No. 6893/1995

IN THE MATTER OF ANDREW WILLIAM ARTHUR BARTLETT, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

Mr. J.R.C. Clitheroe (in the Chair)
Mr. A.G. Gibson
Mr. G. Saunders

Date Of Hearing: 25th July 1995

FINDINGS

of the Solicitors' Disciplinary Tribunal
constituted under the Solicitors Act 1974

An application was duly made on behalf of the Solicitors Complaints Bureau by Roger Field, solicitor of Inhedge House, 31 Wolverhampton Street, Dudley, West Midlands on 19th May 1995 that Andrew William Arthur Bartlett, solicitor of Near Preston, Lancashire (and subsequently of Garstang, Preston, Lancashire) might be required to answer the allegations contained in the statement which accompanied the application and that such Order might be made as the Tribunal should think right.

The allegation against the respondent was that he had been guilty of conduct unbefitting a solicitor in that he had been convicted of offences of dangerous driving and driving with excess alcohol and sentenced to a term of imprisonment.

The application was held at the Court Room, No. 60 Carey Street, London WC2 on 25th July 1995 when the said Roger Field, solicitor and partner in the firm Inhedge & Co. appeared for the applicant and the respondent appeared and was represented by Mr Arnold Rosen of 199 Piccadilly, London, W1V 9LE.

The evidence before the Tribunal consisted of the oral testimony under oath of the respondent. Facts and allegations were agreed as set out in paragraphs 1 to 4 hereunder.

At the conclusion of the hearing the Tribunal ORDERED that the respondent Andrew William Arthur Bartlett, solicitor of Garstang, Preston, Lancashire be SUSPENDED from practice as a solicitor for an indefinite period to commence on the 25th days of July 1995 and they further Ordered him to pay the costs of and incidental to the application and enquiry fixed in the sum of £910.00 inclusive.

The facts are set out in paragraphs 1 to 2 below.

1 The respondent was admitted a solicitor in 1978 and his name remained on the Roll. At all material times has not carried on practice as a solicitor.

2 On the 7th March 1995 at the Crown Court at Preston the respondent was upon his own confession convicted of dangerous driving and also of driving with excess alcohol. He was sentenced to six months imprisonment in respect of each offence to run concurrently and was disqualified from driving for a period of two years.

3. The facts behind the conviction were that at 8 pm on 11th February 1993. The respondent was involved in a road traffic accident on the M55 motorway. He was driving in a car eastbound toward Preston. Another motorcar was being driven in the same direction. The driver was carrying a front seat passenger and was travelling at about 50 miles per hour in the middle lane when his vehicle was struck in the rear by the respondent's car. Such was the force of impact that the first vehicle went out of control and over the central crash barrier landing in the middle lane of the westbound carriage-way on its roof and occasioning severe injury to the driver and passenger. Indeed, they were trapped for about an hour in their vehicle and were only released by the fire-brigade with the assistance of an emergency doctor. The respondent's car was found parked on the grass verge of the eastbound carriage-way. It was extensively damaged and locked. There was no trace of the respondent. The police made enquiries and at about 11pm two police officers arrived at an address in Great Eccleston where they saw the respondent and his sister. The respondent had scratches on his face and hands. He admitted he was the owner of the car. He admitted he had been involved in an accident. He told the police words to the effect that he had panicked and had to get away. In front of the respondent was a tumbler of whisky. He was advised that he would have to take a breath test and replied that he had something to drink before the accident (the respondent denied that he had been drinking in the evening before the accident but it was common ground that he had drunk one and a half pints of beer at lunch time). He agreed to provide a specimen which was positive. He was taken to the Preston police station and provided two specimens for analysis. The lower of the two showed 96 micrograms in his breath (35 micrograms being the legal limit).

Submissions of the Applicant

4. This was an unusual but not a unique case. This was not a case of a solicitor who had been convicted of a crime of dishonesty whilst practising. Nevertheless the conviction was one which demonstrated conduct unbefitting on the part of the solicitor. Some adverse publicity had been generated from the case and that publicity had described the

respondent as a 'solicitor' and as a 'lawyer'. Adverse publicity was inevitable when an Officer of the Court was sent to prison. Principle 1:02 in the Guide stated that a solicitor was an officer of the Court, and should conduct himself or herself appropriately.

5. The commentary in paragraph 1 goes on to say:

> "A solicitor, whether practising or not, is an officer of the Court. Certain standards of behaviour are required of a solicitor, as an officer of the Court and as member of the profession, in his or her business activities outside legal practice and even in his or her private life. Disciplinary sanctions may be imposed if, the solicitor's behaviour tends to bring the profession into disrepute".

6. It was for the Tribunal to determine the seriousness of this breach.

The Submissions of the respondent

7. The respondent admitted that his conduct was unbefitting. Nevertheless the respondent wished to raise certain matters of concern with the Tribunal.

8. It seemed clear to the respondent that when he was sentenced to a term of imprisonment the Judge drew adverse inferences from the facts which did not necessarily reflect the true position.

9. The facts of the accident itself was that the respondent was driving a Ford Granada on the M55 motorway when he shunted into a Ford Fiesta. Extensive damage was caused and two persons were injured. The respondent did not remain at the scene of the accident. The Judge clearly drew an adverse inference that the respondent was a man who made off from the scene of an accident without knowing or not caring of the consequences of his actions.

10. In fact what happened was that at 10.55pm a PCB and PCA went to the address in Greater Eccleston where the respondents "sister" admitted them. They found the respondent on the telephone. He had some scratches on his face and hands and his trousers and shoes were covered in mud. He admitted he was the owner of the vehicle that had been driving on the motorway at 8pm. He admitted there was an accident and he admitted that he panicked. There was a tumbler of whisky in front of him. When asked if he had drunk the whisky since he had got home he replied, "yes, we've just got in". He said that additionally he had been to two pubs as well following the accident. In his panicky condition he telephoned his sister from a pub who eventually got him home in a taxi. At 11.19 the police requested a specimen.

11. When the matter came before the Preston Crown Court counsel for the respondent did not call him to give evidence. It was not anticipated that there would be an immediate sentence of imprisonment, nevertheless counsel's advice was not to appeal. Given that the respondent was hitherto a decent and a respectable person, it was important to satisfy oneself as to why the Judge would have imposed a term of imprisonment. Some evidence might be gleaned from the letter received by the respondent from the

Driver Vehicle Licensing Agency dated 18th March 1993 stating (inter alia) "We have received a report from the police which suggests you may have a medical condition which could affect your ability to drive safely." The letter went on to say they needed to make enquiries into the respondent's fitness to continue driving. The respondent replied that he had consulted his GP with a view to a specialist's opinion and he had voluntarily not driven since the incident and did not propose to do so until it was certain that it was safe. Indeed, the respondent even at today's date has not driven since the accident. It took two years to get his case to trial (7th March 1995) and thereafter he had been disqualified from driving for two years. The only conclusion which could be drawn for the custodial sentence imprisonment imposed upon the respondent was that the Judge had taken into account that the respondents driving led to the victim's vehicle being overturned onto its roof leaving two people trapped for a considerable length of time.

12. The respondent had had certain medical tests but these had proved inconclusive. The respondent's conduct generated minimal publicity prior to his imprisonment. If the Judge had heard the respondent's full version of events it was possible that he might have adopted a different approach.

13. This was a man who was not acting dishonestly; he was not practising as a solicitor at the time. Within two months of the accident he had been declared bankrupt. He had since been in receipt of income support. A striking-off was not appropriate and a fine was not realistic in the circumstances. It was hoped that the Tribunal could be persuaded to consider a reprimand or even make no order in relation to the respondent.

14. As to costs, given that the respondent was on income support and had not committed any offence of dishonesty, it was hoped that the Tribunal could recommend that the Law Society not enforce any costs without the leave of the Tribunal.

15. The respondent's solicitor quoted from the abstract of the Committal proceedings. Witnesses in one of the pubs which the respondent visited immediately after the accident spoke of his being in "a right state". The respondent phoned his brother in law from a pub at 9pm in a breathless manner asking to be picked up. The respondent did not say why but told his brother in law that he was at a pub called "Trader Jacks". The brother in law arrived at the car-park of that pub at 9.15 but he did not get out of his car and did not find the respondent. The brother in law phoned his wife (the respondent's sister) and she eventually much later got the taxi and collected him from the premises. When she got there she found him with a member of staff covered in scratches. He said he had fallen in a bush. He said nothing to her on the way home but afterwards at home, when he had had his drink of whisky, he told her that he had been in an accident on the motorway. He was in a very confused condition.

16. A laboratory report confirmed that one and a half pints of bitter consumed at lunch-time (which the respondent admitted to) would not put him above the legal limit at 8pm. At the time of the road traffic accident that alcohol would have been completely eliminated from his body. It was admitted that he had alcohol after the accident but the retroactive calculations to ascertain what alcohol might have been in his body at 8pm proved unsatisfactory.

17. The respondent gave evidence on oath, he said that he had not callously run away from the scene of an accident neither had he gone to a public house after the accident to conceal any consumption of alcohol prior to the accident.

18. He could not recall the details of the collision at all. He was driving to an important meeting, he did not see the another car although he appreciated that there had been a collision. He parked his car at the side of the road and made away across the fields to get to a phone box. It never crossed his mind to use the telephone boxes on the motorway itself. This was an area he knew well and he knew there was a telephone box in the nearby village. However this was not working so he went to the pub where there was a phone and telephoned his brother in law. At the same time he bought a pint of bitter. He asked his brother in law to meet him at "Trader Jacks" which he believed was the name of the pub where he was at that time. He then realised that he had given his brother in law the wrong name of the pub and went to the one diagonally opposite which he believed was the one known as "Trader Jacks". He did not find his brother in law there so he had another drink or two. The staff would not serve him with any more so he went back to first public house and had another one. It was at this point his sister found him and took him home by taxi. The drinking at the public house was not to conceal an earlier consumption of alcohol. He admitted he had had one and a half pints at lunch-time but that was all until after the accident.

19. He had emerged from the accident relatively unscathed and assumed that the same had happened to the other driver. He saw that his own car was damaged but he did not see another vehicle at all and was completely unaware of the vehicle which was upside down on the opposite carriageway.

20. He pleaded guilty to the offences of dangerous driving and driving with excess alcohol. His not guilty pleas of failing to report an accident and failing to stop after an accident had been accepted by the Court. He had been referred to a specialist and given a brain scan but that brain scan had not shown specific medical condition. He believed he had had a temporary black out.

21. He bitterly regretted the injuries caused to others. Nevertheless no-one considered him a solicitor at the time. He was running a nursing home which was going through some financial problems and this had caused him a great deal of stress. He had been in business discussions with a nursing home broker at his lunch-time meeting and was on his way to meet a different broker in the evening when the accident happened.

22. In the right circumstances and if he were admitted to remain in practice, it would be his hope to return to the profession at some time in the future. He had primarily been a conveyancing solicitor and the respondent appreciated that at the moment his prospects of returning to such work were not good. Under cross examination he admitted that he had left the legal profession only three months before the accident and his name was still on the roll of solicitors. At his trial he was advised by both solicitor and counsel and had admitted the two offences mentioned. Counsel had mitigated before the trial Judge along the lines already raised before this Tribunal and in addition his health and marital problems had been mentioned. After his collision, he admitted

he told the police that he wanted to be away from the scene of the accident but he had not appreciated that in making off he had left behind the injured parties.

23. He was aware that something in the nature of a collision had had happened to him because his car was in such a state but he could not remember anything about the impact or the events leading up to it. There was extensive damage on the left near side wing of his car. He had been travelling at 70-75 miles per hour, the traffic condition was light and the weather was fair. He had given serious consideration to pleading not guilty but he didn't think that a scientific back-tracking exercise would conclusively prove his innocence. No evidence was called as to the post-traumatic stress he might have suffered from. He had no recollection about the actual collision. He believed that immediately after collision that his car ended up pointing the wrong way on the motorway. He believed that neither vehicles had any lights on.

24. When the police arrived at his home at 11pm he was on the phone to a policeman friend to get advice. He had not made any phone-call to the business acquaintance that he had been on his way to meet that evening.

25. It was not the respondent's intention to go behind the conviction. Nevertheless, the respondent had not given evidence in mitigation at his trial (on the advice of Counsel) and had never had the opportunity to express himself on the subject. He wished to gain say the impression that he had acted irresponsibly and uncaringly. Any right thinking member of the public who understood the true facts of the case would hold that the respondent had not brought the profession into real disrepute.

26. The Tribunal Found the allegations to have been substantiated, indeed they were not contested. The Tribunal did not find the respondent's testimony entirely convincing. He had provided no evidence of a medical nature to explain his apparent "blackout" at the time of the collision. He had raised the inference of a medical condition but admitted that investigations had proved inconclusive. The incontrovertible facts were that he was driving at such a speed as to push the driver in the Fiesta over the crash barrier onto the opposite carriage-way. Notwithstanding this, the respondent steadfastly maintained that he saw and heard nothing of the other car. He maintained that the conditions were not dark and no-one was driving with head-lights although it was 8 pm on a February evening. He gave a non-convincing explanation as to why he had to make across the fields to get to a telephone rather that use the phones on the motorway itself. He said that he did not mention the fact of an accident to his brother in law when he asked him to collect him from the pub car park and that he did not speak to his sister about the accident when she collected him in a taxi whilst his state and appearance would have demanded an explanation. The Tribunal do not rule out entirely the possibility that the respondent's unconvincing evidence could be indicative of a continuing state of lack of recall. On balance however they felt that his version of events was inherently improbable. Either the collision was caused by a medical condition or it was not and there was no evidence at all that the respondent was suffering from a medical condition. In the absence of a medical explanation his conduct could only be described as dangerous driving which may or may not have been induced by excessive alcohol. The respondent could not escape the fact that he had pleaded guilty to those two offences and could not go behind the conviction of the court. Many factors in the respondent's version of events remained wholly unexplained

and the sum of his evidence was unconvincing. The Tribunal were therefore entitled to view the respondent in the same unattractive light that he was no doubt viewed by the Judge, namely that he had behaved in an irresponsible and blame-worthy manner entirely inappropriate for that of a solicitor - whether practising or not. The Tribunal viewed this behaviour in a very grave manner. They refrained from a striking-off in part because the conduct did not take place in the context of practice as a solicitor. Further there were some uncertainties surrounding certain aspects of the case which led them to conclude that they should not impose a striking-off order in the circumstances. Nevertheless the general principle prevails namely this was a serious offence of admitted conduct unbefitting which could not in any way be treated with the leniency urged upon the Tribunal by the respondent's advocate. The respondent should be able to seek a lifting of his suspension as and when he can demonstrate rehabilitation and was able to show his judgement can be considered sound. In the meantime, the only appropriate course of action in the view of the Tribunal was to order that he be indefinitely suspended.

DATED this 28th day of September 1995

on behalf of the Tribunal

J.R.C. Clitheroe
Chairman

22nd
September 95