

THE HIGH COURT

2009 95 SA

**IN THE MATTER OF MICHAEL J. MURPHY A SOLICITOR FORMERLY PRACTISING AS M.J. MURPHY & COMPANY, SOLICITORS, 25
LOWER SALTHILL, GALWAY, CO. GALWAY**

RESPONDENT

AND

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

APPLICANT

AND

IN THE MATTER OF THE SOLICITORS ACTS 1954 – 2008

JUDGMENT of Kearns P. delivered the 10th day of May, 2010

I am delivering this judgment to address an issue which has arisen in relation to the jurisdiction of this Court, following the making of an order to strike a solicitor off the Roll, to thereafter make further orders in relation to the former solicitor in question.

I invited both the applicant Society and the respondent solicitor to make submissions in relation to the following issue:-

"Where the High Court makes an order striking a solicitor off the Roll of Solicitors pursuant to s.8 of the 1964 Act as amended, does the High Court thereafter lose jurisdiction to make orders affecting the respondent solicitor such as, for example, orders affecting the assets of the respondent solicitor pursuant to s.20 of the 1964 Act as amended?"

Unfortunately, it has not been unusual in recent times for solicitors to have multiple complaints of a serious nature brought against them. A situation can arise where an initial complaint is heard by the Disciplinary Tribunal following which the matter is sent forward to the High Court with a recommendation that he be struck off the Roll. If the High Court does strike him off, the question arises as to what is to happen to any other cases which are either progressing through the Tribunal system or which have already been dealt with by the Tribunal but which have not yet come before the High Court. In such circumstances, is the solicitor, who is now no longer a solicitor, nonetheless still amenable to the disciplinary jurisdiction of the Court?

This problem must be distinguished from the separate issue which is that of a solicitor who faces certain allegations and who might seek to resign rather than face them. That does not pose a difficulty, since in order to come off the Roll, a solicitor has to make an application to the Tribunal and the Tribunal will not grant the application if there are outstanding disciplinary matters pending against the solicitor.

The requirement for clarification is manifest. In cases where a solicitor is struck off he can apply to be readmitted to the Roll at some later date. Clearly, it would be necessary for the Society to have registered the appropriate number of 'strike offs' or other sanctions at the right time in such circumstances. Secondly, the Tribunal may have ordered compensation to be paid by such a solicitor in respect of future findings and this opportunity would be lost if the Law Society could not intervene. Finally, it can scarcely be in the public interest that a particular complaint could never be addressed in public because in the meantime the solicitor concerned had been struck off. Thus it could occur that a solicitor who is struck off in respect of an unrelated matter towards the end of a lengthy disciplinary hearing against him or her in respect of a separate matter could in such circumstances contend that the Tribunal's subsequent hearings and/or findings would be null and void.

On behalf of the Law Society, Paul Anthony McDermott, B.L., argued that for so long as a solicitor is on the Roll at the point in time when he or she engaged in the conduct in question, then there is no logical reason why the Society, the Tribunal and the Court would not retain jurisdiction to deal with the consequences of that conduct even though the solicitor has, in the interim, been struck off the Roll. The alternative would be that a solicitor would enjoy an immunity from answering for such conduct merely because his misconduct in respect of another matter had intervened and resulted in him being struck off. He contended that such an approach would not promote the goal of protecting the public which is one of the key functions of the disciplinary aspects of the Solicitors Acts.

In making his submissions, Mr. McDermott made it clear that the Law Society was not contending under any circumstances that supervisory or disciplinary jurisdiction should be asserted over a solicitor who is deceased.

On behalf of the respondent, Edmund Sweetman B.L., submitted that once a solicitor is struck off the Roll pursuant to an order of the President of the High Court he is no longer subject to the jurisdiction of the Solicitors Acts, 1954 – 2008.

He based his submissions not on any consideration of public policy, but simply on the wording of the relevant legislation. He also submitted that, as the disciplinary provisions provide for a penal process, the rule of strict construction was one which militated against the interpretation contended for by the Law Society.

LEGISLATIVE PROVISIONS

The operative definition of a "solicitor" for the purposes of the Solicitors Acts is to be found in section 3 of the Solicitors (Amendment) Act, 1994. That section provides as follows:-

"(1) Section 3 of the Principal Act is hereby amended

by—

(a) The deletion of the definition of "solicitor" and the substitution of the following definition:

"solicitor" means a person who has been admitted as a solicitor and whose name is on the Roll; and a reference to a solicitor includes a reference to a firm of solicitors unless the context otherwise

requires and includes a former solicitor or a deceased solicitor unless the context otherwise requires..."

It will be observed from the foregoing definition that the word "solicitor" includes "a former solicitor" unless the context otherwise requires.

When a trainee solicitor, having duly completed the course of professional training prescribed by the Law Society of Ireland, applies to the President of the High Court "to be admitted as a solicitor" and is "by instrument in writing" so admitted by the President, he or she will then receive a parchment so stating from the President of the High Court as is provided for by section 10 of the Solicitors Act, 1954 (as amended by section 25 of the Act of 1960). A person so admitted must then apply to the Registrar of Solicitors to have his or her name entered on the Roll and for that purpose produces the "instrument in writing" signed by the President and is then entered on the Roll. One does not become a solicitor within the specific meaning of the Solicitors Acts 1954 – 2008 without those formalities having been complied with.

Section 3 of the Act of 1994 defines a solicitor as a person who has been both admitted as a solicitor and whose name is on the Roll. The original definition provided for the term "solicitor" in the Act of 1954 was:-

"Solicitor" means a solicitor of the Courts of Justice".

On one view, section 3 of the Act of 1994 might be considered to have narrowed the application of the Solicitors Acts so that, for an individual to become subject to that corpus of legislation, it was necessary for that person to have received his or her parchment and to be on the Roll. If the definition were to provide that a "solicitor" *"means a person who has been admitted as a solicitor and whose name is or was on the Roll; and a reference to a solicitor... includes a former solicitor or a deceased solicitor unless the context otherwise requires"* such a definition would arguably have been preferable in terms of legislative draughtsmanship.

I am satisfied, however, that by bringing a purposive interpretation to the definition of "solicitor" contained in the Act of 1994, the inclusion of "a former solicitor" in the amended definition must be taken as including a solicitor who has met the qualifying requirements and who was on the Roll but who is no longer on the Roll. "Former solicitors" must be taken as including both categories.

I am fortified in this interpretation by virtue of the fact that the legislation contains no provision for a firm of solicitors to be on the Roll. I see no reason to restrict the term "former solicitor" to a solicitor who is no longer practising but who remains on the Roll.

Section 5 of the Interpretation Act 2005, in a part described as "construing ambiguous or obscure provisions", provides as follows:-

"(1) In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction) –

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of –

(i) in the case of an Act to which paragraph (a) of the definition of "Act" in section 2(1) relates, the Oireachtas, or

(ii) in the case of an Act to which paragraph (b) of that definition relates, the parliament concerned,

the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where that intention can be ascertained from the Act as a whole."

I am satisfied that the submissions advanced on behalf of the Law Society in this matter are correct and that the term "former solicitor" on its plain meaning is broad enough to cover the concept of a person who was a solicitor (i.e. a person whose name was on the Roll) but who is no longer a solicitor because his or her name has been struck off the Roll.