

ASK THE ADVISER

16) COURTS AND THE LAW - The latest in a series of articles by Iain Gregory of Caithness CAB

My guide and mentor in life, sadly now deceased, was a Professor of Law and the author of learned tomes on “Diminished Responsibility Homicide” – light bedtime reading you might say. He started as a junior barrister on the infamous Craig and Bentley murder case and spent a lifetime specialising in such trials thereafter. He had a lot of very useful guidelines for practicing law and he once explained to me that one of the great advantages of advancing years for Counsel was that one could always have a “Rumpole Moment” if faced with the difficulty of not having a plausible answer immediately to hand should a Judge or Sheriff ask for one. He spent some time trying to persuade me to go into law, preferably on the criminal defence side, and said that the golden rule was never, ever, to ask your witness a question unless you were certain of the answer you were likely to get. I note that my wife seems to adopt a similar technique when cross-examining me as well.

We do tend to get quite a lot of legal inquiries at Caithness CAB and often the best advice is for the client to consult a solicitor to make sure that all the bases are covered. It is fair to say that an awful lot of advice given by well-meaning friends and relatives is seriously wrong and this can prove expensive and very detrimental indeed. Fortunately CCAB have a lot of information to hand and can give general guidance and information to anyone who finds themselves in a situation where the full majesty of the law is about to bear down upon them, or where they have a grievance which might well need to be taken to a civil court.

So where do we start? Well the first thing to remember is this. The Scottish Legal System is almost certainly the best in the world. Despite some changes recently it remains very fair and very strong. As a good example the rules relating to corroboration ensure that there are very few miscarriages of justice in Scotland. In short, corroboration means that at least two different and independent sources of evidence are required in support of each crucial fact before a defendant can be convicted of a crime. This means that a simple confession or an allegation from one person is not enough on its own – there needs to be solid evidence to back it up – and corroboration has served us well for hundreds of years. Also, access to the court system is surprisingly simple if you wish to pursue a civil matter. Our local court officials are approachable and helpful and many of our clients are pleasantly surprised when we suggest they go to the Sheriff Clerk’s office to seek guidance.

Firstly, let’s have a look at criminal cases. The word “Criminal” conjures up all kinds of pictures, but it can refer to something as simple as failing to note that a traffic light is a particularly fetching shade of red, and proceeding to sail through it without a care in the world, and can progress right through the

spectrum up to cases likely to be heard in the High Court. The first thing to remember is that you are, again thanks to the wisdom of our legal system, innocent until proven guilty. If you receive a “Summons” as people refer to it (correctly known as a “Copy Complaint”) in respect of an alleged crime or offence then the first thing to do it is study it carefully and see exactly what you are supposed to have done and indeed where and when. There will be various documents attached and it is vital to take note of exactly what is said and to see what you have to do. If you do not understand it and need help CCAB are perfectly happy to assist you and explain everything to you. Almost always once we have done this (unless you choose otherwise) we will advise you to consult a solicitor who deals with “criminal” cases and we will provide you with information about Legal Aid eligibility (your solicitor will do this as well but we like you to be able to read about in advance). We keep a list of local solicitors and can also signpost you to the Law Society of Scotland (www.lawscot.org.uk) if you want to seek legal advice elsewhere. Your solicitor will explain everything to you and advise you correctly – whether you decide to plead “Guilty” or “Not Guilty” – and will always act in your best interests and speak for you in court. The golden rule is not to put the documents behind the clock and hope they will go away – you need to get advice swiftly and the sooner you do this the better.

Another very common area where court processes are involved and where people come to us for advice relates to relationship breakups and divorce procedures. Again, we have a wealth of information to hand and we will go over it with you and provide you with useful leaflets and printouts so that you can read through everything in your own time. We cover everything from the basics – for example “Can I get divorced in Scotland” or “What are the grounds for divorce” up to a detailed explanation of the procedures at each stage. Again, it is very often the case that you will need legal advice from a Scottish solicitor, but our role is to empower you with all the information you need in layperson’s terms so that you know how everything works and how the courts are involved. We are often asked about the cheerfully named “DIY Divorce” (yes, really). Do-It-Yourself divorce is the name given to the simplified procedure which allows people to divorce very quickly with a minimum of cost when there are no problems about money and there are no children under 16. It is known in the abbreviated form as DIY divorce and more formally as the simplified procedure for divorce. The intention of the DIY procedure is that it is quick, straightforward and a solicitor's help should not be required. However the a person would be entitled to legal advice and assistance, subject to financial eligibility, if s/he needs to consult a solicitor about the DIY procedure. Court processes are involved, but there is no need for concern about this.

The third most frequent request for advice relates to “Small Claims” – this procedure applies where you are owed money or where you have a claim for something else and where the sum claimed does not exceed £3000. The small claims procedure was designed to be a quick and informal way of settling straightforward disputes. A person can act for her/himself as either a

pursuer or a defender. S/he is allowed to act on her/his own or with the support of a lay person of her/his choice. Generally this process is indeed quite simple and straightforward and the paperwork is kept to a minimum but any form of legal process can be intimidating so come and see us and we will help you to understand the procedures and fill in the forms for you if you wish. Again the Sheriff Clerk's Office are very good at explaining things (and we have had a lot of help recently) and if you go to www.scotcourts.gov.uk everything you need to know is there. The thing to remember with this process is that it is best to try and resolve the problem first without needing to take a claim to court. If all else fails however and you need help then we will assist you – we do tend to remind people that if you are considering using a solicitor you should have a think about the possible cost of doing so, especially in relation to the value of the claim. Legal fees may not be recoverable from the loser even if you win your case, so do take advice.

There are lots of other areas of life where the court system plays a vital part – we do tend to think in terms of criminal cases only, but in addition to the subjects above the Scottish Courts and Tribunals Service deal with countless other matters as well – from helping people with the confirmation of a deceased person's estate to ensuring someone's safety – and we all have access so if you need guidance we are here to give you the initial, free, advice which you need.

And on a lighter note I do recall many years ago in a certain Sheriff Court in the Western Isles a somewhat nervous witness was asked "who is making these allegations" and the utterly brilliant, if inadvertent reply was "My Lord, I am the Alligator". The formal facade of the august assembly was severely cracked and the Sheriff apparently felt obliged to retire to his chambers for a short break".