

THE HIGH COURT

[2017 No. 27 SA]

IN THE MATTER OF IAN MALLON SOLICITOR PRACTISING AS A SOLICITOR IN IAN MALLON SOLICITORS, 49, PATRICK STREET,
NEWRY, CO. DOWN

AND

IN THE MATTER OF AN APPLICATION BY THE LAW SOCIETY OF IRELAND TO THE SOLICITORS DISCIPLINARY TRIBUNAL UNDER
CASE REFERENCE NO. S10478/DT157/14

AND

IN THE MATTER OF THE SOLICITORS ACTS 1954-2013

AND

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 7 OF THE SOLICITORS ACT 1960, AS SUBSTITUTED BY SECTION
17 OF THE SOLICITORS (AMENDMENT) ACT 1994 AND AS AMENDED BY SECTION 9 OF THE SOLICITORS (AMENDMENT) ACT
2002

BETWEEN

IAN MALLON

APPELLANT

AND

LAW SOCIETY OF IRELAND

RESPONDENT

JUDGMENT of Mr. Justice Kelly, President of the High Court delivered on the 3rd day of October, 2017

Introduction

1. This is my judgment on an application by the respondent (the Law Society) to strike out *in limine* a purported appeal brought by the appellant (Mr. Mallon). The purported appeal has been brought by him in respect of what his notice of motion describes as a "*decision/finding of the respondent made on 16th day of February, 2017 that the appellant is not entitled to rely on a defence of estoppel against the Law Society in an application bearing the record no. S10478/DT157/14, before the Solicitors Disciplinary Tribunal*".

2. In fact, there is no such decision or finding of the Law Society. Mr. Mallon intends to refer to a determination made by the Solicitors Disciplinary Tribunal (SDT) of 16th February, 2017.

3. The Law Society contends that no appeal lies against that determination and therefore the purported appeal should be struck out for want of jurisdiction.

4. During the course of the hearing before me it appeared that both solicitor and counsel acting on behalf of Mr. Mallon failed in obligations of disclosure and candour both to the Disciplinary Tribunal and to this court. That matter will be the subject of a separate ruling.

Background

5. On 31st July, 2003 Mr. Mallon was admitted as a solicitor in this jurisdiction. Three years later he established the firm of Ian Mallon Solicitors. He is the principal of that firm and he practises at Ormond Quay in Dublin. That firm also operates in Northern Ireland with its principal offices there at Patrick Street in Newry, Co. Down. Mr. Mallon describes his practice as "*an undertaking which offers to provide and provides legal services, including personal injury legal services, to persons resident in Ireland and in the European Union*".

6. Mr. Mallon has been accused of misconduct by the Law Society. The SDT has commenced an inquiry in respect of those accusations and they are pending before that Tribunal.

The complaints

7. Two complaints have been made against Mr. Mallon by the Law Society. The first is that he had a direct or indirect connection, association or arrangement with Claims.ie and/or its operators and/or owners, whom he knew, or upon reasonable inquiry should have known, was acting or had acted in contravention of s.5 of the Solicitors (Amendment) Act 2002, which amounts to misconduct in accordance with s.3(d)(i) of the Solicitors (Amendment) Act 1960 as amended by s.24 of the Solicitors (Amendment) Act 1994 and s.7 of the Solicitors (Amendment) Act 2002.

8. The second complaint of misconduct is that Mr. Mallon allegedly accepted instructions to provide legal services to persons including the complainant which came via Claims.ie and/or its operators and/or owners, whom he knew, or upon reasonable inquiry should have known, was acting or had acted in contravention of s.5 of the Solicitors (Amendment) Act 2002, which amounts to misconduct in accordance with s.3(d)(ii) of the Solicitors (Amendment) Act 1960 as amended by s.24 of the Solicitors (Amendment) Act 1994 and s.7 of the Solicitors (Amendment) Act 2002.

9. Mr. Mallon denies these allegations of misconduct.

The SDT

10. On 17th January, 2017 the SDT convened to hear and consider these allegations against Mr. Mallon. It determined that it would hear an estoppel argument which had been raised by Mr. Mallon by way of a preliminary objection. That objection was heard on 16th February, 2017. On that occasion the SDT heard both evidence and submissions and came to the conclusion that the estoppel argument was without merit. The inquiry was adjourned until 13th March, 2017.

11. On 13th March, 2017 the SDT resumed the hearing but was met with an application for an adjournment by Mr. Mallon on a twofold basis. First, he sought an adjournment of the SDT hearing because he had on 3rd March, 2017 issued a plenary summons which *inter alia* challenged certain provisions of the Solicitors Acts. The second basis upon which he sought the adjournment was that he had on 7th March, 2017 commenced this purported appeal by a notice of motion of that date.

12. The Law Society opposed the application for the adjournment. Amongst other things it alleged that no appeal lay under the relevant legislation against the determination made by the SDT on the question of estoppel.

13. The SDT refused to grant the adjournment which was sought by reference to the plenary proceedings but it did grant the adjournment because of the existence of this purported appeal.

14. At no stage during the hearing of 13th March, 2017 was the SDT apprised of the fact that some few days beforehand on 9th March, 2017 Mr. Mallon had applied unsuccessfully to Stewart J. *ex parte* for an injunction seeking to restrain the SDT hearing of 13th March, 2017. The refusal of that injunction was not disclosed to this court during the course of the instant hearing until I happened to inquire during counsel's closing submission if an application for injunctive relief had ever been made on foot of the plenary summons. I was told for the first time that such an order had been sought and was refused. This fact had also not been disclosed to the Law Society at any stage until then. This non disclosure is compounded by the fact that certain correspondence which had been sent by the Law Society's solicitors to the plaintiff's solicitors prior to the application to Stewart J. was not disclosed to her either. I will deal with these various failures to disclose in a later ruling but I now turn to the Law Society's application to strike out the appeal *in limine*.

Disciplinary proceedings

15. Inquiries into allegations of misconduct on the part of solicitors are carried out pursuant to the provisions of the Solicitors Acts.

16. The SDT is created by those Acts and its functions and powers are derived from that legislation.

17. The right of appeal to this court from the SDT is likewise regulated by statutory provisions. Those provisions are s.7 of the Solicitors (Amendment) Act 1960 as substituted by s.17 of the Solicitors (Amendment) Act 1994 as amended by s.9 of the Solicitors (Amendment) Act 2002.

18. Section 7(3) as substituted by s.9(A) of the Solicitors (Amendment) Act 2002 provides that if the SDT finds that there is a *prima facie* case for inquiry (as in Mr. Mallon's case) "(a) they shall proceed to hold an inquiry ..." and "(b) when holding the inquiry the Disciplinary Tribunal shall – (i) consider each allegation of misconduct made against the respondent solicitor and (ii) make a separate finding in respect of each such allegation".

19. Subsection 3(c) requires the SDT (on completion of the inquiry) to specify in a report to the High Court, *inter alia*, the nature of the application, the evidence laid before it and the finding on each allegation of misconduct. In the event that the SDT has made findings of misconduct but has not made and does not intend to make an order under subsection 9 imposing a sanction itself it must state its opinion as to the fitness or otherwise of the respondent solicitor to be a member of the solicitors profession and its recommendations as to the sanction which should be imposed. When such report is referred to this court, a full range of sanctions up to the striking off the Roll of a solicitor may be imposed.

20. The SDT is, pursuant to s.7(5) as substituted by s.9(b) of the Solicitors (Amendment) Act 2002, required to serve its report on the solicitor concerned and the Law Society not later than 21 days after its preparation.

21. Section 7(11) as substituted by s.9(f) of the Solicitors (Amendment) Act 2002 provides as follows:-

"(a) A respondent solicitor in respect of whom an order has been made by the Disciplinary Tribunal under subsection (9) of this section, or

(b) without prejudice to subsection (12) of this section, the Society or any person other than the Society who has made an application under subsection (1) of this section,

may, within the period of 21 days beginning on the date of the service of a copy of the order or of the report, whichever date is the later, appeal to the High Court to rescind or vary the order in whole or in part, and the Court, on hearing the appeal, may—

(i) rescind or vary the order, or

(ii) confirm that it was proper for the Disciplinary Tribunal to make the order."

(My emphasis)

22. Section 7(13) substituted by s.17 of the Solicitors (Amendment) Act 1994 provides:-

"A respondent solicitor may appeal to the High Court against a finding of misconduct on his part by the Disciplinary Tribunal pursuant to subsection (3) of this section, and the Court shall determine such appeal when it considers the report of the Disciplinary Tribunal in accordance with the provisions of section 8 (as substituted by the Solicitors (Amendment) Act, 1994) of this Act, or as part of its determination of any appeal under subsection (11) of this section, as the case may be."

(My emphasis)

23. This statutory scheme makes it clear that the right of appeal of a solicitor arises only consequent to the making of a finding of misconduct by the SDT pursuant to s.7(3) of the Act of 1960 as substituted. Under s.7(13) of the Act of 1960 as substituted a solicitor may appeal the finding of misconduct. Under s.7(11) of the Act of 1960 as amended a solicitor may appeal sanctions imposed by the SDT further to findings of misconduct. However, it is clear that in both instances the right of appeal flows from the issuing by the SDT of its formal report under s.7(3)(c) setting forth the results of the inquiry, including its findings in respect of each allegation before it. Under the statutory scheme no appeal lies before the completion of the inquiry process where the SDT is obliged to consider each allegation and make a finding in respect of each such allegation.

24. I should also point out that in addition to the rights of appeal given to a solicitor, the statutory provisions also provide for appeals by the Law Society or a lay applicant against a sanction imposed by the SDT on the grounds of inadequacy (see s.7(12) of the Act of 1960 as substituted). There is also provision for an appeal by the Law Society or a lay applicant against a finding of the SDT that there is no *prima facie* case for inquiry or against a finding of no misconduct (see s.7(12A) of the Act of 1960 as inserted by s.9(g) of the Act of 2002).

25. Thus it can be seen that the legislature has set forth comprehensive entitlements to appeal from the SDT.

The instant appeal

26. This appeal was commenced by a notice of motion dated 7th March, 2017. It is clear from its title that it purports to be an appeal brought pursuant to s.7 of the 1960 Act as substituted by s.17 of the Solicitors (Amendment) Act 1994 and as amended by s.9 of the Solicitors (Amendment) Act 2002. Although the appeal is framed within s.7 it is to be noted that Mr. Mallon has not been able to identify which subsection he relies upon in bringing this appeal. That is hardly surprising in circumstances where the SDT has not made any order or finding against him and still less has it served on him an order or report of the Tribunal which could give rise to a right of appeal to this court.

27. In the present case the SDT, as a matter of convenience in the course of hearing the complaints, decided to hear evidence and receive submissions on a preliminary objection taken by Mr. Mallon. It was entitled to take that course as part of the ordinary case management of the complaints that it had to deal with concerning Mr. Mallon. The SDT did not accept his argument concerning the existence of an estoppel and then proceeded to attempt to discharge its statutory function under which it is mandated to consider each allegation of misconduct and to make findings in respect of them. If there are findings of misconduct made then the SDT's report must be served on M. Mallon and his rights of appeal are triggered. None of this happened in this case. No finding of misconduct has been made against Mr. Mallon. No order or report has issued pursuant to s.7 of the Solicitors (Amendment) Act 1960 as substituted and amended. Thus, it can be seen that the necessary statutory preconditions to enable an appeal to be brought under s.7 have not been met.

The Law Society submissions

28. Given that the necessary statutory preconditions have not been met the Law Society says that this appeal is ill founded. The appeal purports to be brought under s.7 but that section has no application given the facts which obtain here.

29. The Law Society also contends that the right of appeal which is prayed in aid here is rooted in the statutory provisions and that they are comprehensive. It contends that Mr. Mallon cannot seek to rely on some general right of appeal to the High Court given the statutory position.

30. In support of this approach various dicta from different judgments were called to my attention. For example, in *O'Reilly v. Lee* [2008] 4 I.R. 269 the Supreme Court had to consider an appeal by a lay applicant pursuant to s.7(12A) of the Act of 1960 as substituted and amended. The appeal was against a decision of the SDT of no *prima facie* case for an inquiry. Macken J. specifically recognised that the right of appeal is governed by the legislative provisions when she stated at p.271:-

"The entitlement to appeal the decision of the Solicitors Disciplinary Tribunal is provided by legislation and specifically by the provisions of s.7 of the Solicitors (Amendment) Act 1960, as amended by s.17 of the Solicitors (Amendment) Act 1994 and as further amended by the provisions of s.9 of the Solicitors (Amendment) Act 2002. The consequence of these legislative provisions is that, in circumstances where the Solicitors Disciplinary Tribunal has found that there is no prima facie case for an inquiry into the conduct of the solicitor complained of, an applicant may appeal that decision to the High Court within a prescribed period of time."

31. Reliance was also placed upon the dictum of Clarke J. (as he then was) in *Fitzgibbon v. Law Society of Ireland* [2015] 1 I.R. 517 where, having considered the various forms of statutory appeal provided for under the Solicitors Acts he made the following observation:-

"... The form of appeal allowed will, in most cases, therefore, be a question of the proper interpretation of the relevant legal measures whether private or public. If those legal measures are sufficiently clear, then it is unlikely that any difficulty will arise. Any court called on to review the actions of relevant bodies or to consider the scope of a right of appeal to or within the courts system itself will simply consider what the rules or statute concerned actually says."

32. In this context the Law Society points out that the rules in this case are contained in O.53 of the Rules of the Superior Courts and that they correspond with the primary statutory provisions. They do not provide for a greater right of appeal than that contained in the primary legislation. In any event, the Rules could not do so as they merely facilitate and implement the right of appeal conferred by the statute. This view is supported by observations made by McKechnie J. in the *Fitzgibbon* case.

33. The Law Society has also called my attention to an unreported decision of Finnegan P. given on 18th March, 2005 in a case called *Stephens v. Orange*. This case is also relied upon by Mr. Mallon. The Law Society relies upon the case for certain dicta from the judgment whilst Mr. Mallon relies on it having regard to the order which was made by the judge. I turn to a consideration of that case now.

Stephens v. Orange

34. A Dr. Gerald Stephens complained to the SDT on 3rd December, 2003 concerning Mr. Orange solicitor. The respondent Mr. Orange was notified of the complaint and furnished with a copy of it by the SDT registrar under cover of a letter of 10th December, 2003. On 22nd April, 2004 the SDT formed the opinion that a *prima facie* case of misconduct for inquiry was disclosed and both parties were notified of that by letters of 26th April, 2004. The date for the inquiry was fixed for 15th July, 2004.

35. At the hearing which took place on that date Mr. Orange raised, as a preliminary issue, the question of delay. He submitted that the SDT should not proceed with the hearing. That application was acceded to and the application was struck out. By letter dated

20th July, 2004 Dr. Stephens, who had been present at the hearing, was notified by letter of the decision of the SDT.

36. By letter dated 6th August, 2004 Dr. Stephens notified the SDT of his intention to appeal that decision and sought an extension of time to file the necessary motion. On the same day he wrote to the Registrar of the High Court indicating his intention to file the necessary motion. Again on the same date he wrote to Mr. Orange in the following terms:-

"This will serve as notice that I intend to file a High Court appeal from the Solicitors Disciplinary Tribunal decision in the above titled matter and published by that body by letter of 20th July, 2004. I hereby request that you confirm consent to said filing."

37. The matter came on for hearing before Finnegan P. Mr. Orange submitted that the appeal was out of time and that in any event, having regard to the statutory provisions no appeal lay against the decision because an appeal lay only against a finding of misconduct or no misconduct and not against an application being struck out. Finnegan P. in the course of his ruling set out the relevant statutory provisions (which are the same statutory provisions that apply in this case) and said as follows:-

"Having regard to these statutory provisions the time for appeal has not run as no report has as yet been made to the High Court nor has the same been served. The registrar to the tribunal did write to the appellant on 20th July, 2004 but that letter does not purport to be a report of the tribunal nor does it contain the information specified in s.7(3)(c). The appeal accordingly cannot be out of time."

As to the second matter raised by the respondent the position appears to me to be as follows. The Solicitors Disciplinary Tribunal is a creature of statute and accordingly its jurisdiction is circumscribed by statute. Section 7 requires the tribunal where a prima facie case for inquiry has been found to proceed and hold an inquiry, to consider each allegation of misconduct made against the respondent and to make a separate finding in respect of each such allegation. This the tribunal has not yet done and it does not intend to do so. The tribunal has no choice as to whether or not it should hold an inquiry, consider each allegation of misconduct and make a separate finding on the same. It is compelled by statute to do so. The only manner in which it can be excused from fulfilling the statutory obligation is by an order of prohibition obtained on an application for judicial review. In short the tribunal had no jurisdiction to accede to the respondent's submission on the issue of delay."

38. The Law Society argues that this is strong support for its contention that once a finding of a *prima facie* case for inquiry had been found in this case, the SDT had no choice but to proceed to hold the inquiry and consider each of the allegations before it and make a finding in respect of each of them. It must then issue a report and only then can an appeal to this court arise. The only means of halting the inquiry before it is reported on is by judicial review brought within the appropriate time limits. In the present case no application for judicial review was brought.

Mr. Mallon's submissions

39. Mr. Mallon brought this purported appeal pursuant to the provisions of s.7 of the Solicitors Act 1960 as substituted by s.17 of the Solicitors (Amendment) Act 1994 and as amended by s.9 of the Solicitors (Amendment) Act 2002. He contends whilst these statutory provisions provide an appeal in accordance with the terms of the statute there is nonetheless what he describes as a form of "unenumerated" appeal which falls within the ambit of section 7. This form of additional appeal is said to arise on a point of law "to regularise the conduct of an ongoing inquiry where there is a breach of natural justice flowing from a decision of the Tribunal taken by way of preliminary hearing in order to prevent or guide the Tribunal from making a finding on the basis of a mistake of law that fetters its own function". (See para. 14 of his written submissions). It is to be noted that this alleged jurisdiction as described in the written submission seems remarkably close if not identical to the sort of jurisdiction that might be exercised by the court by way of judicial review.

40. Support for this contention of the existence of this "unenumerated" appeal is sought to be obtained from the Rules of the Superior Courts.

41. Reliance is placed on O.53, r.12 (b) which it is said accommodates unenumerated appeals of the type contended for.

42. Rule 12(b) provides:-

"Every appeal to the court other than an appeal referred to in paragraph (a) of this rule from a finding or order of the Disciplinary Tribunal, whether the appeal is by the respondent's solicitor or by the solicitor or (if applicable) by any person other than the Society who made the application in relation to the respondent's solicitor to the Disciplinary Tribunal (or any one or more of them), as the case may be, brought under s.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 shall be brought by the appellant within the period of 21 days beginning on the date of the service by the Tribunal registrar on the appellant of a copy of the order or of the report, whichever date is the later, 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".

43. It is contended that the reference to s.7 in O.53, r.12B is

"... expressly linked to the Society or an applicant who – (as the case may be) – brings an application to the Tribunal 'under section 7', and not to an appeal under section 7.

Further O.53 directs an appeal to the President in substitution for an application for judicial review."

(Paragraph 17 of Mr. Mallon's written submissions).

44. I will deal with these contentions later in the judgment.

45. The second limb of Mr. Mallon's argument is by reference to the course taken by Finnegan P. in the Stephen's case. Having made the observations which I have already reproduced the judge stated as follows:-

"The matter cannot be left in limbo and the problem now is to decide how best the position can be regularised. Clearly this could be done by an application for judicial review taken by the appellant. This will have the effect of adding to the delay which has already taken place and lead to expense. There is an alternative which I propose adopting. Section 8 of

the Act of 1960 as substituted by the Act of 1994, section 18 deals with proceedings before the High Court on a report from the Tribunal. Section 8 (1)(b) empowers the court to remit the case to the tribunal to take further evidence for submission to the court and to make to it a supplementary report. I propose directing the tribunal to submit a report on the proceedings of the 15th July, 2004 and upon receipt of the same if as seems likely I consider the report to be defective having regard to the requirements of s.7(3)(c) I would consider exercising the courts power under s.8(1)(b) to remit the matter to the tribunal. On a further report having been made the applicant would have the statutory period to appeal that decision if dissatisfied with the same.

Having regard to the foregoing I propose adjourning this matter to a date agreeable to the parties to enable a report of the proceedings of the 15th July, 2004 to be prepared, filed and served. Should the appellant be dissatisfied upon receipt of that report then I would draw his legal advisors attention to the current Rules of the Superior Courts (Solicitors Acts 1954 – 2002) 2004 S.I. No. 701 of 2004 in relation to appeals and also the statutory provisions and time limits. They should consider whether it is appropriate to appeal the decision of the tribunal as embodied in the report in addition to considering whether they should appeal the decision in any supplemental report made upon the matter being remitted.

To facilitate the supplementary report which I am requesting I hereby extend the time limited by the Rules of the Superior Courts as amended by the 2004 rules in rule 7 thereof for the filing of a report by six weeks from today's date. I appreciate the difficulty which may arise in the tribunal reassembling and would consider a further extension of time if required."

46. Mr. Mallon contends that this approach of Finnegan P. demonstrates that the President of the High Court has an inherent jurisdiction over the SDT in relation to the regulation of solicitors particularly to regularise matters that are "in limbo" or at odds with its rules and with rules of natural justice.

47. In further support of this line of argument Mr. Mallon also cites from the observations of McKechnie J. in *Fitzgibbon's* case where he said:-

"65. ... in discharging the Society's obligations, the Committee must at all times act fairly: it must abide by the rules of natural and constitutional justice, with its functions being subject to judicial review. This being so it is entirely unsurprising that the appeal from such a process would be restricted in form. That limitation in my view does not in any way impinge upon or undermine the rights of the appellant.

66. Even if the rules of court did not so provide, I would be perfectly satisfied that the High Court has full jurisdiction to regulate the manner in which issues before it are dealt with: this must follow from the mandatory obligation on every court to ensure that constitutional justice and fair procedures are applied to any justiciable controversy determined by it. This duty takes effect once the court has seisin of the issue and continues until that court becomes *functus officio* ... This means that in any given case, the court can and will respond to what is necessary to ensure the integrity of a person's rights. It would however entirely defeat the purpose of a limited appeal, if the exercise before the High Court routinely became a re-run of what transpired before the Committee. That will not be required in a great number of cases which will be dealt with in the manner provided by the Rules."

Decision

48. Mr. Mallon invoked the provisions of s.7 of the Solicitors (Amendment) Act 1960 as amended as the basis for this appeal. None of the statutory preconditions which trigger such right of appeal have been met in the present case. The SDT has not considered each allegation of misconduct made against Mr. Mallon nor has it made any findings against him in respect of such allegations. No report has been prepared by the SDT. No order has been made by the SDT. Consequently none of the statutory preconditions to the exercise of the right of appeal have been met.

49. I do not accept that s.7 creates an appellate jurisdiction concerning what he describes as "unenumerated appeals". The only appeals that are created by the Act are those which arise on foot of the steps prescribed by the Act namely the completion by the SDT of its statutory obligation to consider each allegation of misconduct and to make findings and prepare a report or order in respect of them. There is, in my view, nothing to be found in the statutory provisions which supports the notion of a species of appeals being created which do not comply with those statutory provisions.

50. I already quoted from para.14 of Mr. Mallon's written submissions. There is no doubt a jurisdiction in the High Court (not confined to the President of the Court) to regularise the conduct of an ongoing inquiry if there is a breach of natural justice or some misbehaviour on the part of the SDT. But such remedy lies within the purview of the judicial review jurisdiction of the High Court. It is not one arising under the structure of the appellate mechanism of the Solicitors Acts.

51. I also reject the contention that the provisions of R.S.C., O.53, r.12 (b) support the notion of an "unenumerated" appellate jurisdiction. First, I can find nothing to support what is contained in para. 17 of Mr. Mallon's written submissions to the effect that the rule directs an appeal to me in substitution for an application for judicial review. There simply is no such direction. Furthermore, I do not find anything in the wording of O.53, r.12 which supports the notion of an appellate jurisdiction in excess of that prescribed by section 7. Even if there was, such a provision of the rules of court would be *ultra vires* since rules of court could not create a jurisdiction in excess of that permitted by the primary legislation.

52. Neither does the approach taken by Finnegan P. in *Stephen's* case support the notion of the existence of some overarching appellate jurisdiction being exercised by the President of the High Court and accommodated as an appeal under s.7 of the legislation.

53. I am of the view that the *Stephen's* case presented a most unusual set of facts. The SDT had failed to carry out its statutory obligations. It did not complete the inquiry which it was obliged to do. It purported to strike out the matter and left the position as Finnegan P. put it "*in limbo*". The judge clearly identified that the position might be regularised by an application for judicial review. However, he quite correctly said that that would have the effect of adding to the delay which had already taken place and would lead to additional expense. With a view to minimising both cost and time he decided to direct the tribunal to submit a report under s.7 of the Act of 1960 and indicated that the court would, on receipt of such report, consider exercising its jurisdiction under s.8(1)(b) of the Act of 1960 as substituted by s.18 of the Act of 1994 to remit the matter to the tribunal. He then pointed out that "*on a further report having been made the applicant would have the statutory period to appeal that decision if dissatisfied with the same*". He also suggested that the appellant should "*consider whether it is appropriate to appeal the decision of the tribunal as embodied in the report in addition to considering whether they should appeal the decision in any supplementary report upon the matter being*

remitted".

54. It is clear that Finnegan P. was of the view that the SDT had erred in striking out the proceeding and consequently no relief could be granted on the application before him. That was because there was no report before the court pursuant to s.7(3)(c) from which an appeal could lie.

55. I am of the view that the approach taken by Finnegan P. in those very unusual circumstances was a pragmatic ad hoc solution to address the limbo in which the parties found themselves.

56. I do not believe that the decision can be read as creating a form of general right of appeal in respect of a preliminary determination of the SDT in circumstances where it has not exhausted its statutory obligation.

57. A challenge to the jurisdiction, behaviour or conduct of the SDT prior to the completion of its statutory mandate cannot be made by means of a purported appeal under s.7 but only by way of judicial review.

58. I should also point out that unlike the 'limbo' situation which arose in *Stephen's* case no such circumstance arises here. The appeal continues to exist before the SDT and may be resumed forthwith so that that tribunal may carry out its statutory function as prescribed under the legislation.

59. In these circumstances I accede to the Law Society's application and strike out this purported appeal.

Disposal

60. Mr. Mallon's purported appeal is struck out in limine.