



THE COURT OF APPEAL

Neutral Citation Number: [2017] IECA 30

Appeal No. 2015/501

Appeal No. 2016/487

**Irvine J.
Hogan J.
Hedigan J.**

IN THE MATTER OF JOHN F. CONDON A SOLICITOR PRACTICING UNDER THE STYLE AND TITLE OF MCMAHON AND TWEEDY SOLICITORS AND

IN THE MATTER OF THE SOLICITORS ACTS 1954 – 2011

BETWEEN

JOHN F. CONDON

APPLICANT/APPELLANT

AND

THE LAW SOCIETY OF IRELAND

RESPONDENT

JUDGMENT of Mr. Justice John Hedigan delivered on the 15th day of February 2017

1. In these appeals the applicant seeks to set aside the decisions of Kearns P. and Kelly P. made on the 21st September, 2015, and 25th July, 2016, respectively. The appeals were heard together. This judgment will consider the latter decision first. In those second proceedings Kelly P. made the following orders:-

1. The application to direct the issue of a practicing certificate to John F. Condon without conditions be refused.
2. The application to rescind the direction given by the committee be refused.
3. The practicing certificate of John F. Condon for 2016 be subject to the conditions set out in the schedule annexed.
4. The applicant pay to the respondent the costs of the proceedings to be taxed in default of agreement.

2. The recent history of the appellant's conduct as a solicitor is comprehensively outlined in the learned President's judgment of the same date. It is clear that the appellant's recent record in his practice as a solicitor is a very bad one. Eight findings of professional misconduct have been made against him between 2010 and 2015. He has been censured on several occasions and was admonished and advised on one. Although he has been directed by the Law Society to pay to it sums in excess of €20,000 in respect of such findings, the bulk if not all of such monies remains unpaid. He has made it clear that he does not accept the correctness of any of these findings, though he has not appealed them. This attitude demonstrates a lack of insight into the grave professional problems in which he has for some time been enmeshed.

3. At the time of his application for the 2016 practicing certificate, he had five inquiries pending before the Disciplinary Tribunal of the Law Society. The Law Society has had to apply on four different occasions for relief against the appellant because of his failure to respond to correspondence from the complaints section of the Society. Conditions were imposed on his practicing certificates for 2010, 2014 and 2015. The conditions on the 2014 certificate required him to engage in a timely, meaningful and constructive manner with the Law Society and that he attend a course on the essentials of legal practice.

4. Further and more severe conditions were imposed upon the appellant's 2015 certificate in that he was required to work under the supervision of another solicitor. The appellant appealed that decision to the High Court. Following a number of adjournments, sought by the appellant, his appeal was eventually heard on the 9th September, 2015, by the then President of the High Court. A stay had been placed on the application of these latest conditions. Judgment was delivered by the then President on the 21st September, 2015. The appeal was dismissed. That judgment is the subject matter of the first appeal brought to this Court. I will return to that appeal later. A stay pending that appeal was refused by this Court on the 2nd October, 2015. As a result, the terms of the conditions attached to his 2015 practising certificate were only finalised by the Law Society on the 5th November, 2015. It was only on the 21st December, 2015, that the appellant's agreed supervisor Mr Bill Stokes was able to attend the appellant's office. His supervision ended on the 31st December, 2015. The Christmas break intervening, the supervision lasted only a few days.

5. The supervising solicitor, notwithstanding the very brief period of supervision, produced a report which was of a highly critical nature. It identified huge arrears of correspondence in the solicitor's office and raised questions about the office account. Subsequently on the 22nd January, 2016, the appellant wrote to the supervising solicitor criticising his report and threatening to sue him.

6. Meanwhile, on the 16th December, 2015, the committee wrote again to the appellant in relation to his 2016 practicing certificate. It put him on notice that he would be required to satisfy the committee that he should be issued a practicing certificate or that one should be issued without conditions attached. A meeting to consider this matter took place on the 26th January, 2016. The appellant argued that he should be issued a certificate for 2016 with no conditions attached. By letter of the 27th January, 2016, the appellant was informed of the committee's decision which was that it would issue him a practising certificate, but with conditions attached including supervision by a solicitor of ten years standing to be approved in advance by the committee. By letter of the 31st January,

2016, the committee wrote to the appellant informing him that his 2015 supervisor was no longer prepared to act in this role. The appellant through his solicitor raised a number of complaints concerning fair procedures and natural and constitutional justice in the consideration of the matter of his 2016 practicing certificate. An appeal was brought by the appellant to the High Court against the committee's decision. He sought the relief set out at paragraph 1 above. The appeal was brought on eight grounds. The President of the High Court Kelly P. dealt with them under the heading of four complaints. In his judgment, the learned President dismissed each of these complaints. He noted that since the 1st March, 2016, the appellant had been practicing under the supervision of Anthony O'Rourke, solicitor.

7. The principles which should guide the committee in their consideration of the issuance of practising certificates are set out in the judgment of the learned President of the High Court at paras. 53 to 58 of his judgment of 25th of July, 2016. He relied upon the judgment of Kingsmill Moore J. in *Re Crowley* [1964] I.R. 106. These principles may be summarised as follows:-

- (a) Where the issue of a practicing certificate would involve the danger of inadequate or dishonest service to the public or the continuance of unprofessional conduct, the Committee has a power and discretion to direct that a certificate should not issue.
- (b) This power is exercisable only for protection not for disciplinary purposes.
- (c) The power should be exercised only where there is a demonstrable probability that a practicing certificate if issued will be abused.
- (d) The restraint involved is not a matter of discipline for past offences, but precaution lest future practice by the solicitor should prove dangerous to the public or the profession in the future.
- (e) The fact that a solicitor has misbehaved in the past may be an element in arriving at the conclusion that he is likely to misbehave in the future and may form grounds for withholding a practicing certificate or issuing it subject to conditions.
- (f) Such action is only justified as a necessary precaution against the likelihood of future misdoing reasonably to be inferred from past conduct.
- (g) The matter must be considered on the basis of how things stand at the date of the application or if there is an appeal, at the date of the appeal.
- (h) The decision must be made in the light of the need, if any, to protect the interest of the public, the interest of the profession, the interest of the clients of the solicitor in question, and in the interests of the solicitor himself.
- (i) The committee is a specialist one to which a measure of curial deference ought to be shown.

8. The appeal brought before this Court against the judgment of Kelly P. is a broad based one challenging the findings of law and fact. The appellant challenges the entire decision in his notice of appeal and in his written submissions. However at the hearing no submissions were made which challenged the findings of fact or law made by Kelly P. The furthest that Mr. Mulloy, senior counsel for the appellant, would go was to submit that the judge was "blind sided" by the affidavit of Mary Fenelon sworn in the proceedings on the 24th March, 2016. Exactly what was meant by this is not clear. No issue was taken with her factual statements therein. Mr. Mulloy submitted that while he was not resiling from his fundamental case that an unconditional certificate should issue, if it was to be conditioned, then he was satisfied with the conditions imposed by Kelly P.

9. I am satisfied, having read the three affidavits of the appellant sworn herein and the affidavit of Mary Fenelon that there was ample evidence before Kelly P. upon which he could base his conclusions both in law and on the facts. This includes his reference to para. 77 of Ms. Fenelon's affidavit where she stated that at the end of July, 2015 the then President of the High Court held the appellant in contempt of court and that it was only under the threat of immediate imprisonment that he complied with a court order obtained against him. Kelly P. notably observes that although this particular incident was not mentioned to the committee, he was obliged to consider it as he must consider matters as they stand at the date of the appeal. Kelly P. considered that that incident was a further justification for a requirement of supervision. I can only express the strongest agreement with this. No basis whatsoever upon which Kelly P. was wrong either on the facts or in law has been identified. I am satisfied therefore that there did exist a clear and present danger of inadequate service to the public and a continuance of unprofessional conduct. The power to apply conditions to his practicing certificate was necessarily applied so as to protect the public and indeed the solicitor himself from the consequences of such inadequate service, the probability of which had been amply demonstrated. The learned President correctly took into account matters as they stood before him. There was more than sufficient evidence of the danger posed by the solicitor continuing to practice unsupervised. The learned President, although entitled to accord a measure of curial deference to the committee, did not need to do so herein in the circumstances. There was ample evidence before him to find that the probability of such a danger was established.

10. For the reasons outlined above I would dismiss this appeal. I would also echo the hope expressed by Kelly P. that Mr. Condon cooperate fully with the supervisory regime which is now in place. It is there in the interests of protecting the public, the interests of the legal profession in adhering to the highest standards of professionalism, the interests of his clients and in the end, the interests of the solicitor himself.

11. In the first appeal brought against the decision of Kearns P. made on the 21st September, 2015, the issue of mootness inevitably arises. Although there is a similar objection raised by the respondent in the second appeal, it has not been pressed. This is understandable in light of the very tight time constraints involved in challenging in the High Court and then the Court of Appeal a decision made in January which is overtaken by a new decision made twelve months later. For this reason any such appeal is likely by the time it reaches the Court of Appeal to have become moot. The practicing certificate for the year past is of no apparent value. Thus the court can make no useful order. Nonetheless there is a certain continuum at work as provided by s. 49(1)(q) of the Solicitors Act 1954, as amended:-

"(q) The solicitor has failed to satisfy the Society that he or she should be issued with a practising certificate or a practising certificate not subject to specified conditions, having regard to all the circumstances, including, where appropriate -

- (i) the financial state of the practice,

(ii) the number and nature of complaints made to the Society, either alleging misconduct by the solicitor or under section 8 or 9 of the Solicitors (Amendment) Act, 1994, within the preceding two practice years, or

(iii) the need adequately to protect or secure the interests of the solicitor's clients."

12. The Act requires regard to be had to all the circumstances. Moreover s. 49(1)(q) (ii) specifically directs consideration of the number of complaints within the last two years. Thus it may well be of some significance that the court examine the manner in which a practicing certificate for a previous year was either refused or issued subject to conditions. The 2015 appeal however, involved conditions that have now been changed. The appellant is no longer required to be employed by a supervising solicitor. He in fact is now the employer of his supervisor Mr. O'Rourke. No useful purpose could be served by litigating any further the 2015 appeal. There is no suggestion that the conditions imposed therein will be re-imposed. It has been entirely overtaken by events. In my judgment therefore the 2015 appeal is moot.

Conclusion

13. For the reasons outlined above, in relation to the appeal brought in respect of the judgment and order of Kelly P. dated the 25th of July 2016, I am satisfied that there was ample evidence before the learned President upon which he could base his findings in law and upon the facts. In any event, no basis upon which he was wrong has been identified. His judgment was based squarely upon the well established principles outlined in *Re Crowley* [1964] I.R. 106 summarized above. The appellant has stated to the Court that he is content with the conditions imposed upon his 2016 practising certificate should this Court hold there should be conditions attached. I would dismiss the appeal.

14. In relation to the appeal brought against the judgment and order of Kearns P of the 21st of September 2015, for the reasons also outlined above I consider the matter to be moot and I would dismiss the appeal.