THE HIGH COURT

IN THE MATTER OF JAMES BINCHY (A SOLICITOR)

AND IN THE MATTER OF AN APPLICATION BY BRIAN CURRAN TO THE SOLICITORS' DISCIPLINARY TRIBUNAL (RECORD NUMBER 3058/DT195/13)

AND IN THE MATTER OF THE SOLICITORS ACTS 1954 — 2011

[2016 No. 55 SA]

BETWEEN

BRIAN CURRAN

APPELLANT

AND

THE SOLICITORS' DISCIPLINARY TRIBUNAL

RESPONDENT

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AND

THE SOLICITORS' DISCIPLINARY TRIBUNAL

RESPONDENT

JUDGMENT of Mr. Justice Eagar delivered on the 13th day of January, 2017

1. This is a judgment on foot of a notice of motion issued by Brian Curran seeking leave to appeal to the High Court against the findings of the Solicitors' Disciplinary Tribunal dated the 6th November, 2015 and dated the 10th December, 2015 (notified to the appellant on the 10th December, 2015), that there was no *prima facie* case for inquiry into the conduct of the solicitor in the title hereof, Mr. James Binchy of Murphy & Company.

2. The first issue that arises in this Court's judgment is that the title of the proceedings is incorrect and I propose to amend the title as the Law Society of Ireland is not the appropriate respondent. In my view, the Solicitors' Disciplinary Tribunal should be respondents, and I amend the title appropriately.

3. The important issue before this Court is whether it is permissible for this Court to extend the time limit within which to appeal against the finding of the Disciplinary Tribunal where there has been a finding that there is no *prima facie* case for inquiry into the conduct of a solicitor having regard to the provisions of s. 7(12)(B) of the Solicitors (Amendment) Act, 1960, amended.

The statutory framework

4. The disciplinary provisions in relation to solicitors is contained in Part II of the Solicitors (Amendment) Act, 1960 as amended by Part III of the Solicitors (Amendment) Act, 1994 and by the Solicitors (Amendment) Act, 2002.

5. Pursuant to s. 6 of the Act of 1960 as amended by s. 16 of the Act of 1994 and by s. 8 of the Act of 2002:—

> "(1) The President of the High Court shall, from time to time as occasion requires, appoint a tribunal which shall be known as the Solicitors Disciplinary Tribunal (in this Act referred to as the 'Disciplinary Tribunal') consisting of—
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> (a) not more than twenty persons from among practising solicitors of not less than 10 years standing (to be known and referred to in this section as 'solicitor members'), one of whom shall be appointed by the President of the High Court to be chairperson of the Disciplinary Tribunal and each of whom shall be appointed after consultation with the Society, and
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> (b) not more than ten persons, who are not solicitors or barristers (to be known and referred to in this section as 'lay members'), who shall be nominated by the Minister to represent the interests of the general public,
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> for such a period, not exceeding five years, as the President of the High Court may determine, and any such person so appointed shall be eligible for reappointment to the Disciplinary Tribunal for not more than one such period.",

6. Section 7 of the Act of 1960 as substituted by s. 17 of the Act of 1994 and amended by s. 9 of the Solicitors (Amendment) Act, 2002 provides:—

"(2)(a) Where an application in relation to a solicitor (in this section referred to as the 'respondent solicitor') is duly made under this section, the Disciplinary Tribunal shall—

(i) where the Society is not the applicant, inform the Society as soon as practicable of the receipt of the application, and

(ii) before deciding whether there is a *prima facie* case for inquiry:

(I) send a copy of the application and of any accompanying documents to the respondent solicitor, and

(II) request that any observations which he or she may wish to make on the application be supplied to the Disciplinary Tribunal within a specified period.

(b) If, after receipt of the respondent solicitor's observations or on the expiration of the specified period, the Disciplinary Tribunal find that there is no *prima facie* case for inquiry, they shall so inform the applicant, the Society (where the Society is not the applicant) and the respondent solicitor and take no further action in relation to the application."

7. Subsection 3 deals with a situation where the Disciplinary Tribunal found that there is a *prima facie* case and it is not relevant in this context.

8. Subsection 7(12) provides for an appeal as follows:—

"(12A) The Society or any person who has made an application under subsection (1) of this section may appeal to the High Court within the period specified in subsection (12B) of this section—

(a) against a finding of the Disciplinary Tribunal that there is no prima facie case for inquiry into the conduct of the respondent solicitor, or

(b) against a finding of the Disciplinary Tribunal that there has been no misconduct on the part of the respondent solicitor in relation to an allegation of misconduct (whether or not there has been a finding by the Disciplinary Tribunal of misconduct in relation to any other such allegation), and the Court may—

(i) confirm the finding concerned,

(ii) where the appeal is under paragraph (a) of this subsection, make a finding that there is a prima facie case in relation to the allegation of misconduct concerned or, as the case may be, one or more than one of such allegations and require the Disciplinary Tribunal to proceed to hold an inquiry under subsection (3) of this section in relation to such allegation or allegations, or

(iii) where the appeal is under paragraph (b) of this subsection, rescind or vary any finding of the Disciplinary Tribunal that there has been no misconduct on the part of the respondent solicitor in relation to an allegation of misconduct and, in relation to that solicitor, by order do one or more than one of the things specified in section 8(1)(a) (as substituted by the Act of 1994) of this Act.

(12B) An appeal against a finding of the Disciplinary Tribunal under subsection (12A) of this section shall be made within 21 days of the receipt by the appellant of notification in writing of the finding."

Background to the complaint to the Solicitors' Disciplinary Tribunal

9. I will outline the factual issues, not for the purposes of analysing the decision of the Solicitors' Disciplinary Tribunal, but with a view to dealing with the issues of appeal which this Court is required to address.

10. The Court was asked to address the following:—

a. Can this Court extend the time limit within which to appeal against a finding of the Disciplinary Tribunal that there is no prima facie case for inquiry into the conduct of a solicitor having regard to the provisions of s. 7(12)(b) of the Solicitors (Amendment) Act, 1960, as amended.

b. If the time limit set out in s. 7(12)(b) is capable of extension should the time be extended on the facts of this case.

11. Mr. Binchy qualified as a solicitor in Easter 1976 and has been a practicing solicitor every since. He also had never been before the Tribunal in his legal career to date. In late 2005, the applicant retained Mr. Binchy in connection with the sale of 9.23 acres of land bequeathed to the applicant at Mount Pleasant, Loughrea, Co. Galway (the Mount Pleasant lands). The appellant retained Michael Regan as his Auctioneer in connection with the sale of the lands. Mr. Binchy said he had never met Michael Regan but he was based in Galway and never had any communications whatsoever with him. The purchaser, Joe Hoade, agreed to pay the sum of €3,694,716.60 for the Mount Pleasant lands.

12. A deposit was placed by Mr. Hoade on 12th December, 2005 in the sum of €369,471.96 and a letter was received bearing that date came from Dearbhla MacGowan, the solicitor for Mr. Hoade, also enclosing an executed contract signed by Mr. Hoade. The applicant signed the contract for the sale of the lands which was dated 26th January, 2006. The applicant alleged that Mr. Binchy altered the contract. On 7th December, 2005, Ms. MacGowan wrote to Mr. Binchy enclosing the Special Conditions to be inserted into the Contract. These were Special Conditions 4, 5 and 6. The Special Conditions were removed from the Contract by the applicant by putting a line through them. This was done with the applicant's consent and correspondence.

13. There were a number of letters exchanged between Mr. Binchy and the applicant on the Special Conditions. Mr. Binchy said that he explained to the applicant why spousal consent was not necessary and what Special Condition 5 meant. There was no family home at issue in the sale. On 13th January, 2008 Mr. Binchy wrote to the applicant stating that he had received a phone call from the purchaser's solicitors confirming that it was in order to delete the Special Condition that referred to Recourse Mortgage and the subsequent sub sales of the property and that if he was happy with this he could sign the Contract and return same when they will be in a position to get the matter up and running.

14. Mr. Binchy sought the advices of John Peart, S.C., regarding the applicant's options in respect of the Contract given that he now wanted to withdraw from it.

15. A sub-issue that arose was that it was alleged by the applicant that a fraud was perpetrated against him in connection with the sale of his lands by Mr. Regan. When the applicant learnt that the land behind him known as the Kilboys Lands had sold for more money per acre than his he wanted to get out of the sale with Mr. Hoade and withdraw from his Contract.

16. Mr. Binchy wrote to Dearbhla MacGowan on 6th March, 2006 indicating that the applicant was not proceeding with the sale and sent the deposit back on 10th March, 2006. Ms. MacGowan replied by letter dated 14th March, 2006 indicating that her client was not accepting the return of the deposit and the cheque with the deposit was returned uncashed. Ms. MacGowan indicated that pending the resolution of impending specific performance proceedings, she would require an undertaking from the applicant not to purport to sell or assign or otherwise deal with the property in question.

17. Specific performance proceedings then issued in April, 2006 bearing the title, "Hoade v. Curran"[2006 No. 1444 P] and the applicant instructed Mr. Binchy to represent him in defence of these proceedings. At a meeting with the applicant, John Peart, S.C., Stephen O'Rourke (the developer) and Bernadette Dinn (solicitor for Stephen O'Rourke) on 10th April, 2006. It was decided that they should fight the specific performance writ fully and head to court on that basis. Robert Barron, then B.L., was briefed to act on behalf of the applicant in the specific performance proceedings and the applicant confirmed that he had read Robert Barron's "excellent" defence and counter claim to the Hoade proceedings. The central relief sought in the counter claim was rescission. The defence and counter claim were extremely comprehensive. A notice of trial dated 15th February, 2007 was received marking a notional trial date of 15th March, 2007.

18. On 3rd April, 2008 Mr. Binchy wrote to the applicant indicating that an offer had come in from Mr. Hoade to settle the proceedings and on 7th July, 2008 the applicant wrote to Mr. Binchy and finished up the letter as follows:—

> "Again, Jim, I would like to thank you most sincerely for help and advice in the above matters."

19. A notice of discontinuance was ultimately served on behalf of Mr. Hoade and dated 23rd July, 2008.

20. Mr. Binchy had never met Ms. MacGowan and knew nothing about her dealings with the Law Society of various banks (this was one of the claims made by the applicant) and Ms. MacGowan did report Mr. Binchy to the Law Society in connection with the return of the deposit after the specific performance proceedings were partially settled. A deposit of €369,471.96 was received from Ms. MacGowan under cover of a letter dated 12th December, 2005. Mr. Binchy wrote to the appellant indicating that they had received a notice of discontinuance of the Hoade proceedings and enclosing the relevant letter from Ms. MacGowan in which she seeks the return of the deposit. On 18th August, 2008 the appellant wrote to Mr. Binchy saying,

> "I received your letter of 15th August and this is certainly good news. I want to thank you for all your efforts in this difficult and complex matter."

21. On 1st September, 2008 the applicant wrote to Mr. Binchy saying,

> "I want to sincerely thank you for all your help, advice and guidance during this difficult matter. Your judgment in this case has been invaluable."

22. On 6th November, 2008 Mr. Binchy wrote to the applicant explaining that the recommendations from their cost drawer in respect of the costs for the work done in relation to the aborted sale of Mount Pleasant Lands, the Hoade proceedings, and the Regan proceedings. On 17th November, 2008 he received a letter from the applicant instructing that the civil portion of the Hoade and Regan proceedings were to be set aside until the criminal investigation was resolved. On 21st August, 2008 Mr. Binchy had written to Ms. MacGowan indicating that as her client was discontinuing the Hoade proceedings against the applicant, Murphys would hold the deposit until the question of costs was resolved. On 9th February, 2009 Mr. Binchy returned to Ms. MacGowan the deposit less €60,000 for the purposes of fees and for costs. Costs were taken from the deposit before it was returned.

23. The complaints by the applicant to the Disciplinary Tribunal were numerous and in many ways contradictory and became divided as a result of the numbers of complaints. It appears that the solicitor for Mr. Hoade had also made a complaint to the Law Society in relation to Mr. Binchy and it seems that this situation that caused Mr. Curran to make allegations against Mr. Binchy of the following:—

> 1. fraud in the sale of the property;
>
> 2. fraud in breaches of trust (case [2006 No. 1444 P.]);
>
> 3. alleged absence of deposit;
>
> 4. tampering with sales contract;
>
> 5. multiple irregularities (case [2006 No. 1444 P.]) subsequently complained to the Law Society;
>
> 6. the matter was referred to the Solicitors' Disciplinary Tribunal of the Law Society.

24. The matter was referred to the Solicitors' Disciplinary Tribunal of the Law Society. The complaints of Mr. Curran were divided into two:—

> 1. On 6th November, 2015 the Disciplinary Tribunal found that there was *no prima facie* case for an enquiry in relation to some of the allegations of Mr. Binchy.
>
> 2. On the 10th December, 2015 the Disciplinary Tribunal found that there as no *prima facie* case for an enquiry into the conduct of Mr. Binchy.

25. The appellant acknowledges that he was notified of both decisions by email on the 10th December, 2015. On the 28th December, 2015 affidavits in respect of two appeals were sworn by the appellant. These affidavits summarised the grounds in respect of the two appeals. However, the notice of motion in respect of Appeal No. 1 was issued on 17th April, 2016 and the notice of Appeal No. 2 was

issued on the 31st May, 2016.

26. The question before this Court is whether it is permissible for the Court to extend the time limit within which to appeal against a finding of the Disciplinary Tribunal that there is no prima facie case for inquiry into the conduct of a solicitor having regard to the provisions of s. 7(12)(B) of the Solicitors Act, 1960 as amended.

27. The respondent solicitor has set out relevant terminology as follows:

> 1. 6th November, 2015 – Date of finding of the Disciplinary Tribunal in respect of *Curran v. Binchy* 3058/DT34/14
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> 2. 10th December, 2015 – Date of the finding of the Disciplinary Tribunal in *Curran v. Binchy* 3058/DT/195/13 dated 10th December, 2015
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> 3. 10th December, 2015 – The appellant acknowledges that he was notified of both decisions by email.
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> 4. 28th December, 2015 – Affidavits in respect of Appeal 1 and 2 were sworn by the appellant.
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> 5. 31st December, 2015 – The twenty-one day time limit within which to appeal expires under s. 7(12)(b) and reflected an O. 15, r. 12(a) expires.
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> 6. 4th January, 2016 – Mr. Binchy's solicitor receives the affidavits.
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> 7. 5th January, 2016 – The Central Office advised the appellant that the documents received by the office on the 4th January, 2016 were received out of time and where irregular insofar as they did not include a notice of motion. The appellant is advised to take legal advice and expressly informed him that there was no provision for accepting the documents outside the twenty-one day time limit.
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> 8. 26th April, 2016 – Notice of motion in Appeal No. 1 issued dated the 17th April, 2016
>
> 9. 31st May, 2016 – Notice of motion in Appeal No. 2 issued (dated 31st May, 2016)

28. Order 53, rule 12(a) of the Superior Courts Rules is entitled:

> "Appeals to the Supreme Court under section 7 (as substituted by s. 17 of the Act of 1994 and as amended by s. 9 of the Act of 2002) of the Act of 1960 states:
>
> > (a) Every appeal to the court against a finding of the Disciplinary Tribunal, either that there was no prima facie case for inquiry into the conduct of a respondent solicitor or that there was no misconduct on the part of a respondent solicitor in relation to an allegation of misconduct, brought by the Society or by any person other than the Society who made the application in relation to the respondent solicitor to the Disciplinary Tribunal under s. 7(12A)(a) or (b) (as substituted by s. 17 of the Act of 1994 and as inserted by s. 9(g) of the Act of 2002) of the Act of 1960, shall be brought within the period of 21 days of the receipt by the appellant of written notification from the Tribunal Registrar of such finding and shall be by notice of motion returnable to the President on a date to be assigned by the proper officer in the Central Office and shall be entitled in the matter of the respondent solicitor and in the matter of the Acts (this Court's emphasises).

29. Counsel for the respondent solicitor argued that this is a mandatory statutory time limit which is prescribed by the Acts. Counsel also noted that s. 7(12)(A)(a) as inserted by the 2002 Act created for the first time an appeal mechanism for those such as the appellant who wished to appeal against "a finding of the Disciplinary Tribunal that there is no *prima facie* case when enquiring into the conduct of the respondent solicitor". Counsel also noted that s. 7(12)(B) states that an appeal against the finding of the Disciplinary Tribunal under subs. 12(a) of this section shall be made within 21 days of the receipt by the appellant of notification in writing of the finding. This Court agrees with counsel for the respondent that the language in the statute is mandatory and in respect of an appeal against the finding of the Disciplinary Tribunal that there is no *prima facie* case for enquiring into the conduct of the solicitor this must be made within a period of 21 days of receipt by the notification by the appellant by the order.

30. Counsel for the respondents summing up the argument for the appellant states that the appellant seeks to read into the words of s. 7 (12) (B) a power to extend the time in accordance with the principles set out in *Eire Continental Trading Company Ltd v. Clonmel Foods Ltd* [1955] I.R. 170. Counsel for the respondent argued that in interpreting s. 7 (12) (B) a fundamental objective must be to give effect to the intention of the legislature and he quoted Murray J. in *Crilly v. T & J Farrington Ltd* [2001] 3 I.R. 251 at 295:

> *"As has often been said by this court, the courts are one of the organs of government, the judicial organ of government, referred to in Article 6 of the Constitution. seeks to ascertain the 'intent' of the legislature or as Blackstone put it at p. 59 of his Commentaries 'the will of the legislature'".*

31. This court finds that the wording of the provision is clear. It allows for a period of 21 days beginning on the date of notification of the decision in writing. It does not provide for the extension of a 21 day period of time to appeal. Counsel for the respondent submitted that prior to the enactment of the 2002 Act it was not possible to appeal a decision against a finding of no *prima facia* case. When the legislature chose to extend the availability of an appeal against the decision of no finding of *prima facia* case, it expressly chose to limit this wider right of appeal to a strict time frame, without discretion to extend time.

32. Counsel for the respondent submitted that there were compelling reasons why the Oireachtas would want to ensure that these types of appeals are advanced expediously, given the adverse impact which they have on solicitors who have been exonerated by the Disciplinary Tribunal at first instance. Counsel also submitted that the facts of this case where the appellant has made multiple baseless and repetitive complaints to the Law Society regarding Mr. Binchy's conduct. "Yes proves that very point".

33. Counsel for the respondent also cited *Walsh v. An Garda Síochána Complaints Board* [2010] 1 I.R. 400 where the Supreme Court considered a complaint which was made within one hour outside of the six month time limit set out by s. 4 of the Garda Síochána (Complaints) Act 1986. That section did not allow for an extension of time to make a complaint. Fennelly J. described the provision as one which leads to the unfortunate and unfruitful results but the language was clear and well established and held that the complaint could not be entertained and quashed the decision of the respondent that the complaint was made in time.

34. Counsel for the respondent drew the court's attention to the decision of the Court of Appeal in *Law Society v. Tobin* [2016] IECA at 26. In this case neither the appellant's solicitors lodged a notice of appeal within 21 days of the date of making the order in the High Court or the date of the perfection of that order. Section 12 of the Solicitors (Amendment) Act 1960 as inserted by s. 39 of the Solicitors (Amendment) Act 1994 provides

> "The Society or the solicitor concerned may appeal to the Supreme Court against an order of the High Court made under section 8 (1) (as substituted by the Solicitors (Amendment) Act, 1994) or section 9 or 10 (as amended by the Solicitors (Amendment) Act, 1994) of this Act within a period of 21 days beginning on the date of the order, and unless the High Court or the Supreme Court otherwise orders, the order of the High Court shall have effect pending the determination of such appeal.". (This court's emphasis)

In the case of Mr. Tobin and Mr. Callanan the order of the High Court striking Mr. Tobin from the role of solicitors provided "that the respondent do have leave to appeal the within order and to lodge such an appeal within such period as is provided under order 58 or 86A of the Rules of the Superior Courts (as the case may be) and in the event of execution be further stayed until the further determination of such appeal".

35. It appears to this court that the circumstances set out in the case of *The Law Society v. Tobin and The Law Society v. Callinan* is a different and distinguishable principle. In that case the High Court had made an order under the Solicitor's Acts striking the names of the respondents' solicitors from the roll of solicitors. The Court of Appeal having reviewed a large number of authorities held that the 21 day period in the 1994 Act was the relevant time period under O. 58 of the Rules of the Superior Courts for appeals to the Supreme Court, which also had a well established jurisdiction to extend such time period of time, and in this case provided for an extension of time. The Court distinguishes the decision in *The Law Society v. Tobin and The Law Society v. Callinan* having regard to the fact that this was a decision of the High Court as opposed to a decision of the Solicitors Disciplinary Tribunal.

36. However in this case it is quite clear that the Solicitors Disciplinary Tribunal that either party before a Disciplinary Tribunal can appeal to the High Court within a 21 day period there is no authority for the High Court in adjudicating whether or not an appeal against the finding of the (Regulatory Authority) power to extend time. This court follows the authority of *Walsh v. Garda Síochána Complaints Board* [2010] 1 I.R. 400 and the decision of Hedigan J. in *Browne v. Kerry County Council* [2011] 3 I.R. 514. Hedigan J. in that case concluded that an appeal section under the Planning and Development Act 2000 had to be construed as being mandatory in nature noting that:

> *"As to the first of Lowry L.C.J.'s principles, it is evident that no power to extend time exists, nor is there any provision to indicate what is to happen if time is exceeded."*

37. This Court therefore finds that this Court has no permission to extend the time limit within which to appeal against the finding of the Disciplinary Tribunal that there is no *prima facie* case for enquiring into the conduct of a solicitor having regard to the provision of s. 7(12)(B) of the Solicitors (Amendment) Act 1960.

38. The court has decided that it would be useful to consider whether or not if there was a power to apply to extend time whether or not that could be availed of by the appellant in this case. In the judgment of the Supreme Court in *Eire Continental Trading Co. Ltd. v. Clonmel Foods Ltd.* previously cited the Supreme Court took the opportunity of setting out conditions which were proper matters for consideration of the court in determining whether time should be extended:

> 1. The applicant must show that he had a *bona fide* intention to appeal formed within the permitted time.
>
> 2. He must show the existence of something like mistake and that mistake as to procedure and in particular the mistake of counsel or solicitor as to the meaning of the relevant rule was not sufficient.
>
> 3. He must establish that an arguable ground of appeal exists. (Laverty J.)

39. In *Brewer v. the Commissioner of Public Works* [2003] 3 I.R. 539 Geoghegan J. observed in relation to the judgment of Lavery J. in *Eire Continental*:

> *"I would interpret those words of Lavery J. as indicating that while these three conditions were proper matters to be considered, it did not necessarily follow in all circumstances that a court would either grant the extension if all these conditions were fulfilled or refuse the extension if they were not. The court still had to consider all the surrounding circumstances in deciding how to exercise its discretion."*

This is a case where the only materials which needs to be considered by the appellant where the materials before the Disciplinary Tribunal and the appellant had available to him all of the information necessary to make his mind up as in terms to which to appeal. He clearly by his actions of swearing affidavits within time and shown a *bona fide* intention to appeal formed within the permitted time. Clearly the judgments of the High Court and the Supreme Court state the view of the court that there is requirement to balance justice on all sides.

40. In *Goode Concrete v. CRH Plc.* [2013] IESC 39 Mr. Justice Clarke delivering judgment on behalf of the Supreme Court having referred to the authorities of *Eire Continental and Brewer and stating that the Eire Continental* test applies "in the majority of cases" he said at para. 3.3:

> *"3.3. The reason why the Éire Continental test applies in the vast majority of cases is clear. The underlying obligation of the court (as identified in many of the relevant judgments) is to balance justice on all sides. Failing to bring finality to proceedings in a timely way is, in itself, a potential and significant injustice. Excluding parties from potentially meritorious appeals also runs the risk of injustice. Prejudice to successful parties who have operated on the basis that, once the time for appeal has expired, the proceedings (or any relevant aspect of the proceedings) are at an end, must also be a significant factor. The proper administration of justice in an orderly fashion is also a factor of high weight. Precisely how all of those matters will interact on the facts of an individual case may well require careful analysis. However, the specific Éire Continental criteria will meet those requirements in the vast majority of cases.*
>
> *3.4. First, it should be said that it is difficult to envisage circumstances where it could be in the interests of justice to allow an appeal to be brought outside time where the Court was not satisfied that there were any arguable grounds of appeal established. It can not be in the interests of justice to allow wholly unmeritorious appeals to progress.*

3.5. Likewise, in most straightforward cases, a party will be aware of the time limit within which an appeal should be brought (or if not, ought to be so aware) and should not be allowed an extension of time unless a decision to appeal was made in time and there is a good reason for the appeal not having been filed within the time limit. In the vast majority of cases the only materials which any party will need to consider in deciding whether to appeal will be the materials which were before the judge deciding the case at first instance. A party who has participated in proceedings before the High Court (or who ought to have so participated) will or ought to be aware of all of the evidence called, of the legal submissions made and of the reasoning of the trial judge in coming to whatever conclusion it might now be sought to appeal against. Such a party has available to it all of the information necessary to make its mind up as to whether it wishes to appeal. In that context it is not unreasonable to require the party, in the interests of the overall administration of justice and the balance of justice as and between the parties, to come to a decision within the time specified and to bring the appeal either within that time or such further period as the court might, exceptionally, allow if there is some excuse for the notice of appeal not being filed in time. Thus the specific Éire Continental criteria will, in the vast majority of cases, be likely to be the only test applied by the court."

41. In this case on the 5th January, 2016 the appellant was told by the Central Office that his paperwork was irregular and could not be lodged. The appellant only remedied the lack of appropriate papers until respectively to remedy the missing notice of motion until respectively the 26th April, 2016 and 31st May, 2016. Apart from a complaint in the appellant's replying affidavit in respect of a failure of the Disciplinary Tribunal to comply with O. 53, r. 7 it is not suggested anywhere in the appellant's affidavit that he was operating under any misunderstanding of the time limit within which the appeals where to be lodged.

42. It is submitted by counsel for the respondent that the fact that the appellant is representing himself in this appeal is not a relevant factor and quoted the recent Supreme Court decision in the *Permanent TSB v. Patrick McMahon* [2016] IESC DET 56 "is well established that while it is impractical of the courts to give a degree of leeway to unrepresented litigants, a court may not go as far as to disregard the rules of law for their benefit".

43. Finally, the court finds that the appellant has not come close to demonstrating that he has any arguable ground of appeal in respect of the ultimate finding. The appellant has made voluminous complaints against Mr. Binchy which appear to be vexatious and grossly oppressive. Serious allegations have been made against Mr. Binchy and by way of replying affidavits the appellant has shown a pattern of adding new complaints and changing his original complaints.

44. It is not the role of this Court to review the findings of the Disciplinary Tribunal but in the circumstances of having to exercise its discretion this Court would not exercise it's discretion to extend the time to enable the appellant to appeal.

45. In summary the finding of this Court is:

(a) It is not permissible for the High Court to extend the time limit within which to appeal against the finding of the Disciplinary Tribunal that there is no *prima facie* case of enquiry into the conduct of a solicitor having regard to the provisions of s. 7(12)(B) of the Solicitors (Amendment) Act 1960 as amended.

(b) In the circumstance of this case if the court did have such permission, to extend the time limit, this Court would not exercise its discretion to admit the appeal having regard to the (a) failure to follow up the attempted appeal until April and May of 2016 and (b) the nature of the appellant's complaints having regard to his expressions of satisfaction up to the settlement of the High Court proceedings between *Hoade v. Curran* and his continuing to increase the numbers of complaints in response to the affidavits of Mr. Binchy.