

SJA E-NEWS

Fifty-Third Issue – October 2014

SJA NEWS

AGM:

**DON'T FORGET THAT THE AGM WILL BE HELD IN STIRLING
ON 22ND NOVEMBER.**

SEE YOU THERE

The **Communications Committee** met on 3rd September. Johan Findlay reported that SJA responses to the Consultations on Television in Courts, and on the Assisted Suicide Bill, had been sent off. However, it had been decided that there was not sufficient agreement to respond to the Consultation on Training Arrangements for Justices of the Peace, though it was understood that most Sheriffdoms, and several members of the Executive (and no doubt other individual Justices), had done so.

Robin White produced a paper on the future of E-News in the light of his impending retiral. This paper was accepted and it was hoped to continue it under new editorship. Possible content for the next issue of *Scottish Justice* was also discussed.

John Lawless reported in relation to updating the SJA website that, regrettably, little progress had been made since the last Meeting. He had been discovered that some changes could not be effected without the assistance of the company hosting the website, and latterly his energies had been diverted to running the Executive election. He was congratulated on the smooth running of this election.

Keith Parkes was noted to have sent out had sent out an email specifying the items necessary for the Annual Report, identifying who was to write each. He had received some copy.

The **Executive** met on 30th September, too late for inclusion of any report on it in this issue, so a report will appear in the next.

OTHER NEWS

PRECISION IN COMPLAINTS AGAIN

It will be recalled that E-News reported in July on *Strawbridge and Others v PF Hamilton* [2014] HCJAC 32, which concerned whether the *locus* of an alleged speeding offence was sufficiently well specified. Another such case, *PF Dundee v Martin* [2014] HCJAC 97, heard in Dundee JP Court, has been reported. Though it involves some detail, it is worth discussing here as it displays the sort of difficulty which can arise quite often in the JP Court.

This case concerned alleged speeding on the Kingsway, that is, the Dundee bypass. This passes north of Dundee from the road to Perth on the west, to the road to Arbroath on the east. It is conventionally divided into Kingsway West and Kingsway East, divided its junction with the Forfar Road. In 1936, the whole Kingsway was designated a “Trunk Road”, and labelled “A972”.

Some fifty years later, the Perth-Dundee Trunk Road (A972) (Kingsway, Dundee) (50 mph Speed Limit) Order 1989 (“the 1989 Order”) imposed a 50 mph limit “on the length of road specified in the Schedule” to the Order. That Schedule referred to the road as the A972, and specified the section subject to the limit by reference to the relevant junctions (those with Myrekirk Road and the Forfar Road), thereby describing most of the Kingsway West section. This section is nearly six and a half kilometres long.

However, a few years later, in 1993, as part of a road improvement scheme, the whole road from Perth to Aberdeen, *via* Dundee and Forfar, and thus including all the Kingsway West (but not Kingsway East) was dualled, and relabelled “A90”.

Mr Martin was prosecuted for alleged speeding “on Kingsway West”, on the basis of the 1989 Order. He raised a plea to the relevancy on several grounds, but principally (i) that the 1989 Order was invalid and (ii) that the *locus* was insufficiently specified. Both of these pleas were upheld by the Justice. The decisions were appealed by the prosecution.

In relation to the question of validity, two arguments were advanced by the accused. Firstly, the title of the 1989 Order, and its Schedule, both referred to “Perth-Dundee Trunk Road”. However, this title was actually applied not to the Kingsway (the “A972”), but to the road Perth-Dundee road (labelled the “A85”). Consequently, it was argued, the 1989 Order must have been invalid since it was promulgated. However, the Appeal Court concluded that this inaccuracy in the Order only created an ambiguity, as the title also included the label “A972” and,

more importantly, the Schedule referred unambiguously to the Myrekirk Road and Forfar Road junctions. Thus, there was no invalidity, only a question of interpretation to resolve the ambiguity, which was readily done.

Secondly, and in any case, it was argued that the 1993 change of label of the Kingsway West from “A972” to “A90” rendered the 1989 Order invalid. In other words a valid piece of legislation referring to a geographical location by its name, became invalid if the location was given a different name. However, the Appeal Court concluded that “as an ordinary rule of interpretation” of legislation, one should normally start by looking at the circumstances when the legislation was made. This means looking at its history, although this made the meaning of the legislation “less immediately, or directly, ascertainable”. In the present case that “there can be no doubt that the length of road specified in the schedule to the 1989 order is indeed the Kingsway West ...”.

In relation to the question of specification, it seems that the accused’s argument was that the complaint specified a stretch of road over six kilometres long. The Appeal Court referred to its recent decision in *Strawbridge*, in particular that whether the *locus* was sufficiently specified was a question of fact and circumstance, and also noted that modern speeding detection methods usually allow close specification, which had in fact been given in the summary of evidence disclosed to the accused (and could have been used to amend the complaint). It further noted that greater specification in the complaint would have been desirable. However, “with some hesitation”, the Court concluded that a 6.3 km length of road “might not be thought to be an extravagantly libelled length of road”.

Thus, the prosecutor’s appeal succeeded. The full report is available at http://www.scotcourts.gov.uk/search-judgments/judgment?id=1e8ca7a6-8980-69d2-b500-ff0000d74aa7&utm_source=Newsletters&utm_campaign=ed649e8652-SLN_8_09_14&utm_medium=email&utm_term=0_1eedb22a32-ed649e8652-65406933.

REGIME CHANGE

Sheriff Welsh has retired from Directorship of the Judicial Institute of Scotland, and returned to the Bench in Edinburgh. E-News wishes him well and thanks him for the work done in relation to JPs over the last few years.

The Deputy Director, Sheriff Duff, takes over from him, and Sheriff Cubie, from Glasgow, becomes the new Deputy Director. E-News welcomes them both to their new duties, and looks forward to continuing interesting JP training organised by the Judicial Institute.

AND WHILE WE ARE ON THE SUBJECT ...

Do look at what training for JPs is available from the Judicial Institute. It's all on the Judicial Hub.

Though, incidentally, it appears that regrettably few JPs are actually accessing the Judicial Hub. It seems that less than half of us have done so.

No doubt those reading this will be among those who have accessed it. So we might draw the attention of our colleagues who might not have.

Robin M White
E-News Editor
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