

OPINION OF LORD MILLIGAN

in Petition of

WILLIAM RENNIE TEMPLETON

for

Judicial review of a
decision of 2nd October 1992
by the Criminal Injuries
Compensation Board

6 August 1996

This is an application for judicial review, which raises the question whether the Criminal Injuries Compensation Board has any power to exclude any individual as representative of an applicant to the Board. Mr Wallace, for the appellant, submitted that the Board had no such power. He explained that this submission was essential to the petitioner's case that a decision of the Board made on 2 October 1992 that the petitioner was not a suitable person either to act in any capacity on behalf of any applicant in written communication with the Board or to act on behalf of any applicant at an oral hearing before the Board should be reduced. Mr Wallace explained that he was not submitting

that this decision of the Board involved an unreasonable exercise of discretion by the Board and, accordingly, the Board's reasons for excluding the petitioner were not relevant to the petitioner's present case. Mr Wallace said that the Board was constituted under the royal prerogative. The Criminal Injuries Compensation Scheme, the 1990 scheme for present purposes, had been laid before both Houses of Parliament and approved. This was the basic constitution of the Board. The first scheme had been in 1964 and there had been successive schemes since then. Decisions of the Board were reviewable on the grounds of unreasonable exercise of discretion. There was no express provision in the 1990 scheme conferring a right on the Board to exclude an individual as representative of an applicant. In A v Criminal Injuries Compensation Board (1987 1QB 74), Lawton LJ said (at page 78A),

"The Government has made funds available for the payment of compensation without being under a statutory duty to do so. It follows, in my judgement, that the court should not construe the scheme as if it were a statute but as a public announcement of what the Government was willing to do. This entails the court deciding what would be a

reasonable and literate man's understanding of the circumstances in which he could under the scheme be paid compensation for personal injury caused by a crime of violence."

There required to be consensus between the applicant and the representative. If the sanity of a representative was in question, it would be a matter for reasonable exercise of discretion by the Board as to whether the representative could appear. Short of any such issue of incapacity, the Board had no power to exclude an individual as a representative. Accordingly, the Board could not exclude as a representative someone with a long criminal record of, for example, fraud, conspiracy, theft, perjury and other crimes of dishonesty. All that was said in the 1990 scheme concerning representation was that,

"25 ... While it will be open to the applicant to bring a friend or legal adviser to assist him in putting his case, the Board will not pay the cost of legal representation ...".

The Board did have discretion under paragraph 27

"... to permit observers, such as representatives of the press, radio and television, to attend hearings providing that written undertakings are given that

the anonymity of the applicant and other parties will not in any way be infringed by subsequent reporting."

Accordingly, there was no power conferred on the Board to exclude any individual from appearing as a representative on behalf of an applicant.

I indicated to Mr Liddle, for the respondents, the Board, that I did not accept the submission made on behalf of the petitioner but that Mr Liddle should make such comments as he wished on the matter. Mr Liddle said that the petitioner, a solicitor, appeared before the Scottish Solicitors Disciplinary Tribunal on 22 January 1992 and the findings of the tribunal involved dishonesty on the part of the petitioner in a number of ways. In particular, the Tribunal found the petitioner, the respondent in the proceedings before them " ...guilty of professional misconduct in that

- (a) between 14th November 1989 and 24th April 1990, the Respondent wrote notes and certificates about "Lawrence Beech", framed legal documents and Building Society applications in the name of "Lawrence Beech" and wrote letters to and from "Lawrence Beech", knowing that this was a fictional name and for the purpose of deceiving the

Dunfermline and Yorkshire Building Societies, his partners and another solicitor, Mr Brennan;

- (b) between 6th September 1989 and 24th April 1990, he operated a Bank account and a Building Society account in name of "Lawrence Beech", knowing the name to be fictional, and with the intention of concealing that he was the true operator of the accounts;
- (c) between 23rd November 1989 and 24th April 1990, he carried on correspondence about "Alan Carnegie", knowing that the particular Alan Carnegie was deceased, but pretending to the recipients of the correspondence that Alan Carnegie was alive and that he, the Respondent, was acting for him, with the intention of deceiving the recipients of the correspondence;
- (d) between 11th January and 24th April 1990, he deceived his partners and members of his staff, in that he pretended that "Lawrence Beech" was a real person and that "Alan Carnegie" was alive, and that he acted for both, and he continued in this deception when pressed by his partners as to the truth of the situation;

(e) he acted as Notary Public to a document which he himself had signed in the name of "Lawrence Beech", knowing that the document was a forgery in that there was no such person as Lawrence Beech, and he thus demeaned the office and responsibilities of a Notary Public; and

(f) he embezzled sums of money amounting to £1,241.67, £304.39 and £886.81 from the clients of his firm"

Following embezzlement being disclosed the petitioner had taken independent advice and tendered his resignation from his firm. The tribunal ordered that the petitioner be struck off the roll of solicitors in Scotland with immediate effect. The Tribunal noted with concern that the petitioner had not disclosed to the present respondents, with whom he had taken up employment, the circumstances leading to his resigning from his firm or any of them. The Criminal Injuries Compensation Scheme did not give rise to any right to compensation. It contemplated only that in some cases, more closely defined with the terms of the scheme, the public purse should be opened to make *ex gratia* compensatory payments. The scheme was discretionary and the discretion was that of the Board. It followed that the Board's decisions could be reviewed if it misconstrued its mandate or, on

the principles set out in the case of Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948 1KB 223) must be deemed to have done so since its decision was one which no reasonable body could have reached on the facts if it had correctly construed its mandate (R v CICB e.p. Thompstone and e.p. Crowe (1983 1AER 936, Stephen Brown J at page 937E and 1984 3AER 572 in the Court of Appeal, Sir John Donaldson MR at page 576B). Within the limits imposed by these principles, the Board had power to decide who appeared as representative of an applicant. In the case of hearings before prison boards of visitors, no one had the right to attend them without the invitation or permission of the Board (R v Secretary of State for the Home Department and Another, e.p. Tarrant and Others (1985 1QB 251, Webster J at page 283C). Hearings before the present respondents were private hearings. The respondents had the right to control, within the principles mentioned, who attended those hearings. In particular, the submission that anyone had the right to appear as representative of an applicant before the Board was wrong. Accordingly, the petition should be dismissed.

As I have already indicated, I do not accept the submission on behalf of the petitioner. That submission

was very clearly stated by Mr Wallace, who accepted that it was essential to success of the petition and further accepted that it was dramatically wide in its terms. If correct, it meant that the Board had no discretion whatsoever to exclude as a representative of an applicant someone, for example, with a long history of serious crimes of dishonesty. The petitioner has been found to have acted dishonestly on a succession of separate occasions and in various different ways. However, the nature and extent of his history of dishonesty is not material to the decision of this case, which Mr Wallace accepts must depend on the short, somewhat dramatic proposition mentioned. I accept Mr Liddle's submission and reject that of Mr Wallace. In my opinion, the Board clearly has a discretion on the matter of excluding an individual as representative of a particular applicant, or applicants more generally, provided always that that discretion is exercised reasonably. It being accepted that, if they have any such discretion, it cannot be said that that discretion was exercised unreasonably in the circumstances of the present case, I sustain the first and third pleas-in-law for the respondents and dismiss the petition.

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Act: Wallace
McClure Naismith
Anderson & Gardiner

Alt: Liddle
Solicitor to the
Secretary of State
for Scotland

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