THE HIGH COURT

[2015 No. 66SA]

IN THE MATTER OF PATRICK ENRIGHT, A SOLICITOR FORMERLY PRACTISING AS PATRICK ENRIGHT & CO., SOLICITORS, TRALEE ROAD, CASTLEISLAND, COUNTY KERRY

AND IN THE MATTER OF AN APPLICATION BY THE LAW SOCIETY OF IRELAND TO THE SOLICITORS DISCIPLINARY TRIBUNAL

AND IN THE MATTER OF THE SOLICITORS ACTS 1954 – 2011

BETWEEN

LAW SOCIETY OF IRELAND

APPLICANT

AND

PATRICK ENRIGHT

RESPONDENT

JUDGMENT of the President of the High Court, Mr. Justice Kelly, delivered on the 4th day of April 2016

Introduction

1. The Law Society of Ireland (The Law Society) seeks to have the name of the respondent solicitor (Mr. Enright) struck off the Roll of Solicitors. The application is made on foot of findings by the Solicitors Disciplinary Tribunal to the effect that Mr. Enright is not a fit person to be a member of the solicitors' profession and that his name should be struck off the Roll of Solicitors. That recommendation was dated 16th April 2015.

2. The background facts which give rise to this application are not in dispute and may be summarised as follows.

The Facts

3. Mr. Enright was admitted to the Roll of Solicitors on 27th August 1986. He went into private practice as a solicitor for two years subsequent to his qualification. He then went to work as an assistant manager for the subsidiary of an American medical insurance company located in Kerry. He worked there until 1994 when he left and established his own legal practice in Castleisland, County Kerry.

4. On ten occasions in 1994 Mr. Enright forged documents purporting to be health insurance claims in the name of a Dr. John Coyle. These claims sought payment of medical expenses purportedly incurred by persons insured by the insurance company. The claims were fictitious as was the identity of the doctor. The claims were sent for processing by Mr. Enright and were to be paid to a post office box, first in Limerick and then in Tralee. The insurance company became suspicious. The gardaí were alerted and carried out an observation of the post office box. They intercepted the respondent's brother collecting the cheques addressed to the fictitious doctor.

5. The motivation behind these acts of dishonesty on the part of Mr. Enright was his understanding that he was being made redundant from his position with the insurance company and that it would pay him an appropriate redundancy payment to enable him to commence his own practice. When that redundancy payment did not materialise he engaged in the activities in question. He was then 33 years old with three children aged from 11 years down to 2 years. He had significant financial commitments so he devised this scheme to provide him with funds to set up his practice. The amount involved was in or around £12,000 and all of that money has long since been repaid to the insurance company.

6. When confronted with his wrongdoing in October 1994 he admitted it and undertook to repay the money outstanding.

7. A prosecution got under way, in which he was charged with ten acts of forgery committed between 1st January 1994 and 24th August 1994. The charges were laid under s. 4(1) of the Forgery Act 1913.

8. The criminal proceedings began in August of 1996 and he was sent forward for trial on indictment. He pleaded not guilty. He commenced judicial review proceedings seeking to prohibit the continuation of that prosecution. Those judicial review proceedings did not end in the High Court until 21st December 2005. Mr. Enright accepts responsibility for a substantial portion of the delay which occurred between the commencement of those proceedings and their determination in the High Court in 2005. He was unsuccessful in his proceedings. He appealed to the Supreme Court which dismissed his appeal on 29th July 2008.

9. Following the dismissal of the appeal by the Supreme Court, the Director of Public Prosecutions re-entered the criminal charges on 22nd October 2008.

10. Mr. Enright then complained to the European Court of Human Rights that his entitlement under Articles 6, 13 and 14 of the European Convention on Human Rights had been breached. Those proceedings resulted in a friendly settlement being arrived at between Mr. Enright and this State.

11. At the conclusion of this piece of European litigation the criminal charges came on for trial before His Honour Judge Moran at Tralee Circuit Court on 28th June 2013. Mr. Enright pleaded not guilty but during the course of the trial asked to be re-arraigned and then pleaded guilty to all ten offences.

12. Mr. Enright was jointly tried with his brother who is not a solicitor. In the course of his sentencing remarks the trial judge said:

"There's no loss to the injured party ultimately and the accused have pleaded guilty. But – and they have no other convictions but this is an extremely serious case notwithstanding – at least in respect of Mr. Patrick Enright, who was a solicitor at the time, a member of the legal profession. And the whole essence of the running of the courts is dependent on having honest solicitors, almost all of whom fall into that category of honesty, I'm very glad to be able to say. There was a degree of planning in this matter, there was a serious breach of trust given not only was he a solicitor, but he was actually defrauding his previous employer, and any sense of grievance he had is really immaterial. There is a considerable delay in their case but much of it, I wouldn't say all of it, but a considerable part of it is attributable to various applications to the High Court, to the Supreme Court and even to the European Court. I take into account, as well, that the maximum penalty is two years imprisonment on each count, and it really – I think it's only fair to the accused to regard this as all of one. I propose a sentence of twelve months on each count in respect of Mr. Patrick Enright, and that's taking into account all matters. Mr. Denis Enright is in a somewhat different position; first of all, he was not a member of the solicitors' profession, he was not defrauding his employer, the guard has – Donovan has said he had the lesser role and was less culpable, and he's not – he can avail of an argument about delay in that he didn't contribute in any way to it himself. In imposing a sentence of twelve months on him I'll suspend it for a period of two years."

13. Mr. Enright has served the sentence of imprisonment imposed upon him at Tralee Circuit Court.

14. Meanwhile, in all the years that have passed since his departure from the American insurance company, Mr. Enright has been conducting private practice as a solicitor in Castleisland. That practice continued up to the time of his conviction and imprisonment. He has not resumed practice since then.

15. During those 20 years, Mr. Enright has conducted his practice with complete propriety. He has not come to the adverse notice of the Law Society or the gardaí. Indeed he placed before the Law Society and the Disciplinary Tribunal of the order of 100 testimonials from former clients of his attesting to his good conduct. They are all in similar form and read as follows:

"Re Application for renewal of practising certificate for Patrick Enright, solicitor.

To whom it may concern: I wish to confirm that I know Patrick Enright, solicitor of St. Anthony's, Tralee Road, Castleisland, Co. Kerry.

I confirm that he has handled legal business for me in the past and I had and continue to have every confidence in him as a solicitor. I am aware of the incident which took place in 1994 and which was subsequently finalised in June 2013. I am aware that this matter is now at an end.

In my opinion, Mr. Enright is a fit and proper person to hold a solicitors practising certificate and I support his right to continue earning a livelihood as a solicitor.

Should you have any questions about this matter then you may contact me."

In each instance, the name, address and contact telephone number of the writer of such testimonials is provided.

The Disciplinary Tribunal

16. The Disciplinary Tribunal which dealt with Mr. Enright's case had before it an application for an inquiry by the Law Society dated 19th June 2014, together with affidavit evidence and exhibits. The application was heard on 16th April 2015 by a division of the Tribunal consisting of two solicitors and one lay person. They were Mr. Brian McMullin, solicitor, Chairman, Ms. Caroline Devlin, solicitor and Ms. Brenda Clifford, the lay member.

17. Mr. Enright attended before the Tribunal and admitted both the factual content of the Society's application and the allegation of misconduct against him. The allegation was that he was convicted before Tralee Circuit Court of the offences of forging documents with intent to fraud and was sentenced to a term of one year's imprisonment.

18. In his replying affidavit, Mr. Enright accepted that he was guilty of misconduct, but put matters before the Tribunal by way of mitigation. These included the testimonials from former clients.

19. At the completion of the hearing, the Tribunal made a finding of professional misconduct arising from the conviction of Mr. Enright and the fact of his imprisonment on 28th June 2013 for a period of one year from that date.

20. Having made its finding of misconduct, the Disciplinary Tribunal then went on to consider the question of the sanction to be applied.

21. In the course of making submissions to the Disciplinary Tribunal on the question of sanction, Mr. Enright said:

"I would just say, you know, I've had 21 years of experience since these events occurred. I've represented hundreds of clients, both in financial matters and matters of litigation, probate. The Law Society, which they're entitled to, undertook a few extra audits of my practice. There never has been a problem. There never has been a problem with a client. That arose because I was representing my client. It didn't arise because I was afraid that there was something hanging over me. I just want to emphasise that point."

Mr. Enright then pointed out that his personal circumstances were that he had had no income since he was released from prison and was reliant on State welfare.

22. The Tribunal adjourned to consider its decision and, having done so, concluded as I have already recited. It did not make any recommendation in relation to the applicant's costs.

Mr. Enright's Submissions

23. Counsel on behalf of Mr. Enright contends that to strike Mr. Enright's name from the Roll of Solicitors would be unfair and disproportionate. He, *inter alia*, points out that since the commission of these offences Mr. Enright has conducted his practice in an impeccable fashion. He has the support of a large clientele who have been prepared to commit themselves to supporting him in writing

in the manner that I have set forth. He points out that Mr. Enright is a sole practitioner and is not to be equated with a solicitor practising in a large practice who may not be personally known to a client. As a sole practitioner in a country town, he would have a personal relationship with each of his clients.

24. Counsel accepts that some sanction must be imposed on Mr. Enright, but argues that the ultimate sanction of striking him off would be inappropriate.

25. He relies, in particular, on two cases in support of his contention that a lesser sanction than a strike-off order would be appropriate.

26. The first case is that of the *Law Society of Ireland v. Colm Carroll and Henry Colley*. The judgment of the Supreme Court in that case was delivered on 20th May 2009.

27. That was a case of some notoriety arising from admitted acts of gross misconduct by both solicitors. The misconduct comprised, *inter alia*:

> (a) conducting a policy of deliberate non-compliance with the Solicitors Accounts Regulation in respect of the handling of clients' monies, fees and outlays;
>
> (b) the conduct of client transactions through bank accounts which were not designated client accounts;
>
> (c) the concealment of the existence of client accounts from both reporting accountants and from the accountant appointed by the Law Society to investigate compliance with the Solicitors Accounts Regulations;
>
> (d) failure to make returns to the Revenue Commissioners in respect of payments of rental income to a company which had been struck off the Companies Register while claiming such payments as an overhead;
>
> (e) deliberate falsification of their books of account to evade payment of tax;
>
> (f) deliberate attempts to mislead the Law Society in producing fictitious books of account when a solicitors' inspection was initiated in June 2003;
>
> (g) providing false and misleading information in response to questions raised by the solicitors' reporting accountant;
>
> (h) demonstrating a blatant disregard for the Solicitors Account Regulations and having knowingly lodged clients' monies to non-client bank accounts and in having maintained no record in books of account in respect of those transactions;
>
> (i) the intermingling of client funds with fees and other monies in an account in the name of a company which had been struck off the Companies Register and continuing to do so after their attendance before a Compensation Fund Committee;
>
> (j) the lodgement of clients' outlays to the office account and the use of those monies to fund office overheads and expenses and
>
> (k) seriously misleading their own reporting accountants in the production of accounting records which they knew to be inaccurate and which did not cover all their dealings with clients' funds.

28. As was pointed out by Geoghegan J., the Statutory Regulations are an essential protection for the public, but the respondents in that case were in flagrant breach of them. None of their conduct, however, was with a view to defrauding clients, but rather was a deliberate and elaborate scheme of tax evasion.

29. Despite these very serious findings, the Disciplinary Tribunal, perhaps surprisingly, did not recommend that the solicitors in question be struck off. Rather, it recommended that they be suspended from practice for a period of 12 months. Furthermore, it recommended that for a further period of three years, each of them would not be permitted to practise either as a sole practitioner or as a partner in a solicitor's practice. Instead, they should only be permitted to practise as assistant solicitors under the direct control and supervision of another solicitor to be approved in advance by the Law Society. The Tribunal further recommended that they should pay a sum of €50,000 to the Compensation Fund of the Law Society and that each pay 50% of the costs of the Law Society.

30. The Law Society took a different view when the matter was sent forward to the then President of the High Court. It sought an order that the solicitors in question be struck off the Roll.

31. The then President of the High Court assigned the case to be dealt with by McKechnie J. who declined to follow the views of the Law Society, but rather gave effect to those of the Disciplinary Tribunal.

32. From his decision, the matter was taken on appeal by the Law Society to the Supreme Court. In the course of his judgment, Geoghegan J. outlined the factors which the judge took into account. He said, broadly speaking, these were as follows:

> *"1. The ultimate full admissions of the allegations of misconduct with particular reference to the fact that these admissions were made a good deal earlier than the hearing before the Disciplinary Tribunal.*
>
> *2. After the initial attempts to frustrate and deceive the Society, the respondents made a decision that they would thereafter cooperate with the investigation and they engaged the assistance of professionals so as to unravel the events which had preceded the discovery of the misconduct charges in 2003.*
>
> *3. They complied with the request to provide interim financial security which they did in the lodgement of €600,000.*
>
> *4. They made full admissions to the Tribunal.*
>
> *5. They owned up to their motive for indulging in the 'very grave practices' i.e. tax evasion but in that regard they made a full settlement with the Revenue Commissioners. As I have already mentioned, the judge was also satisfied that they had become and remained tax-compliant.*

6. Regard for the views of the Disciplinary Tribunal with special reference to the fact that the two solicitor members were very senior and experienced members of the profession, as already adverted to, together with the long history of both of them being involved with the Society and the solicitors' profession. In this connection, the judge went out of his way however to make it clear that this was merely a factor which he took into account, it was not a question of deciding whether they were or were not 'substantially wrong'.

7. The then position of the two respondents. As already mentioned, the judge's belief that there was not any likelihood of a repetition of the events. He pointed out that Mr. Carroll was about 57 or 58 and that Mr. Colley was 51 or thereabouts. In this connection, the judge had been aware that Mr. Carroll had resigned from practice some considerable time before the hearing. Mr. Colley was continuing in practice.

8. What the judge regarded as 'the most critical persuading factor' in his decision was that 'no monies have ever been found wanting in terms of the solicitors being unable to meet their liabilities. In other words, clients were not left without funds'. Furthermore, the judge went on to point out that even though it was late in the day, barristers who were owed very substantial sums of money were paid and there was never a worry that the Compensation Fund would have to be called upon. He noted that the sum of €600,000 was released back some years ago and made it clear that if there had been any shortfall in the funds he would have struck both solicitors off. But he was satisfied there was not.

Whilst the learned High Court judge was obviously entitled to have regard to the fact that no monies were ever found wanting and he was entitled to attach considerable significance to this factor in what he regarded as a finely balanced case, it must be emphasized that it is certainly not the situation that if a solicitor ignores the accountancy regulations thereby putting in jeopardy the position of clients, that he can with any confidence expect to avoid the ultimate sanction, because by good fortune, on the relevant day no client or other person owed money by the practice is at an actual loss.

9. The judge noted that a certain time had passed in particular between the decision of the tribunal and the hearing in the High Court and that in that time Mr. Colley had been continuing practising with a practising certificate.

10. Finally, the judge said the following:

> *'The ultimate test is whether or not, I feel, that if this court were to impose by way of final order and sanction the recommendations of the Disciplinary Tribunal, would that be sufficient in terms of maintaining public confidence in the solicitors' profession as well as doing justice to the solicitors in question and also upholding the good name of the Law Society. I think on balance it would'."*

33. Geoghegan J. then turned to the role of the Supreme Court on appeal from a decision of the High Court which is not relevant to this case. He upheld the decision of the High Court.

34. Counsel on behalf of Mr. Enright says that a number of the matters that were taken into consideration in that case are apposite to the present one. Mr. Enright made admissions, owned up, repaid the monies, created no threat to the Compensation Fund and has, for in excess of 20 years, practised as a solicitor without criticism. There is no likelihood of the repetition of the events and so a suspension or other restriction is the appropriate penalty.

35. Reliance was also placed to a limited extent upon the decision of the Supreme Court of New South Wales in the case of *Montenegro v. Law Society of New South Wales* [2015] NSW SC867. I do not derive much assistance from a consideration of that case. It set aside a decision of the Council of the Law Society of New South Wales refusing to grant the plaintiff a local practising certificate. It was a case involving a failure to make full disclosure of prior convictions and is far removed from the facts of the present case.

The Law Society's Position

36. The Law Society contends that nothing less than a strike-off order is appropriate in the present case. It points to two notable differences between the facts of this case and that of *Carroll and Colley*. First, despite the disgraceful behaviour of Messrs. Carroll and Colley, they were not convicted of any criminal offence, still less any criminal offence involving dishonesty. In the present case, ten convictions for dishonesty offences have been recorded against Mr. Enright. Second, in this case, the Disciplinary Tribunal was of the view that Mr. Enright ought to be struck off the Roll. That was not the recommendation of the Disciplinary Tribunal in Carroll and Colley's case. It recommended suspension.

37. The Law Society furthermore relies upon two other decisions, one English and the other Irish. The English decision is that of the Court of Appeal in the case of *Bolton v. Law Society* [1994] 1 WLR 512. In particular, reliance is placed upon a dictum of Sir Thomas Bingham M.R. where he said:

> *"14. Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the Tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the Tribunal be likely to regard as appropriate any order less severe than one of suspension.*

> *15. It is important that there should be full understanding of the reasons why the Tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is*

not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires."

38. The Irish decision relied on is that of Finnegan P. in *Carroll v. the Law Society of Ireland* [2005] IEHC 199.

39. That was a case which involved a solicitor's apprentice against whom 13 complaints of misconduct were made. In the course of his judgment, Finnegan P. quoted the extracts from the judgment of Bingham M.R. which I have just reproduced. Finnegan P. clearly approved of those statements and went on to say:

"As with a solicitor, so too with an apprentice. In considering these standards in relation to an apprentice rather than a solicitor, I consider it appropriate that account should be had of the particular relationship between master and apprentice and in particular to circumstances such as whether the conduct complained of was directed, colluded in or condoned by the master. Regard should be had to the apprentice's age, maturity and the stage to which his legal education has progressed. However, such matters would be of little relevance or weight where the offence is one of dishonesty."

40. A further case which was included in the papers is the decision of the Queen's Bench Division in the High Court in England in the case of the *Law Society v. Emeana & Ors*.[2013] EWHC 2130. Moses L.J. in the course of his judgment said this:

"24.This appeal took a familiar course. The respondents were able to show cases of at least as great a gravity where fines were imposed and the appellant authority was able to refer to cases where it appeared the failures were no more severe but at least suspension was ordered.

25. I did not find this process of assistance. Of course, the disciplinary tribunal must strive for consistency. But uniformity is not possible. The sentences imposed are not designed as precedents. The essential principle is that which was identified by Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 1286. The profession of solicitor requires complete integrity, probity and trustworthiness. Lapses less serious than dishonesty may nonetheless require striking off, if the reputation of the solicitors' profession 'to be trusted to the ends of the earth' is to be maintained.

26. The principle identified in Bolton means that in cases where there has been a lapse of standards of integrity, probity and trustworthiness a solicitor should expect to be struck off. Such cases will vary in severity. It is commonplace, in mitigation, either at first instance or on appeal, whether the forum is a criminal court or a disciplinary body, for the defendant to contend that his case is not as serious as others. That may well be true. But the submission is of little assistance. If a solicitor has shown lack of integrity, probity or trustworthiness, he cannot resist striking off by pointing out that there are others who have been struck off, who were guilty of far more serious offences. The very fact that an absence of integrity, probity or trustworthiness may well result in striking off, even though dishonesty is not proved, explains why the range of those who should be struck off will be wide. Their offences will vary in gravity. Striking off is the most serious sanction but it is not reserved for offences of dishonesty."

Conclusion

41. In this case, I fully take into account that Mr. Enright has had a criminal penalty imposed upon him and that it has been satisfied. He has, therefore, paid his debt to society. It would be unjust to punish him again. I also take into account the admissions which he made before the Disciplinary Tribunal. I also have regard to the fact that for about 20 years subsequent to commission of the offences, he practised as a solicitor to the complete satisfaction of his clients and the Law Society. It is highly unlikely that there will be any repetition of any offence of dishonesty on his part. There is therefore no need to suspend him or strike him off from practising as a solicitor with that object in mind.

42. Echoing the words of Sir Thomas Bingham M.R., the purpose of the sanction sought by the Law Society appears to be "*the most fundamental of all*". In order to maintain the reputation of the solicitors' profession and to sustain public confidence in the integrity of that profession, I share its opinion that it is necessary that Mr. Enright's name be struck from the Roll of Solicitors. A suspension from practice would not be adequate.

43. The purpose of this order is not punitive as he has already been punished with a term of imprisonment. It is not directed to ensuring that he does not have the opportunity to repeat an offence or offences of dishonesty. I am satisfied that there is no danger of that. The sole purpose is to maintain the reputation of the solicitors' profession "*as one in which every member, of whatever standing, may be trusted to the ends of the earth*" (per Bingham M.R.). I do not believe than anything less than a strike-off order would be sufficient to achieve that purpose.

44. Counsel on behalf of Mr. Enright urged that I should not make this order, for to do so is to consign Mr. Enright to unemployability in his chosen profession in perpetuity. That is not necessarily so. In some circumstances, it is possible for a solicitor who has been struck off to successfully apply for a restoration of his name to the Roll. It would be unwise to indicate the circumstances in which such an order might be made, but normally a passage of time would occur subsequent to the strike-off order and other conditions would have to be met. A strike-off order is not in all cases one which continues in perpetuity.

Disposal

45. I give effect to the recommendation of the Disciplinary Tribunal and the Law Society and order that Mr. Enright's name be struck off the Roll of Solicitors.