THE COURT OF APPEAL

Neutral Citation Number: [2018] IECA 228

Record Number: 2016/374

MacMenamin J.
Peart J.
Hedigan J.

BETWEEN:

LAW SOCIETY OF IRELAND

APPLICANT/RESPONDENT

- AND -

MICHAEL O'SULLIVAN

RESPONDENT/APPELLANT

JUDGMENT OF MR. JUSTICE MICHAEL PEART DELIVERED ON THE 6TH DAY OF JULY 2018

1. This is an appeal by Michael O'Sullivan, a solicitor, against the order made in the High Court (McDermott J.) on the 22nd April 2016 in the following terms:

> "1. Michael O'Sullivan the respondent solicitor be not permitted to practice as a sole practitioner or in partnership and that he be permitted only to practice as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of at least ten years standing to be approved in advance by the Law Society of Ireland.
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> 2. The respondent solicitor pay the sum of €10,000 to the Compensation Fund.
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> 3. The respondent solicitor pay a sum of €6774.51 as restitution to James Nolan.
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> 4. The respondent solicitor paid the whole of the costs of the applicant to the Solicitors Disciplinary Tribunal to include Counsel's fees and witnesses' expenses to be taxed in default of agreement.
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> 5. The respondent solicitor to pay to the applicant the costs of the within application to be taxed in default of agreement.
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> 6. Execution on foot of the said order be stayed from the date of perfection hereof for such period as is provided for in Order 58 or Order 86A of the Rules of the Superior Courts (as the case may be) for the lodging of an appeal hearing and in the event of such appeal being lodged within that period that execution be further stayed until the final determination of such appeal."

2. The above order was made following a hearing before the trial judge on the 19th October 2015 of the Law Society's application by way of notice of motion pursuant to s. 7(3)(c)(iv) of the Solicitors (Amendment) Act 1960 as substituted and amended ("the 1960 Act"), grounded upon the affidavit of Ms. Linda Kirwan, solicitor, who is head of the Society's Complaints & Client Relations Section in the Regulation Department. In that application the Society brought before the High Court the Report of the Disciplinary Tribunal dated the 9th July 2015 following its inquiry into certain complaints of professional misconduct of Mr O'Sullivan which had been made by Mr James Nolan, a former client of his. This report had made a number of findings of misconduct, the details of which are not relevant to the particular issues that arise on this appeal, and had recommended to the High Court that the sanctions that appear in the said order of the High Court be imposed upon Mr O'Sullivan.

3. The inquiry into these complaints commenced before the Disciplinary Tribunal on the 8th May 2014. On that date the Society was represented by solicitor and junior counsel, Ms. Neasa Bird BL. Mr O'Sullivan represented himself, as indeed he has done on all occasions both in the High Court and before this Court. Counsel for the Society made a short opening address and then called Mr Nolan to give evidence of relevant matters related to the complaints that he made against Mr O'Sullivan. His direct evidence was not completed by the end of that day. Thereafter, there were a number of interlocutory applications dealt with as noted by the trial judge at para. 50 of his judgment.

4. The hearing resumed on the 26th February 2015, and Mr Nolan's direct evidence concluded. On this occasion, Ms. Elaine Finneran BL appeared for the Society. His direct evidence was not cross-examined by Mr O'Sullivan because by the 26th February 2015 Mr O'Sullivan had decided to withdraw from the inquiry and was unrepresented. I will come to the circumstances in which that occurred. Further oral evidence was given by three other witnesses called by the Society to give evidence relating to matters relevant to the complaints being inquired into. Oral evidence and submissions by the Society concluded at the end of that day's hearing. The decision of the Tribunal was given orally at a further sitting on the 31st March 2015. Mr O'Sullivan was not in attendance though he was notified of the further hearing date.

5. The circumstances in which Mr O'Sullivan withdrew from the inquiry can be briefly described. It appears that at an early stage of the inquiry, and before oral hearings had commenced, junior counsel originally instructed by the Society, Mr Damien Keaney BL, withdrew from the case following an objection by Mr O'Sullivan on the basis that the tribunal's Chairman, Michael Tyrrell, solicitor, and

Mr Keaney were both members of a regulatory panel of the Chartered Accountants Regulatory Board (C.A.R.B). It is unnecessary for me to express any view one way or another on whether it was necessary that Mr Keaney withdraw from the case in such circumstances. All I will say is that if he felt unsure about the matter, and thought it appropriate to do so, he acted very properly. This withdrawal occurred ahead of the commencement of the oral hearing itself.

6. It is Mr Keaney's withdrawal at that early stage that appears to have led in due course to Mr O'Sullivan emailing the Society on the 23rd February 2015, ahead of the resumed hearing to take place on the 26th February 2015, seeking that the Chairman, Mr Tyrrell, step down because he was member of the same regulatory panel in C.A.R.B as Mr Keaney, who had stepped aside earlier.

7. At the commencement of the resumed hearing on the 26th February 2015 the chairman stated that Mr O'Sullivan's email had been brought to his attention. He stated that the email sought his recusal on the grounds that the counsel who appeared for the Society at an interlocutory hearing on one occasion earlier is a member of a panel established by C.A.R.B, and the chairman is a member of the same panel. He noted that Mr Keaney had voluntarily withdrawn from the case due to Mr O'Sullivan's previous objections in that regard on the 20th February 2015. The chairman read out the Society's response to that email, which stated (according to the transcript for that day):

> "Dear Mr O'Sullivan,
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> I acknowledge receipt of your letter dated 23 February 2015 addressed to Mr Michael Tyrrell, chairman of the division of the Tribunal, sitting in respect of the disciplinary proceedings herein. In regard to the submissions made in your letter, I would advise you that these are matters which should be formally raised by you at the commencement of the hearing on Thursday 26th February at 10 AM".

8. On the morning of the 26th February 2015, it appears that Mr O'Sullivan sent a further email stating that he was withdrawing from the process. As I have already stated, Mr O'Sullivan did not attend before the Tribunal on that date. He made no formal application that the Chairman step aside. Nevertheless, the chairman addressed the application made in Mr O'Sullivan's email. He outlined the basis of the application as being on account of the fact that on an interlocutory application before the Tribunal on the 8th December 2014 the Tribunal (being chaired by Mr Tyrrell) heard the application that was moved by Mr Keaney who was then instructed by the Society, and where both he and Mr Keaney were both members of the same panel established by C.A.R.B. The chairman addressed the relevant case law on the issue of objective bias, having noted that actual bias was not being alleged by Mr O'Sullivan. Having correctly identified the correct test he applied it to the facts underlying Mr O'Sullivan's application, and concluded by stating:

> "Turning to the current matter, there has been no evidence offered by Mr O'Sullivan which might suggest that a reasonable man might reasonably apprehend that because Mr Keaney and the Chairman have shared a platform on a separate and distinct regulatory board that this could in some way affect the outcome of this case.
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> Indeed, any such community of interest, to use the phrase from DeSmith referred to above has no relationship to these current proceedings. The Tribunal accordingly rejects the suggestion that the Chairman recuse himself from continuing in this matter."

9. The hearing continued in Mr O'Sullivan's absence and, as I have stated, the Tribunal's findings were given at a hearing on the 31st March 2015, and were sent to Mr O'Sullivan. The findings of the Tribunal were that Mr O'Sullivan was guilty of professional misconduct arising from Mr Nolan's complaints, and recommended the sanctions to which I have already referred and which are contained in the order of the High Court under appeal.

10. At this stage, I should say that Mr O'Sullivan did not avail of his statutory right of appeal to the High Court against the Tribunal's findings, as provided for in s. 7(13) of the 1960 Act, as substituted by s. 17 of the Solicitors (Amendment) Act 1994. His failure to appeal against the findings of the Tribunal means that he could not challenge them thereafter and, in particular, when the Society's application to the High Court for the imposition of the recommended sanctions came before the High Court. In the event that Mr O'Sullivan had chosen to lodge an appeal, that appeal would have been determined ahead of the Society's application for the imposition of the recommended sanctions.

11. When the High Court hears the Society's application in these circumstances, it is not, of course, bound to impose the sanctions which the Society recommends on foot of the Tribunal's findings. The range of sanctions available is provided for in s. 8(1)(a)(i) of the 1960 Act, and includes the primary sanction imposed in this case whereby Mr O'Sullivan may not practice as a sole practitioner or in partnership, and may practice only under the supervision and control of a solicitor of at least ten years standing.

12. In his written judgment, the trial judge set out in exhaustive detail the lengthy course of dealings between Mr O'Sullivan following Mr Nolan's complaints to the Society, and the lengthy process which ultimately led to the order to the High Court under appeal. There is no need to repeat that history.

13. Having noted that the Society's Disciplinary Tribunal had made its findings of professional misconduct beyond a reasonable doubt – the correct standard – and having set out those findings in detail in accordance with the Report before him, the trial judge then embarked upon an examination of relevant case law concerning the appropriate and proportionate sanction that should be imposed.

14. Having done so, the trial judge expressed his conclusions as follows, at para. 64 of his judgment:

> "64. The applicant was not guilty of misconduct in respect of a number of matters. Though the matters of which he was found guilty were very serious, they fell short of the more egregious forms of misconduct based on fraud or dishonesty that might attract the sanction of being struck off as a solicitor. It is clear from the facts of the case that Mr O'Sullivan dealt with the issue raised by Mr Nolan in an unreasonable and unprofessional way. It is in the context of the extensive history which I have outlined above that the Disciplinary Tribunal recommended that Mr O'Sullivan not be permitted to operate as a sole practitioner or in partnership, and that he be permitted to practice only as an assistant solicitor in the employment or under the direct control and supervision of another solicitor of at least 10 years standing to be approved in advance by the Law Society of Ireland. Whatever about having made an ill-advised initial response to Mr Nolan's request, the failure to reflect and exercise a reasonable judgement in respect of the issue raised and the further failure and refusal to engage appropriately or reasonably with Mr Nolan provided ample grounds for the recommendation made by the Tribunal. This was compounded by his correspondence alleging defamation and seeking withdrawal of what he perceived to be unwarranted allegations before dealing with the real issue. This was the prelude to the extremely hostile, intemperate and intimidatory correspondence that followed, culminating in the deduction of a sum from the settlement money without the consent of the client and a reasonable estimate of what was due or might be recoverable. He clearly

needs supervision. He has no insight into his unfair and unreasonable behaviour towards his client. His client was left at a loss for a considerable period. He showed no regret for any of his actions nor did he offer any indication that such behaviour might not be repeated in the future. I am satisfied that the sanction recommended is entirely necessary to uphold professional standards within the profession in dealing with clients in relation to issues of costs and the other misconduct in respect of which he was found guilty. The court is, therefore, satisfied that Mr O'Sullivan should be restrained from practising as a sole practitioner or in partnership and should only practice as an assistant solicitor in the employment and under the direct control and supervision of another solicitor of, at least, ten years standing to be approved in advance by the Law Society of Ireland."

15. Having expressed these conclusions, the trial judge referred to two other matters that had been raised before him by Mr O'Sullivan. The first matter was the fact that in separate proceedings commenced on the 16th October 2015 by way of plenary summons, and in which the named defendants are the Disciplinary Tribunal, The Law Society of Ireland, Ireland and the Attorney General, Mr O'Sullivan seeks to have certain provisions of the 1960 Act declared unconstitutional, and to be incompatible with Article 6 of the European Convention on Human Rights. Those proceedings represent an attack on the regulatory regime under which the Disciplinary Tribunal operates. As noted by the trial judge one of the reliefs sought is an order preventing the Society from bringing the Disciplinary Tribunal's report in this case before the High Court under the provisions of the Act. The trial judge stated in this regard:

> "I am satisfied that the provisions under which this application is made carry a presumption of constitutionality, and I am not satisfied that there is any basis upon which to adjourn or strike out these proceedings pending the determination of Mr O'Sullivan's plenary proceedings in respect of the Act."

16. The second such matter related to the failure of the chairman of the Tribunal to have recused himself following Mr O'Sullivan's application by email dated the 23rd February 2015 already referred to. In that regard the trial judge stated:

> "Though the jurisdiction of the court on this application is defined by sections 7 and 8 of the Solicitors (Amendment) Act 1960 as amended, Mr O'Sullivan canvassed the issue of objective bias in the course of the hearing. I am not satisfied that there is any basis for the submissions made by Mr O'Sullivan in respect of his complaints concerning the failure of the chairman of the Disciplinary Tribunal to recuse himself. Mr O'Sullivan was given a full opportunity to vent this matter before the Tribunal which he declined by his non-attendance. Notwithstanding the matter was adjudicated upon by the Tribunal when it considered the letter outlining his objections prior to entering upon the hearing of the case. Insofar as Mr O'Sullivan's plenary proceedings related to that issue, I regard them as wholly unmeritorious. No application has been made by way of notice of motion grounded on affidavit for any relief in respect of that issue. Though Mr O'Sullivan appeared in person and made submissions as to why the matter ought not to proceed, I am satisfied that Mr O'Sullivan was afforded a hearing before the Disciplinary Tribunal which was in accordance with fair procedures under Article 40.3 of the Constitution and the Act."

The grounds of appeal

17. In his notice of appeal, Mr O'Sullivan raised grounds of appeal under three general headings set forth as follows: (1) Constitutional and Convention of Human Rights; (2) Fair procedures issues; (3) Procedural issues.

18. Under (1) it is asserted that the trial judge was wrong not to adjourn the Society's motion before him until such time as Mr O'Sullivan's plenary summons proceedings to which I have just referred in para. 15 above were finally determined. He goes on to state, by placing reliance upon the Supreme Court's judgment in *In Re Haughey* [1971] 2 I.R. 217 that the importance of his constitutional challenge to the relevant provisions of the 1960 Act "superceded the necessity of an immediate decision on an application of a lesser magnitude" and that the principle of proportionality applies.

19. Under (2) it is asserted that the trial judge was wrong to decide that there was no basis to adjourn the Society's application pending the determination of his plenary proceedings, and to determine that they are wholly unmeritorious.

20. Under (3) it is asserted that the trial judge erred in a number of ways. For convenience, I will set those out as they are set forth in the notice of appeal, as follows:

> (a) Without prejudice to the grounds set out at (i) and (ii) above, that the learned High Court judge erred in law and/or in fact in:
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> 1. Failing to hold any evidential or any hearing in relation to the Law Society's application.
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> 2. Failing to allow any cross-examination in relation to the Law Society's evidence.
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> 3. Allowing the Law Society' application without requiring the Law Society's evidence to be tested in court.
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> 4. Permitting the report of the Solicitors Disciplinary Tribunal to be determinative of the issues before him.
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> 5. Failing to treat the report of the Solicitors disciplinary Tribunal as simply an opinion.
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> 6. Treating the order of the Solicitors Disciplinary Tribunal made on 9 July 2015 as determinative of the issues before him.
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> 7. Permitting the Law Society to introduce as evidence the order of the Solicitors Disciplinary Tribunal made on 9 July 2015 which made a finding that the respondent's solicitor was "guilty of misconduct" when such a finding is in breach of Bunreacht na hEireann and ultra vires the powers of a Tribunal.
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> 8. Imposing sanctions and making orders detrimental to the respondent solicitor's livelihood, professional standing, business affairs, property rights and reputation without making any adjudication on the primary issue of whether each allegation of misconduct made against the respondent solicitor by the Law Society and/or the Solicitors Disciplinary Tribunal was supported by any evidence or any evidence sufficient to meet the legal threshold required in disciplinary applications.
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> 9. Imposing sanctions and making orders detrimental to the respondent solicitor's livelihood, professional standing,

business affairs, property rights and reputation without making any finding that the respondent solicitor's rational conduct amounted to misconduct.

10. Imposing sanctions and making orders detrimental to the respondent solicitor's livelihood, professional standing, business affairs, property rights and reputation which were disproportionate to the conduct alleged by the Law Society and/or the Solicitors Disciplinary Tribunal to amount to misconduct.

11. Failing to give reasons for the sanctions imposed and the orders made by him.

(b) Adherence to constitutional principles and rules of evidence in the administration of justice.

(c) Articles 34, 38, 40 and 43 of Bunreacht na hEireann and Article 6 of the Convention and Articles 1 and 2 of the Protocols to the Convention done at Paris on 20 March 1952.

(d) As set out at (iii)(a),(b) and (c) supra.

21. Grounds (1) and (2) above each relate to Mr O'Sullivan's submission that the trial judge ought to have adjourned the Law Society's motion regarding sanctions to be imposed, until such time as his plenary summons proceedings challenging the relevant provisions of the 1960 Act were determined. The trial judge declined to do so. From what this Court was informed by Mr O'Sullivan his constitutional challenge is based, *inter alia*, upon the fact that under the statutory regime someone such as Mr Tyrrell, who is a solicitor and a person who has had in the past over his lengthy professional career, and still maintains, connections both professional, social and economic, with the Society can sit as Chairman of the Solicitors Disciplinary Tribunal. Generally speaking, Mr O'Sullivan's contention is that this regime is tainted with objective bias such that any reasonable objective observed would have a reasonable apprehension that the Chairman would be biased in favour of the Society and that someone in Mr O'Sullivan's position would not get a fair hearing before that Tribunal. I will return to the question of objective bias in relation to Mr Tyrrell in due course, but for the moment I simply wish to state my understanding of the constitutional challenge from what Mr O'Sullivan stated in this appeal.

22. It should be noted that Mr O'Sullivan's plenary proceedings were commenced only on the 16th October 2015 - just three days before the Law Society's motion was due to be heard before Mr Justice McDermott. If Mr O'Sullivan was intent upon embarking on such a constitutional challenge to the statutory scheme on foot of which the Disciplinary Tribunal operates when conducting an inquiry into allegations of professional misconduct against him, he could have commenced his proceedings in a more timely fashion, and certainly at any time after he decided at the end of February 2015 to withdraw from the Tribunal hearing.

23. In my view the trial judge was correct to reject any last minute attempt by Mr O'Sullivan to have the Law Society's application put back to await the eventual outcome of those plenary proceedings. The trial judge was entitled to rely upon the presumption of constitutionality of the legislation, and to proceed to hear the application. An applicant who wishes to challenge the constitutional validity of legislation under which some process against him/her is about to be embarked upon may do so, and also seek to restrain by injunction or prohibition that process until the challenge is determined. There is a clear jurisdiction to do so (see *e.g. Pesca Valentia Ltd v. Minister for Fisheries* [1985] I.R. 193. The principles which guide the court when asked to restrain such a process have been clearly set forth by Clarke J. (as he then was) in the High Court in *M.D. (an infant) v. Ireland* [2009] 3 I.R. 690. At paras. 17 - 18 he stated:

> "17. … it was argued, correctly in my view, that the relevant jurisdiction is one which must be most sparingly exercised. The reasons for this are obvious. Legislation that has been passed into law by the Oireachtas enjoys a presumption of constitutionality. If it were to be the case that persons who were able to establish a fair case to be tried concerning the validity of the relevant legislation having regard to the provisions of the Constitution (which is not a particularly high threshold) were able to obtain an injunction preventing, in practice, the application of the legislation to them until the proceedings had been determined, then it would follow that legislation could, in practice, be sterilised pending a final determination of the constitutional issues raised. Those considerations apply with equal force with the statute concerned is one which creates a criminal offence.
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> 18. While, in general terms, the principles applicable to the grant or refusal of an interlocutory injunction in a case such as this are no different from those which apply in the case of any other interlocutory injunction, it has to be emphasised that a very significant weight indeed needs to be attached, in considering the balance of convenience, to the desirability that legislation once coming into force should be applied unless and until such legislation is found to be invalid having regard to the Constitution. It should only be where significant countervailing factors can be identified or where it is possible to put in place measures that would minimise the extent to which there would be any interference with the proper and orderly implementation of the legislation concerned, that a court should be prepared to grant an injunction which would have the effect of preventing legislation which is *prima facie* valid from being enforced in the ordinary way."

24. While the trial judge did not refer to these principles specifically, and confined himself to concluding briefly that he could see no basis for adjourning the application pending the determination of the plenary proceedings, it is in my view clear that the refusal to so adjourn the application is entirely consistent with the principles stated by Clarke J. in *M.D.* above, and with which I am respectfully in full agreement. For these reasons I would reject grounds (1) and (2) set out in the grounds of appeal.

25. As for ground (3) above, Mr O'Sullivan's submission can be fairly summarised by stating that he considers that fair procedures were breached by the fact that the trial judge accepted without oral evidence the findings of misconduct made by the Tribunal, and that inter alia, he had no opportunity to cross-examine the witnesses whose evidence was relied upon for those findings. It was submitted that it was incumbent upon the High Court to make its own findings of misconduct by hearing the evidence, rather than simply accepting the Tribunal's findings of professional misconduct and imposing sanctions accordingly.

26. There is a fundamental flaw in Mr O'Sullivan's argument in this regard. It is that he failed to avail of his entitlement to a statutory appeal against the findings of misconduct by the Tribunal in accordance with s. 7(13) of the 1960 Act. His failure to adopt that course means that the findings made by the Tribunal are final and conclusive. They may not be challenged on the merits. Had Mr O'Sullivan sought to appeal the findings as he was entitled to do, that re-hearing before the High Court would have taken place ahead of the Law Society's present application. Mr O'Sullivan could on that appeal have cross-examined any witnesses called by the Society. By not bringing such an appeal, Mr O'Sullivan cannot now be heard to complain that on the Society's application to the High Court for an order imposing sanctions, he had had no opportunity to cross-examine witnesses. He could have sought leave to cross-examine Ms. Kirwan on her grounding affidavit but did not seek to do so. It is also the case that by withdrawing from the Tribunal process on the 26th February 2016 he deprived himself of that opportunity to cross-examine Mr Nolan or any other witnesses who

gave evidence at the Tribunal. I would reject this ground of appeal.

27. Within ground (3) at sub-paragraph (10) is a contention by Mr O'Sullivan that the sanctions imposed are disproportionate to the professional misconduct found against him. He points to the fact that this is not a case of theft or fraud on his part where the client's money was stolen, and where the Society's Compensation Fund has been called upon to make good that loss to the client. He points also to the fact that he is now of an age where it will be impossible for him to gain employment as a solicitor as the sanction requires, rather than that he be permitted to continue to practise as a sole practitioner or as a partner in a firm of solicitors. He submits that the effect of the sanctions imposed is that his career as a solicitor has come to an end and he will never work again as a solicitor. He considers this to be disproportionate. He also complains about that part of the order of the High Court that requires him, as recommended by the Tribunal, to pay a sum of €10,000 into the Society's Compensation Fund in circumstances where that Fund was not required to be called upon to make good any loss to Mr Nolan.

28. When the High Court hears the Society's application for sanctions to be imposed pursuant to s. 7(9) of the 1960 Act its function is limited to the question of sanction. By that time, the merits of the complaint of misconduct and the findings of the Tribunal or the High Court (in the event of an appeal) have been determined. The High Court is not obliged to impose the sanctions that the Tribunal has recommended in its Report, and may impose whatever sanction available under the legislation that it considers appropriate to the misconduct found.

29. The trial judge's judgment reveals that considerable thought was given by him to the appropriateness of the sanctions being recommended for imposition by the Society. He considered each of the proposed and was satisfied that each should be imposed. He has explained why each was appropriate. He had heard submissions made both by the Society and by Mr O'Sullivan and clearly took account of them. The question of what sanctions should be imposed is a matter for the trial judge's discretion. This Court on appeal should not lightly interfere with the order made in exercise of that discretion, absent some obvious error or where the Court is satisfied that there is a manifest injustice in all the circumstances. I can see no such error or manifest injustice. The trial judge clearly emphasised the serious nature of the misconduct, and indeed Mr O'Sullivan's lack of insight. He correctly identified the important public interest in upholding the integrity and reputation of the solicitors' profession by the imposition of sanctions appropriate to maintaining that integrity and reputation.

30. In such circumstances, while fully appreciating the serious impact that the sanctions imposed will have on Mr O'Sullivan, I would not interfere with the manner in which the trial judge exercised his discretion. The existence of resulting hardship does not per se amount to an injustice. I would reject the appeal against the sanctions imposed.

31. Much of the focus of Mr O'Sullivan's appeal before this Court was on a matter that is not explicitly referred to at all in his notice of appeal. He has sought to argue that because of certain connections which Mr Tyrrell, the Tribunal Chairman had with the Law Society, and which he failed to disclose at the time, he ought to have recused himself. This is a separate ground for recusal to that already referred to whereby he sought Mr Tyrrell's recusal by email on the 23rd February 2015 on the basis of his sharing a C.A.R.B panel with Mr Keaney, the counsel first retained by the Society, and who himself withdrew because of that connection with Mr Tyrrell. It will be recalled that the trial judge found no basis for Mr O'Sullivan's complaint that the Chairman had refused to step down following that email, and he pointed out that Mr O'Sullivan had had an opportunity to ventilate that complaint fully before the Tribunal but had declined to do so by withdrawing from the process at that point.

32. The present ground does not arise from the trial judge's judgment. As I understand his point it is that for a long number of years Mr Tyrrell has been a member of the Law Society, and has sat on committees of the Society, and in addition has lectured on courses organised by the Education department of the Society. He has referred in particular to the fact that, as publicly advertised, Mr Tyrrell gave a lecture on the Education department's diploma course on Commercial Litigation. While he adduced no evidence on affidavit, nor sought leave to adduce such evidence, the clear inference from Mr O'Sullivan's submission is that he believes that Mr Tyrrell will have been paid a fee by the Society for his participation on this course as a lecturer. On this basis he seeks to characterise Mr Tyrrell's connection with the Society/ the Disciplinary Tribunal as an economic connection, and one that gives rise to objective bias requiring that he should have recused himself from the Tribunal's inquiry. He submits that this appearance of objective bias is compounded by the fact that Mr Tyrrell did not disclose these connections at the commencement of the Tribunal's hearing, or at least at the time that Mr Keaney stepped aside.

33. Even taking Mr O'Sullivan's complaint at its height from his point of view, and overlooking that he has never sought to raise this particular issue previously or in an appropriate manner before the Court, and also that there is nothing of an evidential nature to support it, there can be no merit in the complaint. Even if it was appropriately raised, the mere fact that a solicitor of long-standing and experience – a *sine qua non*, one would think, to being appointed to chair a body as important as the Disciplinary Tribunal – has during his career participated in the work of the Law Society, which is of course a separate entity altogether from the Disciplinary Tribunal, through its committees cannot possibly in my view constitute a connection that gives rise to a reasonable apprehension on the part of an objective bystander that someone in the position of Mr O'Sullivan would not receive a fair hearing at the Tribunal.

34. Similarly, the fact that Mr Tyrrell was asked to give a lecture – even more than one such lecture – to other solicitors on a course run by the Society's education department on Commercial Litigation, is not something that could possibly in the eyes of the fully informed and objective observer give rise to a reasonable apprehension of bias. On the question of whether Mr Tyrrell received a fee for his lecture, there first of all is no evidence one way or another. But even if he did receive a fee, the fact remains that he is not an employee of the Law Society. He is not an officer of the Society. He is self-employed, being a partner in a well-known law firm. I reject this ground of appeal having addressed its merits – (See *O'Driscoll v. Hurley and anor* [2016] IESC 32 – *per* Dunne J.)

35. But I would in any event reject it on the basis that it is not raised as a ground of appeal. Mr O'Sullivan indicated that he "presumed" that it came within the general fair procedures grounds contained in his notice of appeal. But I strongly disagree. The purpose of the notice of appeal and of setting forth in detail the grounds being relied upon is first of all to inform the other side of what case it must meet on the appeal. Secondly, and no less importantly, the Court is entitled to know precisely what grounds will be argued on the appeal. It is the notice of appeal that defines the ambit of the appeal, and the Court should not lightly permit an appellant to rely upon a matter not covered in the grounds of appeal.

36. In so far as this particular issue related to Mr Tyrrell's alleged economic connection to the Society through his lecturing on that course and by his participation on committees from time to time does not appear to have been raised on that basis before the trial judge, it is not something that this Court could or should deal with absent some application by Mr O'Sullivan to amend his grounds of appeal and to seek leave to adduce new evidence that was not available to him at the time of the High Court. None of that has happened in this case.

37. Finally, I would add that at the commencement of this appeal the Court addressed the question of whether the appeal was lodged

outside the time permitted for appeal. The appeal was out of time, but having heard submissions in relation to the issue, the Court agreed to extend the time for lodgement of the appeal.

38. For all these reasons I would dismiss this appeal.