Neutral Citation No. [2005] IEHC 61

THE HIGH COURT
JUDICIAL REVIEW

[2004 No. 645 J.R.]

BETWEEN

KIRAN P. O'DUFFY

APPLICANT

AND
THE LAW SOCIETY OF IRELAND

RESPONDENT

Judgment of O'Neill J. delivered the 4th day of March, 2005.

1. The applicant is a solicitor and in his statement grounding this application for judicial review he seeks an order of *certiorari* quashing the decision of the respondents made on the 22nd July, 2004, to refer the applicant to the Disciplinary Tribunal and also an order of prohibition restraining the respondent by its Compensation Fund Committee, its officers, servants or agents or any other persons acting on its behalf from acting further, proceeding with, relying on or otherwise making any use whatsoever in furtherance of any disciplinary action against the applicant before the Disciplinary Tribunal of the purported findings detailed in the reports of Jim Ryan and Noirín McCarthy dated 12th May, 2004 and 17th June, 2004 and/or the pleadings and proceedings in the matter entitled "*The High Court Special Summons The Law Society of Ireland, applicant and Kiran P.O'Duffy, respondent* bearing record no. 2004/198 SP.

2. The grounds in which these reliefs and indeed other ancillary reliefs were sought are that in referring the reports dated 12th and 17th May, 2004, to the President of the High Court in the above mentioned proceedings bearing record no. 2004/198SP, the respondent no longer retained seisin of the purported complaints contained within the reports and is *functus officio* in this regard and further that the President of the High Court in making an order dated 14th June, 2004, has made a finding of fact on the basis of the report dated 17th May, 2004 and any breaches by the applicant of the Solicitors Accounts Regulations 2001 and accordingly the respondent has no jurisdiction to embark on a hearing to consider whether the applicant is in breach of the said regulations as detailed in the said reports.

3. The background to this matter is as follows.

4. On 20th May, 2004, the applicant attended before the Compensation Fund Committee of the respondent in relation to an investigating accountants report dated 12th May, 2004, of his practice pursuant to the Solicitors Accounts Regulations 2001. The Compensation Fund Committee at this meeting decided that the respondent should issue proceedings under s. 18 of the Solicitors (Amendment Act) 2002 against the applicant. The respondent issued these proceedings by way of special summons on 21st May, 2004, entitled the High Court Record No. 2004 /198 SP, *the Law Society of Ireland, applicant v. Kiran P. O'Duffy, respondent*. The special summons proceedings came on before the President of the High Court Mr. Justice Finnegan on 14th June, 2004. In these proceedings the reliefs sought by the respondent were:

> 1. An order pursuant to s. 18 of the Solicitors Amendment Act, 2002 prohibiting the applicant from breaching the Solicitors Accounts Regulations 2001 and, particular orders sought under s. 18 in the circumstances, and an order for further and other relief and an order for costs.

5. These special summons proceedings were grounded upon three affidavits. Two of the affidavits were sworn by the investigating accountants detailing their findings, and a third affidavit was sworn by the Register of Solicitors and Director of Regulation of the Law Society and Secretary of the Compensation Committee of the Society Mr. John Elliot.

6. On 14th June, 2004, the President of the High Court determined and ordered:

> 1. That the applicant herein be prohibited from continuing his breach of regulations 7 (2) (a) of the Solicitors Accounts Regulations 2001 by clearing all debit balances identified on its client account as at the 28th April, 2004, as set out in the schedule to the order.
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> 2. That the applicant be prohibited from continuing his breaches of the regulations by prohibiting him from creating future debit balances into the future.

7. The case was adjourned to the 21st June, 2004 and the question of costs was reserved.

8. Before that date, the investigating accountants again attended the applicant's practice by agreement for the purpose of ascertaining that the debit balance in the client account had been cleared. A supplementary report dated 17th June, 2004, of the accountants alleged that a portion of the debit balance remained unclear. On 21st June, 2004, the case was adjourned by the President of the High Court to 12th July, 2004. On this date it was confirmed to the President that all debits in the client account had been cleared and the case was adjourned to the 26th July, 2004. On 26th July, 2004, the President struck out the proceedings and awarded the cost to the Law Society.

9. On 24th July, 2004, the Compensation Fund Committee was convened for the purpose of reviewing matters arising from the investigating accountants reports dated 12th May, 2004, and 17th June, 2004, and the special summons proceedings. The applicant had been requested to attend the meeting of the Compensation Fund Committee by a letter of the 9th July, 2004, from the respondent's which was in the following terms:

> *"Please note that you are required to attend the next schedule meeting of the Committee which will take place at the above address on Tuesday 22nd July, 2004 when you should be in attendance at 4.00 pm. The committee will review the matters arising from the investigating accountant's reports on the practice dated 12th May, 2004, together with the matters outlined in the supplementary report dated 17th June, 2004. The Committee will have before them a booklet containing a copy of the proceedings before the High Court brought pursuant to s. 18 of the Solicitors (Amendment Act) 2004 which booklet includes copies of the two reports and your affidavit sworn 21st June, 2004, to the effect that the deficit identified in the supplementary report had been cleared. I enclose a booklet of the copy proceedings and exhibits.*
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> *I also enclose a copy of my letter of today's date to your solicitor Mr. Giles Kennedy regarding same.*

I wish to emphasise the importance of attending the meeting as a decision may be made by the Committee to refer you to the Disciplinary Tribunal together with any other act which may be deemed appropriate."

10. The applicant attended the meeting of the compensation fund on 22nd July 2004 as requested with his solicitor and senior counsel. In the light of the intentions expressed by the Registrar of the respondent in the letter of 9th July, 2004, submissions were made at the outset of the meeting by senior counsel which were to the effect that the Committee was *functus officio* with respect to the complaints of breaches of the solicitors Accounts Regulations 2001 and as detailed in the reports dated 12th and 17th May, 2004 and therefore had no jurisdiction to consider the said reports or to indeed make a decision with respect to same, including a decision to refer the applicant to the Disciplinary Tribunal. Senior counsel submitted to the Tribunal that the complaints of breaches of a said regulations by the applicant had already been referred to the President of the High Court under s. 18 of the Solicitors (Amendment) Act 2002 by way of the aforementioned special summons proceedings and that the learned President had made a finding of fact in those proceedings with respect to same as evidenced by his order of the 14th June, 2004. It was submitted that in the light of such referral by the Committee to the High Court and the findings of fact made by the said court, the committee could no longer consider and/or determine any matters arising from the said reports and had no power to do so under the Solicitors Acts 1954 - 1994.

11. The Compensation Fund Committee having considered these submissions rejected them and proceeded to consider the contents of these reports together with the pleadings and proceedings in the special summons proceedings and reached a determination that the complaints made against the applicant should be referred to the Disciplinary Tribunal.

12. The issue which has to be resolved in this case is whether in circumstances where the respondents make an application to the High Court under s. 18 of the Solicitors (Amendment) Act 2002, are they then precluded from invoking and pursuing the disciplinary process as contained in s. 7 of the Solicitors (Amendment) Act 1960 as inserted by s. 17 of the Solicitors (Amendment) Act 1994, and as amended by s. 9 of the Solicitors Amendment) Act 2002 where the complaint which is the subject matter of the application to the High Court under s. 18 of the Solicitors (Amendment) Act 2001, is the same as or similar to the subject matter of the complaint sought to be referred to the Disciplinary Tribunal for inquiry.

13. An alternative way of expressing the issue stated above is whether or not the power conferred on the respondents to make application under s. 18 of the Solicitors Amendment Act 2002 is to be construed as additional to the powers the respondents already had or whether that power is to be construed as an alternative to the powers of the respondent and specifically to the power of the Compensation Fund Committee to refer a matter to the Disciplinary Tribunal for inquiry.

14. Section 18 of the Solicitors (Amendment) Act 2002 reads as follows:

"18.-(1) Where, on the application of the Society, it is shown to the satisfaction of the High Court-

(a) that a solicitor or any other person has contravened, is contravening or is likely to contravene any provision of the Solicitors Acts, 1954 to 2002, or,

(b) that a solicitor has contravened, is contravening or is likely to contravene any provision of regulations under those Acts,

(c) the Court may by order prohibit the solicitor or other person concerned from contravening that provision, notwithstanding that any such contravention may constitute an offence and notwithstanding section 77 of the Principal Act.

(2) An order under subsection (1) of this section may contain such provisions of a consequential nature as the Court considers appropriate."

15. It was submitted by Mr. Gilhooley for the applicant submits that s. 18 of the 2002 Act was enacted in response to the case of the *Incorporated Law Society of Ireland v. Carroll* [1995] 3 I.R. 145 in which the respondents issued proceedings against the defendants in that case seeking inter alia declaratory relief that the defendants were in breach of the Solicitors Acts 1954 and injunctive relief restraining any further breaches of the Solicitors Acts. The acts alleged against the first four defendants were that they had represented themselves to members of the public as solicitors, they not being solicitors, in breach of the Solicitors Acts. That, was an offence punishable in summary proceedings. The respondents sought a permanent injunction restraining these defendants from holding themselves out as Solicitors, or otherwise purporting to act as solicitors. The respondents action failed because it was held by the High Court and by the Supreme Court on appeal that the respondents lacked the necessary *locus standi* to bring civil proceedings in respect of the conduct alleged. It was submitted that s. 18 was enacted in order to provide the respondents with a necessary and clear locus standi to seek conjunctive relief in respect of contraventions or future contraventions of the Solicitors Act and thus to provide them with a rapid and efficacious weapon for the protection of the public.

16. It was submitted that under s. 18 the High Court must first consider whether it is satisfied under sub-s. (1) (a) that the solicitor has contravened or is a likely to contravene any provision of the Solicitors Acts 1954 to 2002 or under sub-s. (1) (b) that he or she has contravened or is likely to contravene any provision of the regulations made under these Acts.

17. It was submitted that in this case the learned President was on 14th June, 2004, satisfied and made a finding of fact that the applicant had breached regulation 7 (2) (a) of the Solicitors Accounts Regulations 2001. Having made this finding of fact the learned President made an order under s. 18 (1) prohibiting the applicant from continuing his breach of the said regulation 7 (2) (a). The learned President also made an order directing the applicant to clear all debit balances identified on his client account as of 28th April, 2004 and made an order prohibiting the applicant from creating further debit balances into the future.

18. These latter orders were made as consequential orders within the terms of s. 18(2).

19. It was submitted that the findings of fact necessarily made by the learned President amounted to findings of "misconduct" on the part of the applicant having regard to the definition of "misconduct" as contained in s. 3 of the Solicitors (Amendment) 1960, the relevant portion of which being amended by s. 7 of the Solicitors (Amendment) Act 2002 to read as follows:

"(c) the contravention of a provision of the Solicitors Acts, 1954 to 2002, or any order or regulation made thereunder."

20. It was submitted that the purpose and intent of s. 18 (2) is that the court should grant relief against the solicitor and any further and other orders as it sees fit in the circumstances, on the basis of the finding of fact already made by it under s. 18 (1) (a) or (b),

and the court's exercise of its jurisdiction should be viewed in the context not only of s. 18 of the 2002 Act but also having regard to the provision of s. 14 (3) of the Solicitors Act 1954 which refers to the inherent jurisdiction of the High Court, and is in the following terms:

> *"14(3) The Chief Justice or any judge of the High Court may, notwithstanding anything contained in this Act, exercise any jurisdiction over solicitors which he might have exercised if this Act had not been passed."*

21. It was submitted that the respondents having chosen to invoke the jurisdiction of the High Court under s. 18, was obliged either in reliance upon a jurisdiction to make ancillary orders under s. 18 (2) or on the inherent jurisdiction as preserved in s. 14 (3) to have raised any disciplinary issues arising out of the complaints made against the applicant as set out in the two accountants reports.

22. It was submitted that if the respondents are permitted to now commence an inquiry under the procedures for that purpose set out in the Solicitors Act that an entirely futile and useless proceeding will be set in being, because at the conclusion of an inquiry under that procedure it will be necessary for the Disciplinary Tribunal to embody their findings of fact in a report together with recommendations to the High Court and all of this will amount to an extremely convoluted oppressive and expensive process, for the applicant, to ultimately end up in the jurisdiction of the President of the High Court, again.

23. In addition it was submitted that as the disciplinary charge now sought to be pursued, is based upon the same facts and allegations prosecuted by the respondent and considered and adjudged upon by the High Court, using the civil standard of proof, if the respondent is permitted to proceed with the hearing before the Disciplinary Tribunal then the applicant will be subjected to a double jeopardy. When the matter would be ultimately before the High Court again for the second time, the court would be required to consider again, the matters referred to in s. 7(3)(c) of the Act of 1960 together with the sanction suggested by the respondent, with respect to the same conduct which was the subject matter of the earlier application under s. 18 of the Act of 2002.

24. It was submitted that having opted to invoke the jurisdiction of the High Court under s. 18 of the 2002 Act and having pursued the remedies available there to judgement and order, the respondents were now *functus officio* insofar as the matters complained about in the two accountants reports and cannot seek to now re-litigate these matters through the process of a disciplinary inquiry.

25. It was further submitted that the respondent cannot be permitted to re-litigate these matters via disciplinary inquiry because that would offend the *res judiciata* principle.

26. For the respondent it was submitted by Mr. McDermott that the power conferred upon the society to invoke the jurisdiction of the High Court under s. 18 of the Act of 2002 is an additional power rather than an alternative to the powers which the respondents already had. He submitted that if it were otherwise an absurd situation would result, in that the society would have to choose whether to seek and obtain emergency relief for the protection of the public under s. 18 and as a consequence confer an immunity on the offending solicitor from disciplinary sanction, or to leave the public exposed by not seeking relief under s. 18, so as to preserve the disciplinary process against the solicitor.

27. He submitted that it could never have been intended by the Oireachtas in enacting s. 18 to have imposed such an invidious choice upon the respondents and that it was clear from the legislation that it was intended that the s. 18 power was to be additional to the powers already enjoyed by the respondent. It was submitted that the s. 18 jurisdiction was entirely different to the disciplinary jurisdiction of the Disciplinary Tribunal. The purpose of s. 18 was to prevent or restrain conduct which was in breach of a Solicitor's Acts or regulations. In essence the relief was directed towards the future i.e. to prohibit future conduct. As a matter of common sense one could not prohibit that which had already taken place.

28. The focus of the disciplinary inquiry was directed to past conduct; one could not be disciplined for what one had not yet done. The essential purpose of s. 18 was to protect the public, probably on an emergency basis, by enabling the respondents to invoke the jurisdiction under s. 18. It was submitted that the standard of proof required for the purposes of s. 18 relief is markedly different to that which would be required in a disciplinary hearing to establish misconduct. In the former case all that was required is, that the matters set out in s. 18 (1) (a) or (b) are "shown to the satisfaction" of the High Court, a low standard of proof, whereas in an inquiry before the Disciplinary Tribunal in order to establish misconduct, that misconduct would have to be proved at the very least on the balance of probability or arguably, to a much higher standard of proof.

29. The disciplinary process was a staged process which involved in the first place the gathering of information either from a complaint by a client or a routine inspection of a solicitor's practice; a hearing before the relevant committee in this case the Compensation Fund Committee; a referral to the Disciplinary Tribunal; a *prima facie* decision by the Disciplinary Tribunal; a full oral hearing before the Disciplinary Tribunal, a hearing before the President of the High Court and finally a ruling by the President of the High Court. In this case the applicant has sought to interrupt the process at a very early stage and namely the stage of referral by the Compensation Fund Committee to the Disciplinary Tribunal and before any decision has been taken by the Disciplinary Tribunal that a *prima facie* case is made out and before any charges of misconduct are formulated at all.

30. It was submitted that this entire process involves a hearing conducted in accordance with the full panoply of rights consistent with natural justice and fair procedures and it is readily to be envisaged, that were it sought to have disciplinary sanctions imposed on a solicitor, as part of the reliefs ancillary to orders under s. 18, that objection would be taken on the grounds that a solicitor was being deprived of the benefit of the procedure set out in the Solicitors Act for the holding of inquiries by the Disciplinary Tribunal.

31. It was submitted that notwithstanding the preservation of the inherent jurisdiction of the High Court under s. 14 (3) of the Solicitors Act 1954, having regard to statutory procedures that have been provided under the Solicitors Acts for the holding of inquiries by the Disciplinary Tribunal, that it was never intended by the Oireachtas that s. 18 could be used for or indeed that s. 14 (3) of the Act of 1954 would be used for hearing and determining disciplinary matters including the imposition of sanctions for misconduct. Hence it was submitted that s. 18 was there solely for the purpose of providing relief usually on an emergency basis to restrain in the future breaches of the acts or regulations, and no more, and that any ancillary orders to be made under s. 18 (2) would be for the purposes of achieving that sort of restraint. Hence it could not be said that in invoking s. 18, that the respondents could be in any way be inhibited from pursuing the disciplinary process as provided for under the Solicitors Acts.

32. It is submitted that the second relief sought namely an order preventing the respondents from using in furtherance of disciplinary action the findings in the reports of the two accountants, is a relief which this court cannot on the authorities grant. In essence what is sought in this order is an order rendering inadmissable this material in a subsequent hearing before the Disciplinary Tribunal or in any other disciplinary proceeding. It was submitted that issues as to the admissibility of evidence in proceedings is a matter which is peculiarly within the jurisdiction of the tribunal in question and it is only when the particular material is tendered as evidence that a tribunal can hear and determine the question of whether or not it is admissible. In other words it is not open to this court in advance

to declare material of this kind inadmissible. In support of this submission the respondents rely on the case of *Byrne v. Grey* [1988] I.R. and *Berkley v. Edwards* [1988] I.R. 217, *Director of Public Prosecutions v. Windle*, [1999] 4 I.R. 280 and *Blanchford v. Hartnett* [2001] 1 I.L.R.M. 193.

33. It was also submitted that it was not open to this court in advance to direct the procedures be followed by an administrative body and in this regard reliance was placed in the case of *Phillips v. Medical Council* [1992] I.L.R.M. 469 and *Carroll v. Law Society* [2000] 1 I.L.R.M. 161.

34. It was submitted that in the absence of the finding of the gravity of that which was made in the case of *Kennedy v. Law Society (No. 3)* [2002] 2 I.R. 458 that this court should be slow to grant any relief that would prevent the respondents from relying upon information obtained by its accountant in their investigation of the applicant's practice.

35. It was submitted that the courts of this jurisdiction have shown a marked reluctance to intervene in the early stages of a disciplinary process, this being particularly so when the Disciplinary Tribunal had yet to conduct a consideration as to whether a *prima facie* case exists and, at that stage the applicant would have the benefit of legal representation and the right to submit such material to the tribunal as he saw fit.

36. Finally it was submitted that double jeopardy cannot arise here as it does not apply to civil proceedings. In this regard the respondents rely on the case of *N.I.B. (no. 2)* [1999] 3 I.R. P 190.

Decision

37. I am satisfied that s. 18 of the Solicitors (Amendment) Act 2002 was enacted for the purpose of giving to the respondents a power to apply to the High Court for injunctive type relief to prevent ongoing breaches of the Solicitors Acts and/or Regulations and was enacted to fill the lacuna in the law exposed in the case of *The Law society of Ireland v. Carroll* (1995) 3 I.R. at 145. I am quite satisfied the power given to the respondents in s. 18 was additional to the other statuary powers available to the respondents under the Solicitors Acts and was never intended to be an alternative to the invoking of the normal disciplinary process as provided for in these Acts. To construe this body of legislation as a whole so as to make these powers alternative to each other would be to produce absurdity, in that, if the respondents decided to invoke s. 18 they would then be precluded from pursuing disciplinary proceedings against the offending solicitors regardless of how serious the allegation of misconduct was. On the other hand, the respondents, if they wished to preserve their recourse to the disciplinary process, they would be inhibited from invoking s. 18 and thereby perhaps exposing members of the public to continuing wrongdoing by an offending solicitor, or unqualified persons.

38. In my view it cannot be seriously suggested that the Oireachtas intended that the statutory powers would operate in this fashion.

39. It was submitted by Mr. Gilhooley that having invoked the s. 18 jurisdiction, that there was in sub-s. 18 (2) ample jurisdiction to deal with disciplinary matters arising out of the same facts as necessarily, had to be proved for the purposes of s. 18(1).

40. I am satisfied that the range of order contemplated by s. 18 (2) was never intended to include in effect, disciplinary proceedings, particularly having regard to the elaborate statutory scheme that is in place for dealing with these matters. Hence the jurisdiction conferred on this court in s. 18 (2) does not include a jurisdiction to hear and determine disciplinary issues arising out of the facts proved for the purposes of sub-s. 18 (1), where those disciplinary matters are amenable to the disciplinary procedures set out in the Solicitors Acts.

41. Whilst s. 14 (3) of the Solicitors Act 1954 preserves the jurisdiction of the High Court to directly discipline solicitors, it would in my view, only be in extraordinary circumstances that this court would exercise that jurisdiction. If a client and a solicitor or indeed the respondents were to invoke that jurisdiction, it is my opinion that this court should, except in the rarest circumstances, decline that jurisdiction having regard to the fact that the Solicitor's Acts provide a procedure for dealing with these disciplinary matters, which culminates in proceedings before the President of the High Court.

42. In this case there was no unusual feature such as to warrant a departure from the normal disciplinary jurisdiction of the respondents as provided for under the Solicitors Acts so as to resort to the jurisdiction of this court as preserved under s. 14 (3) of the Solicitors Act 1954 and neither party quite sensibly and understandably asked the learned President when the matter was before him, or since, to exercise that jurisdiction.

43. Whilst it may be the case, as was alluded to by Mr. Gilhooley that the culmination of the disciplinary procedure is a report from the Disciplinary Tribunal to the High Court, it must be borne in mind that other material not the subject matter of the s. 18 application could legitimately have to be considered by the Disciplinary Tribunal and have to be included in the report and furthermore the tribunal could be obliged to give its opinion as to the fitness or otherwise of the solicitor to be a member of the solicitors profession having regard to their finding and also their recommendations as to the sanction which in their opinion should be imposed having regard to their findings and any finding of misconduct. Clearly these are matters which are having regard to my conclusions above as to the range of jurisdiction encompassed in s. 18 (2) matters which are, outside the ambit of the jurisdiction conferred upon by s. 18.

44. I have therefore come to the conclusion that there is no legal basis for asserting that the respondents are functus officio because they invoked the s. 18 jurisdiction and had heard and determined complaints arising out of the two accountant's reports, and orders made under s. 18.

45. That conclusion results clearly in a refusal of the order of certiorari which is sought and in my opinion also leads to a refusal of the order of prohibition that is sought restraining the respondent from relying or otherwise making use of the findings detailed in the accountant's report in any disciplinary action against the applicant.

46. Additionally for the reasons set out below, prohibition should be refused.

47. I would accept the submission of Mr. McDermott, that this court should not in judicial review proceedings or indeed in any other proceedings seek to restrain in advance the admissibility of material to be offered in evidence before the Disciplinary Tribunal or indeed to regulate in advance the procedures to be followed. So far as the latter is concerned no difficult arises because in the first instance no complaint is made about the procedures to be followed and in any event these are well regulated by statute. So far as the contents of the two accountant's reports are concerned in my view, the admissibility into evidence of these reports or the contents of these reports is a matter which ought to be left for determination to the Disciplinary Tribunal. The admissibility of this material can be argued before the disciplinary tribunal and it is entirely within their competence to make a determination on it. I am of the opinion that this conclusion is entirely in accordance with the well settled line of authority consisting of the cases of *Byrne v.*

Grey [1988] I.R. 31, *Berkley v. Edwards* [1999] I.R. 217, *Director of Public Prosecutions v. Windle* [1999] 4 I.R. 280 and *Blanchford v. Hartnett* [2001] 1 I.L.R.M. 193.

48. This brings me to the issue of double jeopardy.

49. In this case it is contended that the holding of an inquiry by the disciplinary Tribunal in respect of the complaints made in the two accountants reports, which were the subject matter of the hearing before the learned president would expose the applicant to a double jeopardy.

50. The proceedings under s. 18 sought injunctive type relief, the object of which was to compel the applicant into full compliance with the 2001 regulations. It did no more than that, it merely obligated by way of court order the applicant into compliance with these regulations an obligation which of course rests on all solicitors.

51. The purpose of any disciplinary inquiry would initially be to determine whether there is a *prima facie* case of misconduct and following upon that, after a full hearing, to determine whether or not on the evidence, the applicant has been guilty of misconduct.

52. In my view these are two entirely different kinds of proceedings with entirely separate and distinct results. For that reason alone it can be said that double jeopardy does not arise.

53. The law in relation to double jeopardy was carefully reviewed by Kelly J. in *re: [North Irish Bank Limited (no. 2)* [1999] 3 I.R. 190] at pages 204 and 205. The following passage from his judgment commencing at page 204 with which I respectfully agree illustrates the relevant principle;

> *"Even if the principle of double jeopardy did apply, it is clear that it is a narrow principle of limited effect. It concerns itself with identical or similar charges not with identical evidence. In Reg. v. Connelly [1964] A.C. 1254, Lord Morris of Borth-y-Gest set out the governing principles concerning its applicability. In the course of his consideration of those principles he said at p. 1306:-*
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> > *"... what has to be considered is whether the crime or offence charged in the later indictment is the same or is in effect or is substantially the same as the crime charged (or in respect of which there could have been a conviction) in a former indictment and that it is immaterial that the facts under examination or the witnesses being called in the later proceedings are the same as those in some earlier proceedings."*
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> *This decision was cited with approval by the Supreme Court in O'Leary v. Cunningham [1980] I.R. 367 at p. 379 per Kenny J.*
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> *Reg v. Connolly [1964] A.C. 1254 was applied by the Court of Appeal in England in R. v. Beedie [1998] Q.B. 356 a case relied upon with some force by the applicants. The court of appeal held that the doctrine was to be defined narrowly and applied only where the same offence was alleged in the second indictment as in the first. It seems to me that this case did no more than apply the principles established in Reg. v. Connolly."*

54. Earlier Kelly J. at the top of page 204 said the following:

> *"The principle of double jeopardy is normally one associated with criminal law. It may arguably extend to other tribunals which exercise disciplinary functions…".*

55. Whilst it is a legal possibility for double jeopardy to arise as between proceedings before the disciplinary tribunal, it being the second tribunal and an earlier proceeding, in this case it is quite clear that the proceeding under s. 18 and the proceedings before the disciplinary tribunal are of a wholly different character and could not be said at all and to be the presentation of the same charge in both cases. It is quite clear from the authorities that as between criminal proceedings and subsequent disciplinary hearings it is extremely difficult to establish the applicability of the principle of double jeopardy, a *fortiori*, it would appear to me that as between civil proceedings such as those involving s. 18 and later disciplinary proceedings such as are provided for under the solicitors Act, that the application of the principle would appear for all practicable purposes and arguably even as a theoretical legal prospect, to be entirely excluded.

56. This brings me finally to the question of res judiciata. An essential aspect of the application of this doctrine is that in the later proceeding it is sought to litigate the same question or issue that has been litigated between the same parties in earlier proceedings to a final determination. Manifestly having regard to what I have said above in relation to the different nature of the s. 18 jurisdiction and of the Disciplinary jurisdiction of the respondents under the solicitors Acts, it necessarily follows that in the disciplinary proceedings the same issue is not being litigated. The issue which would be litigated in disciplinary proceedings is whether or not there has been misconduct on the part of the applicant. Whilst this would involve a consideration of the material in the accountant's reports, other material which was not all the subject matter of the section 18 material might also be legitimately considered and other issues apart altogether from those considered under s. 18 could legitimately arise.

57. That being so it would appear to me that an essential ingredient of *res judiciata* is missing and hence res judiciata does not arise in this case.

58. For all of the foregoing reasons therefore I have come to the conclusion that I must refuse the reliefs sought in these proceedings.