

Major Public Law Conference: A Murray Stable Public Law Group Event

DEVELOPING PUBLIC LAW IN SCOTLAND

Keynote Speaker: Lord Clyde

Monday 10th November 2008

**The Faculty of Advocates, Mackenzie Building, Old Assembly Close,
172 High Street, Edinburgh, EH1 1QX**

Does Scotland lag behind England in the development of public law? Murray Stable Counsel and their instructing solicitors have been at the forefront of the development of Scots public law since before devolution. How can public law be further developed in Scotland?

In the morning we look at the major overall trends and developments over the past decade and the developing policy background. In the afternoon specific areas of practice are considered.

Chair: Derek O'Carroll, Advocate

- Public Law in Scotland: An Overview – Lord Clyde
- Development of Administrative Justice – Prof. Tom Mullen, University of Glasgow
- Regulating the New Scotland: Who Regulates the Regulators? – Scott Blair, Advocate
- Criminal Law - Simon Collins, Advocate
- Education Law – John McKendrick, Advocate & Barrister
- Plain Vanilla Data – Valerie Stacey QC
- Employment Law – Sheena Stark, Advocate
- R.E.S.P.E.C.T. – Ross Macfarlane, Advocate
- Drawing the Threads Together – Mungo Bovey QC

Programme

9.30- 10.00: Registration and Coffee

10.00-10.45: Keynote Address: **Public Law in Scotland: An Overview**. The strengths and weaknesses of public law in Scotland and its development in a UK context. **Lord Clyde** considers how far we have come and what developments may be anticipated over coming years.

10.45 – 11.30: **The Development of Administrative Justice**. Many public law disputes are ventilated outside the courts through tribunals, ombudsmen and various other grievance mechanisms. Together with the courts, they make up a system of administrative justice. This session will review the important changes that are taking place in the administrative justice system including the rationalisation of tribunals following from the Tribunals, Courts and Enforcement Act 2007, the relationship between courts and other mechanisms of administrative justice, and the impact of the Gill Review.
Professor Tom Mullen, University of Glasgow

11.30 – 11.45: Tea and Coffee

11.45 – 12.30: **Regulating the New Scotland: Who Regulates the Regulators?** From the Care Commission and the Financial Services Authority to the Gambling Commission, Scotland is regulated as never before. Can the Scottish Courts exercise control over these regulators? **Scott Blair, Advocate**

12.30 – 1.30: **Lunch** (provided)

Applications of Public Law

- 1.30 – 2.00: **Criminal law** is about as 'public' as law gets, yet challenging decision making in criminal prosecution has long been thought to be off limits for judicial review in Scotland. But that doesn't mean that public law thinking and case law is not increasingly utilised in this area. **Simon Collins**, Advocate, looks at where we are now, and offers some ideas for further development.
- 2.00 – 2.30: **Education Law: the relative failure of human rights:** The leading human rights cases within the jurisdictions of England/Wales and Scotland and the consideration of their relative lack of success with the context of education law. **John McKendrick**, Advocate, and Barrister, Hardwicke Building.
- 2.30 – 3.00: **Plain Vanilla Data:** This summer's House of Lords decision in *CSA v. Scottish Information Commissioner* has cast a flood of light on the developing regulation of information and data. Among the issues clarified have been the interplay between the Data Protection and the Freedom of Information legislation, the quasi-judicial role of the Scottish Information Commissioner, the categorisation of data as "personal", "sensitive personal", and "plain vanilla", and the difference between "information" and "data". **Valerie Stacey QC**
- 3.00 – 3.15: Tea & Coffee
- 3.15 – 3.45: **Employment Law:** The overlap of public law and employment law has been topical since *West v. Secretary of State for Scotland* 1992 SC 385. Choice of remedy and jurisdiction is determined by an awareness of that overlap. **Sheena Stark, Advocate**
- 3.45 – 4.15: **R.E.S.P.E.C.T:** Issues of proportionality in Family Law. **Ross Macfarlane, Advocate**
- 4.15 – 4.45: **Drawing the threads together:** A summary and some thoughts on the possible impact of Tribunal reform and of the Gill review. **Mungo Bovey QC**
- 4.45 **Close**

BIOGRAPHIES

James Clyde, Baron Clyde PC, QC called to the Scottish Bar in 1959. A QC from 1971 and Senator of the College of Justice from 1985 until 1996, he was Lord of Appeal in Ordinary from 1996 until 2001. He has been a Privy Counsellor since 1996. He is co-author with Denis Edwards of 'Judicial Review'. No-one is in a better position to review the current standing of public law in Scotland.

Tom Mullen is Professor of Law and Head of Department, School of Law, at the University of Glasgow. He has taught and researched extensively in the area of public law. Publications include *Public Law in Scotland* (Avizandum, 2006) (ed. with A McHarg) and *Judicial Review in Scotland* (Wiley, 1996) (with K Pick & T Prosser) and *The Human Rights Act 1998 and Scots Law* (Legal Services Agency, 2001). He has conducted empirical research into the operation of judicial review and various aspects of housing law.

Scott Blair, Advocate, worked as a solicitor in private practice before calling in 2000. He specialises in a wide range of public law issues. He has been instructed in cases in the European Court of Human Rights, Judicial Committee of the Privy Council, both the Inner and Outer House of the Court of Session, the High Court of Justiciary at first instance and on appeal, the Sheriff Court and before various tribunals, licensing boards and local authority regulatory committees. He is a part time Immigration Judge. He is the author of *Scots Administrative Law: Cases and Materials* (W Green/Sweet & Maxwell, 1999) and a contributor to many other publications in the field of public and administrative law.

Simon Collins, Advocate, is one of Scotland's leading public and human rights lawyers. He has appeared in many of the most important and controversial public law cases of recent years, including *Noel Ruddle v Secretary of State for Scotland* (treatability of psychopaths - first Act of the Scottish Parliament); *Starrs v Ruxton* (temporary sheriffs), *Napier v Scottish Ministers* ('slopping out') and *Somerville v Scottish Ministers* (time bar, PII and the Scotland Act 1998). He has been a full time Advocate Depute since 2007.

John McKendrick, Advocate & Barrister, was called to the Bar of England and Wales by the Inner Temple in 1999. He has practised public and administrative law for a number of years with a particular focus on education and community care law and has been involved in a number of leading cases. He was called to the Bar in Scotland in early 2008. He was Associate Professor at the University of Santa Maria La Antigua in Panama City in 2005.

Valerie Stacey QC called at the bar in 1987. She was Vice Dean of the Faculty of Advocates from 2004 until last year. She was an Advocate Depute from 1993 to 1996 and from 1996 until taking silk in 1999 she was standing junior to the Home office in Scotland. She sat as a Tribunal Chairman from 1987 until 1993, and between 1997 and 1999 she sat as a temporary Sheriff.

Sheena Stark, Advocate, came from private practice to be Head of Litigation and then Solicitor (Scotland) for British Railways Board where she handled large volumes of litigation including a large volume of employment litigation. When privatisation led to the birth of Railtrack and all the Railway operating companies, she was involved in resolving the many resultant Public Law and Employment Law disputes following the break-up of the industry including those arising from T.U.P.E. Her practice at the Bar is largely concerned with Employment and Public Law.

Ross Macfarlane, Advocate, is Editor of *Greens Family Law Reports* and has specialised in the area of Child Law for over a decade. He is regularly peer-reviewed as one of the top Junior Counsel in his field. The *Legal 500* describes Ross as “*A noted expert in Child Law*” and *Chamber and Partners* has nominated Ross as one of their “Leaders at the Scottish Bar” for 2009.

Mungo Bovey QC is the Keeper of the Library of the Faculty of Advocates. He has been involved at the highest level in many of the leading public and administrative law cases in Scotland over the last two decades. He is Door Tenant at Toaks Chambers and a member of the legal panel of the Mental Health Tribunal for Scotland. He still finds time to be involved in administering triathlon Scotland.

Derek O'Carroll, Advocate, (Chair), called to the Bar in 2000. Before that, he was a solicitor for nine years. He practices and publishes in many areas of public and administrative law including housing, education, mental health, discrimination, community care and social work law. He is a part-time chairman of the Mental Health Tribunal and the Private Rented Housing Panel, and a part-time sheriff. He is convenor of the Public Law Group of the Murray Stable.

All the Advocate speakers are members of the Murray Stable Public Law Group. Further information about each of them is available on the Murray Stable website:

www.murraystable.com

Registration

I shall attend the seminar “Developing Public Law in Scotland” on Monday 10th November 2008 at The Faculty of Advocates, Mackenzie Building, Old Assembly Close, 172 High Street, Edinburgh, EH1 1QX

Registration Fee: £50 + vat = £58.75 per delegate (Buffet lunch and refreshments included)

Cheques: Payable to Faculty Services Limited

BACS: sort code 80-02-24, account no 00373977, account name Faculty Services Limited

Please book by mail using the form below or by email to

john-ross.morland@murraystable.com with your full details and we will send you an invoice

Name.....

Firm / Organisation.....

Address/DX/LP.....

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Email.....

Tel No.....

No cancellations after 3rd November but substitutions permitted at any time.

CPD: May qualify for 5 hours accreditation



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