Privy Council Appeal No. 26 of 1992

Dr. Thomas Anderson McAllister *Appellant*

v.

The General Medical Council *Respondent*

FROM

THE PROFESSIONAL CONDUCT COMMITTEE OF THE GENERAL MEDICAL COUNCIL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH DECEMBER 1992

Present at the hearing:-

LORD KEITH OF KINKEL
LORD GRIFFITHS
LORD JAUNCEY OF TULLICHETTLE

*[Delivered by **Lord Jauncey of Tullichettle**]*

This appeal arises from a decision of the Professional Conduct Committee ("the Committee") of the General Medical Council ("the Council") on 8th May 1992 that the appellant, Dr. Thomas Anderson McAllister, was guilty of serious professional misconduct and a direction by the Committee that his name be erased from the register of medical practitioners. The charges against the appellant, all of which were found by the Committee to be proved, were in these terms:-

"That being registered under the Medical Act,

1(a) On various occasions between 1 January 1988 and 12 May 1989 you suggested to representatives of John Laing Construction Ltd (JLCL) that JLCL might donate money for the purchase of a Blood Culture System machine (known as a Bactec machine) for the Royal Hospital for Sick Children, Yorkhill, Glasgow;

(b) On about 10 May 1989 you took possession of a cheque for £38,000 made payable to the Royal Hospital for Sick Children by JLCL;

(c) At the time you took possession of the said cheque you knew that JLCL had donated a

cheque in the belief that the proceeds of the said cheque would be used to enable the said hospital to pay for the Bactec machine, then installed in the said hospital;

(d) Prior to 10 May

i. the said Bactec machine had been paid for by the Greater Glasgow Health Authority;

ii. you knew that the said Bactec machine had been paid for as described in (i) above;

(e) In May 1989 you induced the Unit Finance Officer of the said hospital to pay the said £38,000 cheque into a hospital account and to provide you with a replacement cheque in the sum of £38,000 made payable to the Interferon Fund;

(f) In June 1989 you

i. caused £30,000 of the £38,000 replacement cheque to be credited to an account number 057720 held at the Clydesdale Bank plc, Bearsden bearing the title 'Dr T McAllister for the Interferon Fund High Interest Cheque Account', you being a signatory to the said account;

ii. caused £8,000 of the said £38,000 replacement cheque to be credited to an account number (7)0055076 held at the Clydesdale Bank plc, Bearsden, bearing the title 'Dr Thomas Anderson McAllister and Mrs Catherine M McAllister', you being a signatory to the said account, which at the material time was your personal account;

(g) On about 3 June 1989 you caused £8,000 to be withdrawn from account number (7)0055076 and to be deposited in an Abbey National account number K665604McA, bearing the title 'Dr T A and Mrs C M McAllister', being an account to which you were a signatory;

(h) After being informed in mid-June 1989 of allegations regarding your financial dealings, you caused £8,000 to be transferred from the said Abbey National Account to the Interferon account number 057720.

2(a) You acted dishonestly in deliberately misleading JLCL into believing that it was your intention to use the proceeds of the said £38,000 cheque provided by JLCL towards paying for the said Bactec machine then installed at the said hospital;

(b) You acted dishonestly in inducing the Unit Finance Officer to provide you with a replacement cheque for £38,000, knowing that JLCL had donated the money to the said hospital;

(c) You acted dishonestly in using the proceeds of the replacement cheque provided by the Unit Finance Officer to credit accounts held under your control and outside the control of the said hospital, thereby removing the money from the said hospital.

And that in relation to the facts alleged you have been guilty of serious professional misconduct."

A hearing took place before the Committee in Glasgow from 4th to 8th May 1992 at which both parties were represented by English counsel and at which an English Queen's Counsel attended as legal assessor.

At the time of the events referred to in the charges the appellant was a Consultant Microbiologist at the Royal Hospital for Sick Children and Queen Mother's Hospital, Yorkhill, Glasgow. The charges arose out of circumstances summarised by him as "the case against him" in his original printed case to this Board.

"In 1988 John Laing Construction Company ("Laings") decided to raise money for charity. Laings were put in touch with the Appellant who had a reputation going back many years for raising charity money. Eventually, by letter dated 3rd April 1989, Laings wrote to the Appellant indicating that they intended to hold a cheque handing-over ceremony in the Glasgow City Chambers banqueting hall on 10th May 1989. The letter included the sentence 'An indication of specific areas where the money could be used would also be appreciated'. By letter dated 12th April 1989, the Appellant wrote back indicating, inter alia, that there was situate in the hospital and on approval a 'Bactec' machine which 'would be top of our shopping list. It is also photogenic'. The machine had in fact already been paid for in March 1989 by the Greater Glasgow Health Authority and this fact was known to the Appellant. (The Appellant disputed this). Under the impression that their charity money was going to be used for the purchase of this machine, at a public ceremony on 10th May 1989 at The City Hall, Laings handed over the Appellant a cheque for £38,000 payable to The Royal Hospital for Sick Children, Glasgow. On 11th May 1989 representatives of Laings made a tour of the hospital and inspected a plaque which had been affixed to the machine by Mr. Roud, the Chief Medical Laboratory Scientific Officer, at the request of the Appellant indicating that the machine had been presented by Laings. On the same day the

> Appellant asked the Unit Finance Officer [Mr. Paterson] of the hospital to bank the Laings cheque and issue him with a replacement cheque made payable to The Interferon Fund, a fund set up in the late 1970s by the Appellant for research purposes. On 31st May 1989 the Unit Finance Officer provided a replacement cheque to the Appellant in the sum of £38,000 payable to The Interferon Fund. The Appellant split the £38,000, paying £30,000 into a newly opened High Interest Account named The Interferon Fund and £8,000 into a current non-interest bearing personal account in the name of himself and his wife, both accounts being at The Clydesdale Bank. He then transferred the £8,000 from the current personal account to an interest bearing personal account at The Abbey National Building Society in the name of himself and his wife. In about mid-June 1989 the Appellant was formally told he was the subject of an investigation in relation to the Laing charity gift and he gave instructions for the £8,000 to be transferred from The Abbey National Building Society to The Interferon Fund High Interest Account, where it thereafter remained."

All the matters in the summary were matter of admission or the subject of evidence. In his original printed case, which was signed by English counsel who had represented him before the Committee, he advanced three reasons why the appeal should be allowed which were as follows:-

"1. Because a material irregularity with regard to disclosure of documents prejudiced the Appellant.

2. Because the Committee failed to apply the correct test in relation to jurisdiction to order disclosure of documents.

3. Because of the way the case was put to the Committee on the ingredients and meaning of the word 'dishonestly'.

The documents referred to in the first and second reasons were precognitions taken by the Procurator Fiscal in Glasgow.

When the case came before this Board, Scottish counsel appeared on behalf of the appellant and sought leave to lodge a supplementary case which departed entirely from the reasons in the original case and sought to introduce fresh reasons attributable to the fact that the proceedings before the Committee had taken place in Scotland rather than in England. The case also accepted that there was evidence in relation to charges 2(a) and (c) which, if accepted as credible and reliable, was sufficient to entitle the Committee to find those charges proved. The new reasons were in the following terms:-

"1. Because the proceedings were subject to Scots law and not to English law.

2. Because there was insufficient evidence to entitle the Committee to find the allegations in paragraphs 1(e) and 2(b) proved.

3. Because the entire decision of the Committee was vitiated by its failure to appreciate the existence and importance of the requirement for corroboration on all charges.

4. Because the Committee were materially misdirected by omission on a matter of central significance to the case and which they required a direction upon, causing a material risk that there was a miscarriage of justice.

5. Because the legal assessor's failure to advise on the question of sufficiency of evidence and of corroboration amounted to a material misdirection causing a material risk that there was a miscarriage of justice, and accordingly invalidated the decision of the Committee."

Although the questions raised in the grounds of appeal in the supplementary case had never been argued before the Committee their Lordships allowed Mr. Mitchell, for the appellant, to lodge the supplementary case and develop an argument thereupon. This he did with considerable skill and ingenuity, maintaining that, in the absence of any direction in the statutory rules as to which system of law should apply to hearings before the Committee, the lex fori must apply and that there was insufficient corroboration by the law of Scotland to entitle the Committee to find charge 2(b) proved. Before considering this argument in more detail it is necessary to examine the statutory background against which the Committee operates.

The Medical Act 1983, which was a Consolidation Act, provided by section 1(3) for the continued existence of four Committees of the Council including the Professional Conduct Committee. Schedule 4 dealt *inter alia* with proceedings before the Committee and provided by paragraph 1 that the Council should make rules with respect *inter alia* to the procedure to be followed and the rules of evidence to be observed in proceedings before the Committee. Paragraph 2 of the Schedule referred specifically to proceedings which might take place not only in England and Wales but also in Northern Ireland and in Scotland. Paragraph 7 of the Schedule provided that the Committee should sit with a legal assessor who should be either a barrister, advocate or solicitor of not less than ten years' standing and made further reference to proceedings taking place in Scotland.

In accordance with their duty under paragraph 1 of Schedule 4 of the Act of 1983 the Council made rules which were approved in the General Medical Council

9. 'Civil proceedings' includes ...

(c) any proceedings before a tribunal or inquiry, except in so far as, in relation to the conduct of proceedings before the tribunal or inquiry, specific provision has been made as regards the rules of evidence which are to apply; ..."

Mr. Mitchell submitted that, the Act and Rule having made no specific provision for the law to be applied by the Committee, the lex fori must determine questions of substantive law, evidence and procedure. Rule 50, although referring questions of admissibility of evidence to English law, left all other evidential matters to be dealt with by the lex fori. Scots law required corroboration of which there was none in relation to the dishonesty referred to in charge 2(b), the only relevant evidence being that of Mr. Paterson the Unit Finance Officer. The failure of the legal assessor to draw the attention of the Committee to the need for corroboration vitiated the whole proceedings and accordingly the case should be remitted back to the Committee for a rehearing. This argument presented Mr. Mitchell with some difficulty in relation to the Civil Evidence (Scotland) Act 1988 since he accepted that the proceedings before the Committee albeit analogous to criminal proceedings were in fact civil rather than criminal. However he sought to overcome this difficulty by submitting that the reference in rule 50 to the application of English criminal law to questions of admissibility of evidence constituted "specific provision" for the purposes of the exception in section 9(c), thereby removing proceedings before the Committee from the ambit of the Act of 1988. He further submitted that a dictum in the judgment of this Board in *Lanford v. General Medical Council* [1990] 1 A.C. 13 required that notwithstanding the provision of the Act of 1988 corroboration was necessary. That passage, at page 19H, was in the following terms:-

"Mr. Cox, (rightly, as their Lordships consider) submitted that the onus and standard of proof in these disciplinary proceedings and the relevant legal principles were those applicable to a criminal trial."

If it be the case that Scots law of evidence, as the lex fori, applied to the proceedings of the Committee in Glasgow, there are two reasons why their Lordships consider that the appeal must fail. In the first place section 1(1) of the Act of 1988 applies to any civil proceedings or a tribunal unless specific provision has been made as regards the rules of evidence which are to apply (section 9(c)). Rule 50 deals with admissibility of evidence in certain circumstances but makes no reference to corroboration which has therefore not been made the subject of a provision. As a matter of construction the exception in section 9(c) can apply only where there exist rules which specifically deal with corroboration in a manner which supersedes the application of section 1(1).

Preliminary Proceedings Committee and Professional Conduct Committee (Procedure) Rules Order of Council 1988 (S.I. 1988 No. 2255). Two of these rules were relied upon by the appellant, namely, rule 27(1)(e) which provides:-

> "27.-(1) In cases relating to conduct, the following order of proceedings shall be observed as respects proof of the facts alleged in the charge or charges:-
>
> ...
>
> (e) At the close of the case against him the practitioner may make either or both of the following submissions, namely:-
>
> (i) in respect of any or all of the facts alleged and not admitted in the charge or charges, that no sufficient evidence has been adduced upon which the Committee could find those facts proved;
>
> (ii) in respect of any charge, that the facts of which evidence has been adduced or which have been admitted are insufficient to support a finding of serious professional misconduct;
>
> and where any such submission is made, the Solicitor or the complainant, as the case may be, may answer the submission and the practitioner may reply thereto."

And rule 50(1) which was in the following terms:-

> "50.-(1) The Professional Conduct Committee may receive oral, documentary or other evidence of any fact or matter which appears to them relevant to the inquiry into the case before them:
>
> Provided that, where any fact or matter is tendered as evidence which would not be admissible as such if the proceedings were criminal proceedings in England, the Committee shall not receive it unless, after consultation with the legal assessor, they are satisfied that their duty of making due inquiry into the case before them makes its reception desirable."

Two further statutory provisions are relevant to this appeal, namely, sections 1(1) and 9(c) of the Civil Evidence (Scotland) Act 1988 which provide respectively:-

> "1.-(1) In any civil proceedings the court or, as the case may be, the jury, if satisfied that any fact has been established by evidence in those proceedings, shall be entitled to find that fact proved by that evidence notwithstanding that the evidence is not corroborated.
>
> ...

There being no such provision in the 1988 Rules, it follows that if the Scots law of evidence applied to the proceedings the Rules did not exclude the application of section 1(1) of the Act of 1988.

It remains to consider the above quoted dictum in *Lanford v. General Medical Council*. That case concerned two separate complaints by women patients of indecent conduct and speech towards them on the part of a doctor. The passage therefore related to events which, had they been the subject of criminal charges in England, would have required to be proved by corroborated evidence. The appellant argued that in the particular circumstances of the case the evidence of one patient did not corroborate that of the other. The Council did not traverse this argument by submitting that corroboration was not necessary and the issue of the need for corroboration was therefore not before the Board. Their Lordships do not consider that the above dictum can be treated as having universal application in all cases arising before the Committee. In charges brought against a doctor where the events giving rise to the charges would also found serious criminal charges it may be appropriate that the onus and standards of proof should be those applicable to a criminal trial. However there will be many cases where the charges which a doctor has to face before the Committee could not be the subject of serious or any criminal charges at all. The Committee is composed entirely of medical men and women learned in their profession and to require that every charge of professional misconduct has to be proved to them just as though they were a jury of laymen is, in their Lordships' view, neither necessary nor desirable. What is of prime importance is that the charge and the conduct of the proceedings should be fair to the doctor in question in all respects. It is not without significance:-

(i) that rule 50 clearly contemplates that the Committee may consider evidence which would not be admissible in criminal proceedings, and

(ii) that the rules nowhere provide that criminal standards of proof and corroboration must at all times apply.

Neither rule 50 nor any other rule required to be considered by this Board in *Lanford v. General Medical Council* and their Lordships doubt whether the above dictum would have been couched in such wide terms had it been drawn to the attention of the Board. Indeed if Parliament had intended that rules of evidence appropriate to criminal proceedings should apply in all proceedings before the Committee, it is surprising that the Council were not directed to make such rules in paragraph 1(1) of Schedule 4 of the Act of 1983. In all the circumstances their Lordships do not consider that, if Scots law applied to proceedings in Glasgow, the Council would have been obliged to disregard the provision of section 1(1) of the Act of 1988 and to apply the criminal law of evidence instead.

In the second place, even if corroboration of the fact that the appellant dishonestly induced Mr. Paterson to provide him with a replacement cheque were necessary, their Lordships are satisfied that there was ample evidence to corroborate that of Mr. Paterson. The provision of a replacement cheque by Mr. Paterson was admitted by the appellant, as were his subsequent dealings with that cheque through the accounts in the Clydesdale Bank, Bearsden. The Committee found, as the appellant accepts that they were entitled to find, that he acted dishonestly in deliberately misleading John Laing Construction Ltd. into believing that he intended to use their cheque towards payment for the Bactec machine. There was accordingly ample evidence on which the Committee were entitled to infer that when the appellant induced Mr. Paterson to provide him with a replacement cheque he was acting dishonestly.

That is sufficient for the disposal of this appeal but their Lordships think it right to consider whether Scots law was applicable at all to the proceedings. This is the first occasion, so this Board was informed, on which the Committee had sat in Scotland. It did so because of the state of health of the appellant. Cases involving Scots doctors have to date always been heard in London and it has never been suggested that any law other than that of England applied to the proceedings. The Council and the Committee are United Kingdom bodies and it is highly desirable that the same rules of evidence and procedure should apply throughout the United Kingdom wherever the Committee sits. Conversely it is highly undesirable that the Committee should apply different standards of proof to different doctors depending upon where they elect to sit. Although the Act of 1983 makes reference to the Court of Session in the context of termination of suspension of a person's registration in the Register (sections 38(6) and (7)) and to the appointment of an advocate as a legal assessor to the Committee in relation to proceedings in Scotland (paragraphs 7(1) and (3) of Schedule 4), these provisions do not necessarily point to Scots law being applied by the Committee. It is possible to envisage situations where a doctor had been convicted of offences in Scotland in circumstances in which it would be desirable for the Committee to be advised as to what were the necessary components of that offence. More significant matters are:-

(1) that in paragraph 1(1) of Schedule 4 of the Act of 1983 no direction is given to the General Medical Council to make different sets of rules of evidence for Scotland and England, and

(2) that in rule 50 admissibility of evidence is in certain circumstances to be tested by English law.

This latter provision suggests that the Council as rule makers contemplated that English law should apply to all proceedings before the Committee wherever they might

take place. Given the desirability of a single code of evidence being applied in the Committee's proceedings throughout the United Kingdom and given the aforementioned indications in rule 50, their Lordships are satisfied that the law of England was the correct law to have been applied in these proceedings.

In summary the appeal fails for the following reasons:-

(1) Because the law of England applied to the proceedings before the Committee;

(2) Even if the law of Scotland had applied:-

(a) there was ample evidence to corroborate that of Mr. Paterson in relation to charge 2(b), and

(b) in any event no corroboration of that evidence was required having regard to the provision of section 1(1) of the Civil Evidence (Scotland) Act 1988.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the respondent's costs.