

## THE HIGH COURT

[2015 No. 8378 P.]

BETWEEN

MICHAEL O'SULLIVAN

PLAINTIFF

AND

THE DISCIPLINARY TRIBUNAL,

THE LAW SOCIETY OF IRELAND,

IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

**JUDGMENT of Mr. Justice Allen delivered on the 31st day of October, 2018****Background**

1. This is an application brought by the plaintiff, a solicitor who acts for himself, for (1) an order for discovery by the second defendant, the Law Society, of sixteen categories of documents, all said to be relevant to matters in issue in the action and, which, it is said, contain information which may enable the plaintiff to advance his case and/or to damage the case of the defendants, and (2) for leave to amend his summons and statement of claim.
2. The plaintiff, as I have said, is a solicitor. He claims that on 17th September, 2007, following a 41-month inquiry, the Law Society lodged an application with the Disciplinary Tribunal for an inquiry into alleged misconduct. The statement of claim chronicles the progress of that inquiry which culminated on 9th July, 2015 with a report, described by the plaintiff as a verdict, that the plaintiff had been guilty of misconduct and, according to the plaintiff, a report of the Tribunal which ordered a lifetime ban on the plaintiff having a practice as a solicitor.
3. The Disciplinary Inquiry was punctuated by a number of adjournments; by judicial review proceedings taken by the plaintiff; by an application by the plaintiff that the Disciplinary Tribunal should recuse itself on grounds of alleged bias and/or breach of the European Convention on Human Rights and/or constitutional law; by an application by the plaintiff to the Tribunal for discovery; and by an application that the Chairman of the Tribunal should recuse himself on the grounds of his alleged association with the Law Society.
4. The report of the Disciplinary Tribunal of 9th July, 2015 was that the plaintiff had been guilty of Professional misconduct and the recommendation was that the plaintiff should be permitted to practice only as an assistant solicitor in the employment, and under the direct control and supervision, of a solicitor of at least ten years standing, to be approved in advance by the Law Society.
5. By notice of motion issued on 21st August, 2015 the Law Society applied to the High Court for orders described by the plaintiff as identical to the orders of the Disciplinary Tribunal and those orders were made by the High Court on 22nd April, 2016. At the hearing of the Law Society's application, the plaintiff, according to the statement of claim, raised issues as to the constitutionality and convention compatibility of the Disciplinary Tribunal process.
6. At the date of delivery of the statement of claim on 14th October, 2016 the decision of the High Court of 22nd April, 2016 was under appeal. The plaintiff's appeal has since been determined by the Court of Appeal and, following delivery on 6th July, 2018 of a written judgment of Peart J., with which the other members of the court agreed, was dismissed. Although it had not been canvassed in the High Court, Peart J. dealt comprehensively with an argument made by the plaintiff that the Chairman of the Disciplinary Tribunal ought to have recused himself.
7. The statement of claim sets out the statutory basis on which the Disciplinary Tribunal is established and constituted. Apart from chronicling the proceedings before the Tribunal, the statement of claim asserts that the "*purported*" decision of the Tribunal made on 21st March, 2013 as to the *prima facie* sustainability of the misconduct allegations was made without notice and in secret and that no transcript of the meeting has been forthcoming.
8. The statement of claim makes a number of assertions as to the establishment, constitution and financing of the Disciplinary Tribunal and the relationship between the Law Society and the Tribunal. There is also a complaint that the "*deliberations*" of the Tribunal were in breach of the principles of basic fairness and natural and constitutional justice.
9. At para. 33 of the statement of claim, the plaintiff claims ten declarations that specified provisions of the Solicitors Acts are invalid having regard to the provisions of the Constitution and/or are incompatible with the State's obligations under the European Convention on Human Rights and the European Convention on Human Rights Act, 2003; five declarations and orders directed to the final report of the Disciplinary Tribunal of 9th July, 2015; and damages. The claims directed to the Tribunal report have obviously been overtaken by the order of the High Court of 22nd April, 2016 and the judgment of the Court of Appeal of 9th July, 2018 and consequent order of 4th October, 2018.
10. In its defence delivered on 6th June, 2017 the Law Society pleads eleven preliminary objections, the substance of which are that the action is an abuse of process as an attempt to circumvent the procedures and time limits for judicial review; that the plaintiff is not entitled to mount a collateral attack on the High Court order of 22nd April, 2016; and that the plaintiff was estopped from seeking to re-litigate issues already disposed of.

**Application for discovery**

11. The discovery now sought by the plaintiff was the subject of a letter seeking voluntary discovery of 11th September, 2017 to which the Law Society's solicitor promptly replied on 22nd September, 2018. Noting that the plaintiff was asking for discovery over a twenty-year period, the Law Society solicitor said that the plaintiff had not demonstrated how any of the documents were relevant to the claims of invalidity and incompatibility or any other issue disclosed by the pleadings; that the request amounted to an oppressive fishing expedition; and that the plaintiff had failed to even suggest that the discovery was necessary for the fair disposal of the proceedings or for saving costs. As the plaintiff's request for voluntary discovery did not, neither did the affidavit on which the application is grounded, suggest that the discovery was necessary for the fair disposal of the action or for saving costs.

12. It seems to me that this application fails at the first hurdle. The action challenges the validity and compatibility of the legislative framework in which the Disciplinary Tribunal is established and constituted and operates. Save as to the finding of the Tribunal on 21st March, 2013 that the plaintiff had a *prima facie* case to answer, it does not seek to address the process or the substance of the inquiry and conclusions against him. The plaintiff could never have properly impugned or prevented the disciplinary process against him by plenary proceedings and at this stage any such purported challenge (if such is to be found at all in the statement of claim) would be a wholly impermissible oblique attack on the orders of the High Court of 22nd April, 2016 and the Court of Appeal order of 4th October, 2018.

13. The discovery now sought is not relevant to any of the issues raised by the pleadings, still less necessary for the fair disposal of the proceedings or for saving costs.

14. Of the sixteen categories of discovery sought, ten are in respect of the period between 12th May, 1995, said to be the operative date of the legislation, and 16th October, 2015, which was the date on which the High Court heard the Law Society's application on the Tribunal's report.

15. By these ten categories the plaintiff seeks all of the records of the Law Society for a period of upwards of twenty years in relation to the selection, nomination and training of all those who in that time were proposed by the Law Society for appointment to the Disciplinary Tribunal; all communications with any of those persons in relation to conflicts of interest or potential or perceived conflicts of interests; all records in relation to the financing by the Law Society of the Tribunal; and all records of any work done for the Law Society by the Chairman of the Tribunal or his firm. None of this is remotely relevant to the legislative framework in which the Tribunal was established and operates and is financed.

16. Neither are all or any of the Law Society's records of its engagement with the Disciplinary Tribunal over the nearly ten-year period between the time of the application by the Law Society to the Disciplinary Tribunal for an inquiry into the alleged misconduct of the plaintiff and the date of the report of the Tribunal; or in relation to the plaintiff's allegations of bias over the course of the Disciplinary Tribunal hearings in 2014 and 2015; relevant to the reliefs sought. In principle the plaintiff is not entitled to fish for a cause of action or complaint. *A fortiori* this plaintiff is not entitled to seek to go behind the findings of the Disciplinary Tribunal or the orders of the High Court and the Court of Appeal.

17. The application for discovery will be refused.

#### **Application for leave to amend**

18. By the general indorsement of claim on the plenary summons and the statement of claim as delivered the plaintiff claims declarations *inter alia* that several provisions of the Solicitors Acts are incompatible with the State's obligations under the European Convention on Human Rights and the European Convention on Human Rights Act, 2003. The summons and statement of claim refer in particular to Article 6 of the Convention and Articles 1 and 2 of the Paris Protocol to the Convention. The amendment sought by the plaintiff is to add specific reference to Article 4 of the Convention: the prohibition of slavery and forced labour.

19. By letter dated 15th December, 2017 to each of the solicitor for the Law Society and the Chief State Solicitor the plaintiff asked for consent to the proposed amendments. The solicitor for the Law Society declined as the basis that he could not see how the proposed amendment could be seen as necessary for the purpose of determining any question in controversy. The Chief State Solicitor consented and invited delivery of amended pleadings.

20. On the hearing of this application counsel for the State defendants appeared as a matter of courtesy to say that the State defendants were not objecting to the proposed amendments and (quite correctly) that the State defendants were not affected by the application for discovery.

21. Counsel for the Law Society was not prepared to consent to the amendment application lest this be thought to give any credence to proposed amendment. I am not unsympathetic to that argument. It was not said, although I very much inclined to suspect, that the same thinking may have been behind the Attorney General's acquiescence in the proposed amendments.

22. Absent the consent of the State defendants I would have taken a lot of persuasion to allow the proposed amendment but given that there is such consent and given that the proposed amendments go to the alleged incompatibility of the legislation (which is a matter for the Attorney General rather than the Law Society) I will permit the amendment of the summons and statement of claim in the terms of the drafts exhibited marked "C" to the affidavit of the plaintiff sworn on 1st June, 2018.

23. I will hear counsel as to whether any amendment is required of the defences.