

The Newsletter from
The Conway Accident Law Practice



www.accidentlawscotland.com



## Fr. TED & THE LAW SOCIETY

Awards & accolades in the legal profession?

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# Father Ted and the Law Society of Scotland

We had a traditional Christmas Eve at home this year. As is the custom I attempted to persuade my grown-up family to watch "It's a Wonderful Life".



Once more I suggested that we should have our Christmas hearts warmed by James Stewart & Co. Yet again, my family refused, opting instead for the hundredth or so rerun of the Father Ted Christmas Special.

Immediately we were transported back to Ireland's largest lingerie department, and to Ted's finest hour; the escape without a hint of scandal of the seven or so priests who "just happened to find themselves there." From being in the eyes of Mrs Doyle, perhaps only the Second Best Priest in Ireland (unlike Peter Perfect, The Perfect Priest) Ted finds himself elevated to Number One Priest via the ultimate accolade, the Golden Cleric award.

As I listened again to his interminable victory speech with its eloquent denunciation of liars, hypocrites and his many detractors over the years, my thoughts wandered to our own profession.

What if we could have a Golden Cleric for Lawyers?

Long before the final scene (where the villainous Father Todd Unctuous is exposed and arrested) I realised that Golden Clerics for Lawyers already exist. They are of course the various awards sponsored by private industry and the lists produced by organisations such as the Legal 500 and Chambers and the annual Scott and Co

You have got to hand it to whoever dreamed them up. They are a marketing man's masterpiece – for the organisations involved. They demand an application and an unspoken agreement to take a table at the awards dinner. The applications are then "judged" by various of the great and good of the legal world. Entry to the various lists seems to be determined by taking "soundings" from other lawyers. Winning an award means that you can put on your website something along the lines of Law Firm of the Year, a description about as reliable as that slogan on the mug your kids gave your dad which tells him that he is "The World's Greatest Grandad".

What is conspicuously absent in these awards, is any meaningful contribution from the consumers of the legal services, namely the clients. Absent realistic and truthful client involvement based on significant random and blind sampling, what you have is an exercise in presentation not substance. The events themselves are harmless enough with the same firms winning or coming second year after year. I hardly know anyone else who bothers applying.

But the question I do have is "Why is the Law Society of Scotland making a sponsorship contribution to the Scott and Co awards."?

These events are self regarding, elitist and shunned by almost all of our membership. Why should any part of my Law Society subscription go towards them?

My attention drifted back to Craggy Island. Perhaps Ted really did deserve that Golden Cleric. At least he didn't have to apply for it.

Welcome to the inaugural newsletter of The Conway Accident Law Practice.

Ronnie Conway is the author of Personal Injury Practice in the Sheriff Court and The Civil Advocacy Skills Book. He is a Fellow of the Association of Personal Injury Lawyers (APIL). Like all APIL members he believes in and benefits from the APIL open source mentality. All APIL lawyers freely exchange information with others, and assist and co-operate to help injured people. R Conway



**CASEWATCH P** 2015

# The Five Most Important Cases of Last Year for **Personal Injury Practitioners**

#### **D** Jackson v Murray [2015] UKSC5

A 13-year-old child suffered serious injury when she emerged into the roadway from behind the minibus without looking.

The approaching driver failed to be vigilant for the presence of children at or near the minibus, and was travelling at around 50 mph.

At first instance the child was held to be 90% contributorily negligent. On appeal to the Inner House this was reduced to 70%. Finally in the Supreme Court liability was divided equally between the parties on a 50-50 basis.

What is astonishing is the extent of disagreement amongst the judiciary concerning what is a very frequent presentation in one format or another. Anyone who thinks litigation is predictable should think again.

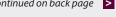
As Lord Reed stated "It is not possible for a court to arrive at an apportionment which is demonstrably correct"

### Montgomery v The Lanarkshire Health Board [2015] UKSC 11

This was another judgement of the Supreme Court from a Scottish case. In October 1999 Nadine Montgomery gave birth to her first child who suffered severe injury and disability during the delivery. The court held that she should have been told of the risks of vaginal delivery related to her diabetes, (about 10%) and should have been given the option of a cesarean section.

In a judgement which reads like a huge breath of fresh air and common sense the court stated that a patient required to be informed of any material risk of the procedure, and whether there were any alternatives available.

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# When Facebook Is Not Your Friend

If you have had the misfortune to be involved in a serious accident the very first advice we will give you is to unplug your Facebook account.

WHY?



Because the insurers who are defending you claim will pore over all your social media looking for examples of ways in which you might be exaggerating iniuries.

And of course some people do. We all know that where there is a financial incentive some persons will try to cheat the system, whether it's to avoid paying corporation tax, make dubious MP expenses claims, or take performance enhancing drugs to win the Tour de France.

All these people should be named and shamed. That is what happened to Sarah Tambosso in March 2015 when a court in British Columbia in Canada ruled that she had grossly exaggerated her claim for damages. She was suing for hundreds of thousands of dollars and represented that she had become a homebound depressive as a result of her accident.

As she told expert psychiatrists, "My life

Unfortunately for Ms. Tambosso, this did not at all square with her Facebook profile, which the insurers had obtained under court order.

Over a succession of 194 pages she was shown drinking with friends, river rafting, and attending fancy dress parties.

The court decided that this evidence was completely inconsistent with a claim for psychological trauma.

But things are not always so clear cut. Time and again I have seen insurance defender lawyers in Scotland try to use pages from a Facebook profile to show that claims have been exaggerated. The almost universal reaction from my clients is to be horrified that their Facebook profile has been ransacked in this way, but why should they be surprised? Insurance companies are not registered charities, their duties are to their shareholders, and they will use any number of tactics to minimise your claim

And of course as everyone knows, the essence of Facebook is keeping up appearances.

We want to show and tell the world how fabulous we are, not how miserable. So our profile consists of single snapshots which we want the rest of the world to see.

In another Canadian case the court held that it was well known that social media tries to present only an optimistic face and will provide a superficial and frequently misleading picture.

The Scottish courts have still to deal with what weight of evidence is to be attached to your Facebook profile. But please, don't take the risk. Switch it off until your case has settled.

### Campbell v Peter Gordon Joiners Ltd. [2015] CSIH 11

The pursuer was injured in an accident involving a circular saw. The defender company was insolvent and there was no employer's liability insurance. The pursuer attempted to convene one of the directors as a second defender for failure to insure. By a majority the Inner House dismissed the claim against the director. All practitioners in the field know that this is a real problem. There have been almost no prosecutions by the Crown office over the last 10 years for the criminal offence of failing to have employer's liability insurance. This case is expected to go to the Supreme Court.

### Young v McVean [2015] CSIH 70

The pursuer suffered psychiatric injury when told of the death of her son. She had earlier passed the scene of the road traffic accident in which he had been killed, and had an increasingly acute premonition that something terrible had happened. However she did not see the accident and was not told of it at the scene. She therefore failed to satisfy the "Nearness, Hearness and Dearness" tests which might let her recover extended damages as a secondary victim. The Inner House did uphold an award of £80,000 in respect of her grief and sorrow at the loss of her son, both in general and in particular terms.

#### WW v Ministry of Defence [2015] CSOH 111

The pursuer was exposed to asbestos whilst in the Royal Navy and had developed pleural plaques, with a 5% risk of mesothelioma. In one of the first cases to proceed to trial under The Damages (Asbestos-Related Conditions) (Scotland) Act 2009, the court awarded £8,500.00 in respect of provisional damages, with the opportunity reserved to return to court if the terminal condition of mesothelioma materialised.

# TABLE OF FEES

#### Court Fees from 22nd September, 2015

!	Sheriff Personal Injury Cou	rt Sheriff Court
Warranting of Initial Writ (to include issue of extract decree)	£210	£94
Defences	£210	£94
Record	£105	£111
Motion/Opposition	£53	£47
Proof/Debate fixing fee	£58	£53
Fee per day of Proof/Debate	£223	£223
Hearing Fee per half hour	£75	_
Appeal to the Sheriff Principal (Ordinary action)	£111	£111
Lodging of Account for Taxation	£42	£42
Certified copy of documents	£18	_
Citation of civil jury	£292	
Summary Cause Warranting		£76
Appeal to Sheriff Principal		£58
Court Fees from 1st April, 2016 Warranting of Initial Writ	£214	£96
(to include issue of extract decree)		
Defences	£214	£96
Record	£107	£113
Motion/Opposition	£54	£48
Proof/Debate fixing fee	£59	£54
Fee per day of Proof/Debate	£227	£227
Hearing Fee per half hour	£77	_
Appeal to the Sheriff Principal (Ordinary action)	£113	£113
Lodging of Account for Taxation	£43	£43
Certified copy of documents	£18	_
Citation of a civil jury	£298	_
Summary Cause Warranting		£78
Appeal to Sheriff Principal		£59



This Newsletter is published by **The Conway Accident Law Practice** 

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