Respondent did not suggest in his submissions any element of unfairness. The Respondent did refer to the BBC

programme, however, the Tribunal have held that any potential risk of prejudice could be dealt with by the members of the Tribunal directing themselves appropriately.

Accordingly the pleas for the Complaint to be dismissed in relation to points 3 & 4, including the additional oral arguments, fall to be repelled.

In relation to points 5, 7 & 8 of the list of issues the Respondent raised issues of relevancy of the Complaint. The Tribunal accepted that the Rules do not provide a specific style for a witness citation. That does not mean however that the Respondent can use any wording that he would wish to. The only authority to formally cite a witness comes from Schedule 4 of the Solicitors (Scotland) Act 1980. The Complaint averred that no authority to cite witnesses had been applied for by the Respondent. The Complaint averred that formal citations had been issued that the witnesses attendance was compellable with consequences should they fail to attend. There is an obvious and clear distinction between what bears to be a formal citation and an invitation/request to attend. The Scottish Legal Complaint's Commission Gateway Recommendation does not amount to a legal authority for the submission that a Respondent can use any form of citation. The averments in the Complaint are relevantly pled and if proved could provide a basis for a Finding of professional misconduct. It may be that the submissions put forward for the Respondent are matters that could be relevantly raised in evidence in his defence. It could not be said that the Complaint lacked merit or was vexatious.

Accordingly the pleas under points 5, 7 & 8 fell to be repelled.

Point 6 for the Respondent related to the assertion that, because the Law Society and the Scottish Legal Complaints Commission did not follow their own policies regarding cross-copying correspondence, then this Complaint fell to be dismissed. No authority was referred to in support of this contention and no evidence or detail was given regarding the detail of any rules allegedly broken. This type of issue had previously been raised in the case of Council of the Law Society-v-Robertson, 23 August 2007. The present Tribunal concurred with that case in the view that this matter would require to be raised by way of Judicial Review and would require specification of the procedures or specific rules allegedly broken.

Accordingly the plea to dismiss the Complaint under point number 6 fell to be repelled.

Point number 9 of the list of issues appeared no longer to be a live issue given the submissions of both parties.

Dorothy Boyd
Vice Chairman