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

INTERLOCUTOR

in Complaint to the Scottish Solicitors' Discipline Tribunal

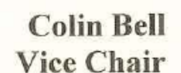
in causa

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND, Atria One, 144 Morrison Street, Edinburgh

against

GORDON DANGERFIELD, Archer Coyle Solicitors, 513 Clarkston Road, Muirend, Glasgow

Edinburgh, 12 September 2019. The Tribunal, having heard submissions and considered the four questions of law agreed and submitted by the parties; Answered the first of those questions in the affirmative and the remaining three questions in the negative; Repelled the preliminary pleas of both parties; Fixed a procedural hearing for 16 December 2019; and Reserved all questions of expenses until the conclusion of the case.



Colin Bell
Vice Chair

NOTE

Both parties had submitted Notes of Argument in advance of the case calling on 1 August 2019 for a preliminary hearing. The Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. The parties heard submissions from the parties regarding the four questions they had agreed required to be addressed at the preliminary hearing which took the form of a debate. The case was continued to 12 September 2019. On that date, the Complainers were represented by their Fiscal, Breck Stewart, Solicitor Advocate, Edinburgh. The Respondent was present and represented himself. It answered the first of the agreed questions of law in the affirmative and the remaining three questions in the negative. The Tribunal repelled the related preliminary pleas of both parties which related to relevancy and specification.

The first question of law was, *"Does the Complaint aver a relevant and specific case against the Respondent and in particular do Rules B1.2, B1.13.1 and B1.14.1 have any application to the facts as averred in the Complaint?"* The Tribunal considered the test of relevancy to be that expressed in Jamieson-v-Jamison 1952 SC (HL) 44. In that case it was said that *"An action will not be dismissed as irrelevant unless it must necessarily fail even if all the pursuer's averments are proved."* Therefore, at this stage, the Tribunal took the averments of the Complaint *pro veritate*.

Rule B1.2 had application because if proved, the Respondent's conduct was capable of raising questions about his integrity. The Complainers aver that the Respondent repeatedly invited the court to consider the Secondary Complainer's actions as false, misleading and amounting to contempt of court, without basis and when he was aware of an alternative explanation given by the Secondary Complainer. The averments, taken at their highest, are capable of showing that the Respondent's actions in this regard lacked integrity, although it will be for the Tribunal hearing the evidence to ascertain the factual position, and decide whether this rule was breached and professional misconduct established.

Rule B1.13.1 relates to giving false or misleading information to the court and maintaining due respect and courtesy towards the court while honourably pursing the interests of clients. The Tribunal considered that the averments relating to the Respondent's conduct in potentially misleading the court with regard to the allegations of contempt of court were capable of breaching Rule B1.13.1.

Rule B1.14.1 was the most pertinent Rule. The Complaint averred that the Respondent made unfounded allegations against a colleague. The Respondent therefore had a case to answer regarding whether he had acted with other regulated persons in a manner consistent with persons having mutual trust and

confidence in each other. The Tribunal had some reservations about whether the Rule was engaged when the Respondent indicated he intended to lodge a minute of contempt and then did not do so. However, it considered that the next Tribunal which would have the benefit of hearing all the evidence was best placed to make a judgement on this matter.

The Tribunal was therefore content that overall, the Complaint did aver a relevant and specific case.

The second question of law was, *"Does absolute privilege offer a defence to the Complaint?"* Absolute privilege is a defence to defamation actions. The Tribunal is unaware of it being raised in any disciplinary case law and the Respondent was unable to cite any relevant authority in support of his proposition that absolute privilege applied in disciplinary proceedings. Regulatory bodies must be able to bring cases against professionals regarding their conduct in court, including things they have said. There are various examples of cases where a professional's words and actions in court have become the subject of disciplinary proceedings (for example, Petition of Alan Cowan [2014] CSIH 11, Brett v Solicitors Regulation Authority [2014] EWHC 2974, Bar Standards Board v McNulty). Absolute privilege does not offer a defence to the Complaint.

The third question of law was *"Should the Tribunal delete from the Complaint in accordance with natural justice and Article 6 of the ECHR, averments which could have been made by the Secondary Complainer at any time since 30 January 2017 if they had any basis in fact, which were not so made, which now appear in the Council's Complaint for the first time, and of the evidential basis for which they Respondent has had no notice whatsoever?"*

The Tribunal noted that the Respondent objected to two sections of the Complaint. The first of these was in paragraph 3.3 and stated, *"On recall of the case the SC did not maintain her submission that a review had not been lodged. The SC made it clear in her submissions that she accepted the respondents [sic] correspondence at face value. In light of same she submitted she required to take further instructions."* The second of these was in paragraph 4.4 and stated, *"the SC considered the [letter the court had received] and thereafter did not insist upon the submission, indeed accepted the respondents [sic] letter at face value and sought an opportunity to take instructions on the respondent's letter on behalf of the JR."* The Respondent submitted that these averments were irrelevant and lacking in specification so as to be meaningless. The Tribunal was of the view that an ordinary reading of those averments did not support the Respondent's submission. The averments are perfectly plain and give the Respondent adequate notice of the Complainers' intention to lead evidence to show that the Secondary Complainer accepted the Respondent's correspondence and did not maintain her submission that a review had not

been lodged by him. This is a legitimate averment and fair notice has been given to the Respondent. There is no basis upon which to strike out these sections. These are merely statements of what the Fiscal offers to prove having carried out his investigation into the case. The next Tribunal hearing the case will have the benefit of hearing the evidence and will be able to make a judgement on whether these alleged facts are proved.

The fourth question of law was, *"Should the Tribunal made deletions from the Answers lodged by the Respondent as a consequence of irrelevancy and lack of specification?"* The Fiscal provided a lengthy list of statements contained within the Answers which the Complainers suggested should be deleted.

Some averments, for example, the Respondent's employment history, did not appear to be directly in point. However, the Tribunal was not willing to delete them as the Respondent had explained that he wished to explain any gap in his career as a solicitor in Scotland. This information had been provided to answer the averments in the Complaint which detailed his working history. The Tribunal also considered that some of the disputed averments could be relevant to the matter of integrity or may become relevant at a later stage in proceedings, for example, in mitigation, if the case progressed that far.

The Tribunal noted with particular care the sections which the Complainers suggested were scandalous. Allegations about the Secondary Complainer's professional conduct might in some contexts be considered scandalous (C v W 1950 S.L.T. (Notes) 8). However, in this case these averments are also relevant to the Respondent's conduct which is said to be in response to the Secondary Complainer's actions. The Respondent should be free to lead evidence pertinent to his defence.

Overall, the Tribunal was not satisfied that it was appropriate at this stage to delete the parts of the Answers suggested by the Complainers due to lack of relevancy. Therefore, the Tribunal made no deletions to the Respondent's Answers. If the Respondent attempts to lead irrelevant evidence at the hearing, the Fiscal can object and the Tribunal will deal with the matter at that stage.

Having answered the agreed questions of law, the Tribunal repelled the preliminary pleas of both parties which related to the relevancy and specification of the pleadings. It was necessary to strike a balance between excluding irrelevant averments and unnecessarily restricting the parties' presentation of their cases and preventing the Tribunal from having the most comprehensive information available. The Tribunal considered that in the circumstances of this case, it was preferable for all averments to go to probation. The Tribunal ordered that the case should be heard by a differently constituted Tribunal. It

fixed a procedural hearing for 16 December 2019 and reserved all questions of expenses to the conclusion of the case. Submissions on publicity will be invited at the conclusion of the case.

Colin Bell
Vice Chair