

Kay Springham QC

Year called: 1999
Year of silk: 2016
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Qualifications: D.E.A. (Strasbourg) (1997)
Dip. LP (1986) (Glasgow)
Ll.B (Hons) (Glasgow) (1985)
Fluent French speaker



Practice

Kay called to the Bar in 1999 and took silk in 2016. Before coming to the Bar, Kay was a solicitor for eight years, beginning with a mixed civil court practice, and eventually specialising in reparation work. She enjoys the challenge of being instructed in a wide range of civil litigation. Her principal fields of practice include:-

- Personal Injury
- Judicial Review
- Statutory Appeals
- Human Rights
- Professional Negligence

Kay is regularly instructed for both sides in personal injury matters. Her recent practice has included, for example, fatal claims, claims for catastrophic injuries and serious head injuries, accidents at work including industrial diseases, and stress at work claims.

Kay has a long-standing interest in judicial review, statutory appeals and human rights matters. She has advised on and appeared in a variety of litigations in these areas. She studied human rights in Strasbourg shortly before coming to the Bar. She has experience in a range of public law matters, including mental health hearings and appeals, Land Registration cases and planning appeals.

In addition, Kay has experience in handling professional negligence cases, for example, involving lawyers, doctors, dentists, and architects. In the disciplinary context, she has advised on and represented solicitors in disciplinary matters,

both before the Scottish Solicitors' Disciplinary Tribunal and the Inner House of the Court of Session.

Representative cases

Reparation

ICL v Johnston Oils [2012] CSOH 62 – action of relief against suppliers of LPG – relevance of averments of standard of care.

David T Morrison & Co Ltd v ICL Plastics Ltd a [2012] OH 44 - claim for reparation arising out of explosion at factory causing damage to neighbouring building; whether claim prescribed under s.11(3) of Prescription and Limitation (Sc) Act 1973.

Davis v Catto and Skinner [2011] CSIH 85 - road traffic accident; whether defender and third party were competing with each other such as to entitle the defender to relief; whether the third party was driving at excessive speed. Decision of Lord Ordinary (finding third party partly to blame) set aside.

Reid v Ogilvie and anor - civil jury trial, 11-14/1/10 - whether a road traffic accident had been caused by the defender and/or the third party. Quantum agreed.

Neil v East Ayrshire Council [2005] CSOH 13 - accident at work - whether defenders were at fault under various statutory cases.

McCondichie v Mains Medical Centre 2004 Rep. L.R. (N) 4 - claim for damages by a member of the public. The first Court of Session decision deciding on the applicability of the Workplace (Health, Safety and Welfare) Regulations 1992 to non-workers.

Professional Negligence

2011 - Junior counsel for pursuer in medical negligence claim which settled on the basis of a periodical payment order – second case in Scotland to use PPO.

Atwal Enterprises Ltd v Toner 2006 SLT 537 - cause of defect in artificial football pitches - whether professional negligence on part of architect - assessment of damages.

Toner v McLeod [2006] CSOH 96 & 228 - claim of dental negligence - whether suitable to be heard by a jury.

Tehrani v Central Council for Nursing, Midwifery and Health Visiting 2001 SC 581 - judicial review of the respondents' procedures with regard to article 6 of the European Convention on Human Rights.

Council of the Law Society of Scotland v Hall and McPherson 2002 SC 620 & 628 - whether there had been a breach of article 6(1) of the ECHR, and the right to a hearing within a reasonable time.

Sutherland-Fisher v Law Society of Scotland 2003 SC 562 - whether the lack of legal aid before the Scottish Solicitors' Disciplinary Tribunal was in breach of art. 6.

McMahon and others v Council of Law Society of Scotland 2002 SC 475 - appeal to the Inner House against the decision of the Scottish Solicitors' Disciplinary Tribunal on whether sentence excessive.

FAI/PI

2010 – junior counsel for Scottish Ministers in the Vale of Leven Hospital public inquiry into the rates and occurrence of numerous cases of Clostridium difficile infection in 2007-08. Representing the interests of Ministers as having overall responsibility for the NHS in Scotland.

Judicial Review

H v Scottish Ministers and Glasgow City Council – counsel for local authority in judicial review relating to proceedings for obtaining of a child protection order – whether compliant with European Convention on Human Rights.

DC, Petitioner [2011] CSOH 193 - judicial review - whether petitioner had been unlawfully detained following decision of Mental Health

Tribunal for Scotland. Whether the Tribunal's decision that it had power to deal with a repeat s.95 application under the 2003 Act was ultra vires.

ICL Plastics Limited v P.F. (Glasgow) 2005 SLT 675 - judicial review of the Procurator Fiscal's decision to refuse to allow access to the petitioners' property, pending her investigation into an explosion at a plastics factory in Glasgow.

SD and anr. v Scottish Ministers and Falkirk Council 2003 SLT 1323 - judicial review of the Scottish Ministers' decision to refuse to allow an appeal against the decision of the Council to refuse to open a record of needs for their child.

Matthewson v Scottish Ministers 28/6/01 - judicial review of a prison governor's decision to refuse to allow legal representation in prison disciplinary proceedings

Other

Apollo Engineering v James Scott Ltd [2012] CSIH 4 - appointed as amicus curiae where lay individual sought to represent limited company. Issues under article 6 of the European Convention on Human Rights.

S v Mental Health Tribunal for Scotland & Others 2010 SLT 991 - appeal to Inner House against decision of MHTS refusing to make an order to return a patient to a medium secure facility. Appeal based on alleged violations of articles 5, 6, 8 and 14 of ECHR.

M v Mental Health Tribunal for Scotland and Another 2010 SLT (Sh Ct) 235 - appeal to Sheriff Principal against decision of MHTS refusing application for revocation of short term detention certificate. Complaint of unlawful detention in terms of article 5 of ECHR.

Scottish Borders Council v Scottish Ministers [2009] CSOH 70 - planning appeal - developer contributions relating to the Waverley Railway (Sc) Act 2006.

Hazle v Lord Advocate (unreported, Kirkcaldy Sheriff Court, 16/3/09) - statutory appeal against a decision to register community interests in land under the Land Reform (Sc) Act 2003.

Houston v Renfrewshire Council and Scottish Ministers (unreported, Ld Menzies, 2/2/07) - challenge to a Compulsory Purchase Order confirmed by the Scottish Ministers.

B v Greater Glasgow Health Board and Scottish Ministers - Mental Health Tribunal for Scotland, 19/2/08 - whether an order should be made under the 2003 Act that a patient was detained in conditions of excessive security.

PF (Linlithgow) v Watson 2002 SC (PC) 89 - Privy Council case - the right to a trial within a reasonable time in the context of criminal proceedings.

Professional Memberships

Board member of the Scottish Legal Complaints Commission

Member of the Faculty of Advocates' Professional Negligence Group

Member of the Faculty of Advocates' Equality and Diversity Committee

Publications

Chapter on "Property Law" in "A Practical Guide to Human Rights Law in Scotland", General Editor, The Honourable Lord Reed.

"Article 6 Examined" in Human Rights and UK Practice, vol 1, Issue 1

"To Associate...or not to Associate - article 11 of the ECHR" in Human Rights and UK Practice, vol. 1, Issue 3

"State Immunity - "What a Pity!" in Human Rights and UK Practice, Vol 3, issue 3

"Trespassing on Human Rights? The Scottish Parliament and land reform" 1999 SLT 227

Lectures and seminars

Kay has spoken at a number of conferences and seminars, primarily on human rights, public law and personal injury issues.

Personal/Misc

Panel of preferred counsel for the Commission for Equality and Human Rights (2011 – date)

Former standing Junior/Second Standing Junior to the Scottish Ministers (2005 - 2016)