



THE HIGH COURT

[2018] IEHC 440

[2017 No.52 SA]

BETWEEN

PATRICK ENRIGHT

APPLICANT

AND

LAW SOCIETY OF IRELAND

RESPONDENT

EX TEMPORE JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 31st day of May, 2018

1. This is an application by Mr Patrick Enright for an order that he be restored to the Roll of Solicitors. His notice of motion grounding this application refers to s.10 of the Solicitors Amendment Act of 1960 and no other statutory provision. Whilst s.10 of the 1960 Act conferred jurisdiction on the court to make an order restoring a solicitor to the Roll, it has been overtaken by the passage into law of s.19(4) of the 1994 Act. It is clear that the legislature, having granted the jurisdiction under s.10 in a very simple and straightforward way, decided to revisit that issue and so it expressly provides in s.19(4) as follows:

"Where, on the hearing of an application under this section, it is shown that the circumstances which gave rise to the striking off the roll of the applicant's name involved an act or acts of dishonesty on the part of the applicant arising from his former practice as a solicitor or that the applicant was convicted of a criminal offence, the High Court shall not restore the applicant's name to the roll, either conditionally or unconditionally, unless it is satisfied that, having regard to all the evidence, the applicant is a fit and proper person to practise as a solicitor and that the restoration of the applicant to the roll would not adversely affect public confidence in the solicitors' profession as a whole or in the administration of justice."

So it is clear, having regard to the latter sub-clause of that section, that I have to be satisfied that:

(1) the applicant is a fit and proper person to practise as a solicitor, and

(2) that the restoration of him to the Roll would not adversely affect public confidence in the solicitors' profession as a whole or in the administration of justice.

2. There are a number of cases where consideration has been given to that subsection. I mentioned a number of them to counsel for the applicant during the course of his presentation. There is the view expressed by Keane C.J. in *Burke's* case where he said:

"Unlike barristers, solicitors are regularly entrusted with the custody of monies belonging to their clients and, if public confidence in the solicitors' profession is to be maintained, any abuse of that trust must inevitably have serious consequences for the solicitor concerned. Viewed in that context, the range of cases in which a solicitor who has been struck off because of dishonesty can properly be restored to the register pursuant to subsection (4) is, of necessity, significantly limited."

Similar views were expressed by the Supreme Court in *Carroll v. The Law Society of Ireland* indicating that the number of cases where a successful application under this particular statutory provision would be very limited and that a party seeking such an order has something of a mountain to climb.

3. Similar sentiments have been expressed by judges in England. In the course of discussion with counsel I drew attention to observations made by the then Master of the Rolls Lord Donaldson and subsequent views expressed by Sir Thomas Bingham when he was Master of the Rolls in the seminal case in this area, *Bolton v. The Law Society*.

4. In order to consider this application fully it is necessary to recount briefly the circumstances which gave rise to the order striking Mr. Enright off the Roll of Solicitors, which I made two years ago. Mr. Enright was admitted to the Roll of Solicitors in August of 1986. He was in 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, Co. Kerry. On ten occasions in 1994 he forged documents purporting to be health insurance claims in the name of a Dr. John Coyle. Those 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 police 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. The motivation behind those 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 that scheme to provide himself with funds to set up his practice. The amount involved was around £12,000 and all of that money has long since been repaid to the insurance company.

5. When he was confronted with his wrongdoing in October of 1994 he admitted it and undertook to repay the money outstanding. A prosecution got under way, in which he was charged with ten acts of forgery committed between 1st January, 1994 and 24th August, 1994. Those charges were brought under section 4(1) of the Forgery Act 1913. 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 the 21st December, 2005. Mr. Enright, as I said in my judgment on the 4th April, 2016, accepted responsibility for a substantial portion of the delay which occurred between the commencement of those proceedings and their determination in 2005. He was unsuccessful in those proceedings. He appealed to the Supreme Court which dismissed his appeal on the 29th July, 2008.

6. Following the dismissal of the appeal by the Supreme Court, the Director of Public Prosecutions re-entered the criminal charges on the 22nd October, 2008. 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. At the conclusion of that European litigation the criminal charges came on for trial before HHJ Moran, as he was then, at Tralee Circuit Court on the 28th June, 2013. Mr. Enright pleaded not guilty but during the course of the trial asked to be re-arraigned and pleaded guilty to all ten offences.

7. He was jointly tried with his brother who is not a solicitor. In the course of my judgment, which I gave on the 4th April, 2016, I recounted what was said by the trial judge in the course of his sentencing remarks. This is what he 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."

Mr. Enright then served the term of imprisonment with appropriate reductions for good behaviour and the usual release provisions.

8. I went on to say that, in all the years that have passed since his departure from the American insurance company, he had been conducting private practice as a solicitor in Castleisland. It continued up to the time of his conviction and imprisonment. He has not resumed practice since then. It is right to say, and I repeat it now, that, 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 police and he placed before the Law Society and this court on that occasion and again today of the order of 100 testimonials from former clients of his attesting to his good conduct. They are all in similar form. I have similar type testimonials from dozens and dozens of people on this occasion concerning Mr. Enright and they all express the view that he is a fit and proper person to hold a solicitor's practising certificate. They support his right to resume earning a livelihood as a solicitor and his application to be restored to the Roll of Solicitors. They are all people in respect of whom he has handled legal business in the past and they all express a continuing confidence in him as a solicitor. So certainly insofar as former clients and residents in the Castleisland area are concerned, they see no reason why he cannot be restored and indeed say he ought to be restored to the Roll of Solicitors. That is certainly a matter that I am entitled to and do take into account on this application. I also take into account the other testimonials, which are not of a standard form type, and which attest to confidence being reposed in Mr. Enright by business persons operating businesses which are successful, in the Castleisland area and who have been acquainted with him for very many years indeed.

9. It is important that I should return to the whole rationale for the striking-off order, which was made. As I said on that occasion, I took fully 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 took into account the admissions which he made before the Disciplinary Tribunal and that he made those admissions at the very outset. I took into account then, as I said, that I had regard to the fact that for about 20 years subsequent to the commission of the offences, he practised as a solicitor to the complete satisfaction of his clients and the Law Society. I also said that I regarded it as highly unlikely that there would be any repetition of any offence of dishonesty on his part and the view that I had then has not changed today. I therefore pointed out that there was no need to suspend him or strike him off from practising as a solicitor with that object in mind. So I out-ruled a strike-off order as a form of punishment. He had already received his punishment. I also out-ruled the necessity for a strike-off order because of a fear or apprehension that there might be any repetition of this conduct. I also take into account, as I did then, the fact that the dishonesty in this instance was committed whilst he was a solicitor but not practising as such, so it was not dishonesty *qua* solicitor, it was dishonesty *qua* employee who happened to be a solicitor, and that is a distinguishing feature, which is of some importance.

10. I then went on to say: -

"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'."

That is a direct quotation from the Master of the Rolls. I said:

"In order to maintain the reputation of the solicitors' profession and to sustain public confidence in the integrity of that profession, I share its (the Law Society's) 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."

I said:

"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."

11. That line of thinking is eloquently reproduced by what was said by Lord Donaldson of Lymington, the former Master of the Rolls, where he said:

"Both branches of this profession are totally dependent for their acceptance by the public upon having an unassailable reputation for honesty, not as individuals, but by virtue of the members of the profession."

He went on to say:

"It should be quite sufficient that somebody says: 'I am a barrister' or 'I am a solicitor' and upon that being said, for the member of the public dealing with them, to say: 'That is quite sufficient for me, anything he says will be truthful and will be honest and I need enquire no further'."

That is the whole basis upon which the solicitors' profession in particular has to operate. Clients coming in to a solicitor don't ask for testimonials or Garda reports or Garda vetting. They simply assume, and they are entitled to assume, that when a person legitimately holds himself out as a solicitor then that is sufficient for them to be assured that anything that he says will be truthful and will be honest and that no further enquiry is necessary. That is the whole basis upon which the order to strike-off was made, in order to ensure that maintenance of the reputation of the solicitors profession was sustained and that public confidence in the integrity of that profession could likewise be sustained.

12. On that occasion when I made the striking-off order, representations were made to me by counsel on behalf of Mr. Enright to the effect that to make that order was to consign him to unemployability in his chosen profession in perpetuity. I pointed out that that submission was not correct because that was not necessarily so. I went on to say that 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.

13. When he was considering this aspect of the matter in the *Burke* case, Keane C.J., having pointed out the significantly limited number of cases where such an application might be brought successfully, went on to say as follows:

"In a case where the acts of dishonesty appear to have been wholly out of character and were committed when the solicitor was under severe pressures of some kind, the exercise of the discretion ... may be justifiable. The fact, if it be the fact, that in his or her subsequent career, the solicitor had been entrusted with positions of trust and responsibility without any further lapses would be an additional factor in enabling the court to exercise the jurisdiction in his or her favour. However, it would be inappropriate to attempt an exhaustive definition of the circumstances in which a solicitor might properly be restored to the rolls in cases to which subsection (4) apply: it is sufficient to emphasise again that the category of cases in which re-admission to the profession is permissible will inevitably be limited."

14. Needless to say, on an application of this sort, the views of the Law Society are an important component in the elements that I have to consider in the exercise of what is a discretionary jurisdiction. In that regard Mr. Enright has been before the relevant committee of the Law Society on two occasions. I do not propose to go into any great detail as to the matters which were before that committee. They are set out exhaustively in the exhibit, which contains the minutes of what went on, on the 28th June, 2017. The committee, having had the opportunity of listening to Mr. Enright and having heard what he had to say, and also having heard from another gentleman, Mr. Flynn, who made some ill-advised comments on that occasion, came to the following conclusion:

"... The chairman stated that the committee had come to the view that the application for reinstatement to the Roll of Solicitors was premature and that this would be articulated to the High Court. The chairman stated that ultimately it was for the President to decide. However he stated that, if the President did restore Mr. Enright to the Roll of Solicitors, then the Society would need to consider imposing conditions on Mr. Enright's practising certificate on reinstatement. Mr. Enright asked what those conditions would be; the chairman reiterated that a common condition would be that Mr. Enright be only permitted to practise as an employed solicitor under the direct control and supervision of a solicitor of 10 years standing to be approved in advance by the Law Society. The chairman stated that another condition could be a requirement for a co-signatory on the client account. He stated that this arrangement would usually apply only concerning financial matters and that this was not present in Mr. Enright's case. The chairman further stated that the operative strike-off date was the 4th April, 2016 and not the 28th June, 2013 and the chairman and the committee wished Mr. Enright well for the future and Mr. Enright thanked the committee."

15. Mr. Enright brought this motion of the 24th May, 2017 before the court for its consideration and, having regard I suspect to that expression of view by the Law Society, an application was made on the 9th October, 2017 to me to strike it out with liberty to re-enter. There was then some further exchange and the matter went back before the relevant committee again. In the affidavit, which I saw for the first time this morning, sworn by Mr Elliott, he sets out what occurred on this second occasion. There is a minute indicating the view of the Law Society on that occasion and it is fair to say that it had changed. That change is reflected in the minute of the 10th May, 2018 and the view of the committee is expressed through the mouth of its chairman who is reported as saying:

"The chairman stated that the committee had deliberated in the matter and was satisfied, having considered the entire circumstances surrounding the application, to instruct the Society's legal team to the effect that the Society has no objection to Mr. Enright's application for restoration of his name to the Roll of Solicitors. He stated that ultimately it will be a matter for the President of the High Court to determine. He stated that, if the application is successful, it would be the recommendation of the Society that Mr. Enright engage in appropriate CPD courses to familiarise himself with any changes in the law. The chairman wished Mr. Enright well and Mr. Enright thanked the committee."

There was material put before that committee, similar to what is before me today, that past clients, about 150 in number, all of whom speak highly of Mr. Enright, are clearly content to have him continue to give them legal advice and to represent them. There is also the fact that he had a completely clear record with the Law Society during the 20 years or so that he continued in practice before the criminal proceedings came to trial.

16. So I go back to what has to be my guiding light, the statutory provision in subsection (4) and the prohibition on the court from making a restoration order unless the court is satisfied that, having regard to all the evidence that the applicant is a fit and proper person to practise as a solicitor and that the restoration of the applicant to the Roll would not adversely affect public confidence in the solicitors' profession as a whole or in the administration of justice. In considering the exercise of that discretion I take into account all of the evidence that has been placed before me. I take into account the view of the regulator, the Law Society. The Law Society must first and foremost be concerned with ensuring that the reputation of the profession which it regulates is not damaged. That profession builds itself entirely upon the concept of trust and its members being trusted simply because they happen to be solicitors. Obviously if that body has come to the conclusion that it sees no danger to its reputation being damaged by the restoration of Mr. Enright to the Roll, that is a matter which weighs heavily with me. If it were otherwise, if the Law Society were not taking that view, equally it would be a matter that I would have to give very considerable attention to. But, as it acknowledges, the ultimate decision is one which is vested in me. I take into account what has been said by other judges as to the limited

circumstances in which success can be expected on an application of this sort.

17. There is a twofold test that has to be met. I have to be satisfied that he is a fit and proper person to practise as a solicitor before I can consider the restoration of Mr Enright to the Roll of Solicitors. I am satisfied that he is a fit and proper person to practise as a solicitor and I come to that conclusion for a number of reasons, some of which at least I mention now. First of all, the acts of dishonesty were not carried out by him, as I have already pointed out, in his capacity as a solicitor; they were carried out by him as a former employee who happened to be a solicitor. But, even so, as a solicitor you carry the badge of that profession and conduct engaged in of a dishonest type, even if not carried out qua solicitor, nonetheless has repercussions. Indeed it had repercussions for Mr. Enright. There were at least two such repercussions. One, the trial judge at the criminal trial felt it appropriate to impose a custodial sentence, and second he was struck off the Roll by me some two years or so ago. I take into account that he conducted the practice of a solicitor for almost 20 years between this offence and his ultimately being sent to prison. During that time there is not a whit of complaint, either on the part of the Law Society, on the part of his clientele, or on the part of any other authorities. So he conducted himself with perfect propriety for that period of time. There is no reason to believe that he would not continue to do so. So I am satisfied that he is a fit and proper person to practise as a solicitor.

18. The second matter of which I have to be satisfied is that the restoration of him to the Roll would not adversely affect public confidence in the solicitors' profession as a whole or in the administration of justice. In that regard I have to assume that "adversely affecting public confidence in the solicitors' profession" is something which has to be viewed through the prism or the lens of an informed public. I do not speak about a public opinion which is formed by inaccurate information or is based on prejudice or ignorance. I speak about public confidence in the solicitors' profession on the basis that the public would be both reasonable and accurately informed. In this case I think that any member or members of the public, having the material put before them which has been put before me, would conclude that the restoration of Mr. Enright's name would not be destructive of their confidence in the solicitors' profession as a whole or in the administration of justice. In coming to that conclusion they would take into account the fact that the dishonesty is now of very considerable antiquity, that it was not dishonesty qua solicitor, that he served a term of imprisonment in respect of it, that during the 20 years before the matters coming to trial and his ultimate incarceration he carried on a successful solicitors practice with perfect propriety and with no animadversion upon his probity. They would also take into account that, with a view to ensuring maintenance of confidence in the solicitors' profession, he has been struck off the Roll of Solicitors for now slightly in excess of two years.

19. In the course of the ruling, which I gave, striking him off, I did, as I have already pointed out, make it clear that that order was not one which was made in perpetuity but there might well be circumstances which would justify it being revisited with an outcome, which would be of benefit to Mr. Enright. I believe that it was unwise to make the application as quickly as he did originally because, as I made clear, a passage of time would need to occur subsequent to the strike-off order and other conditions would have to be met. I think to have come back as quickly as he did was overly optimistic on his part. I think the Law Society quite rightly indicated that if he were to proceed with the application at that juncture it would oppose it. A further passage of time has taken place, which I think in all of the circumstances one could regard as reasonable, with a view to bringing this application with a reasonable prospect of success. Having regard to the attitude which the Law Society now takes, having regard to the material which has been put before me and which I have considered, the whole history of the matter, the rationale for the original strike-off, the rationale behind the trial judge's decision in the criminal proceedings, the numerous testimonials both of a boilerplate type and also the more individual ones which have been put before the court, I am satisfied that this is one of the exceptional cases in which I should exercise the discretion conferred upon me under subsection (4) in favour of Mr. Enright.

20. In so doing I have come to the conclusion that the applicant is a fit and proper person to practise as a solicitor and that his restoration to the Roll would not adversely affect public confidence in the solicitors' profession as a whole or in the administration of justice. In those circumstances I propose to accede to the application seeking his restoration.

21. I have given thought to the question of whether that restoration should be conditional. I have out-ruled in its entirety the suggestion that was once made by the Law Society that it should be conditional upon him working under the supervision of an experienced solicitor of 10 years standing. I do not believe that that is necessary and it would be entirely disproportionate. Likewise, I do not believe that it is necessary that there should be a second signatory on any account. Again I think that that would be disproportionate having regard in particular to the fact that the dishonesty was not carried out in his capacity as a solicitor; that it is well over 20 years ago; and that he has had an unspotted reputation as a solicitor, both competent and honest, since that time. So the only possible conditionality would be in respect of him taking whatever courses are appropriate with a view to ensuring that he apprises himself of any changes in the law which have taken place since he ceased to practise as a solicitor. In that regard what I propose to do is to make a full order for his restoration to the Roll but on the understanding, (I am not going to make it conditional because I think that that would also be somewhat disproportionate in circumstances where I am told that he is perfectly willing to engage in such courses), that I will simply leave it to the Law Society and Mr. Enright to work out what those courses, their duration and type should be. If there is any dispute that arises in that regard, and I would hope that there would not be, then the matter can be brought back before the court. But rather than setting out in black and white form something in respect of which I do not have a great deal of information, I do not propose to make the restoration conditional upon that. But it is the understanding of the court that any course which is considered appropriate by the Law Society, having regard to the sort of practice that Mr. Enright would be going to engage in, will be undertaken by him without quibble. There will be liberty to apply if there is any dispute in that regard.