Neutral Citation Number: [2007] IEHC 352

THE HIGH COURT

[2006 No. 587 J.R.]

IN THE MATTER OF THE SOLICITORS ACTS, 1954 to 2002

AND IN THE MATTER OF SECTION 9 OF THE SOLICITORS (AMENDMENT) ACT, 1994

BETWEEN

GARY O'DRISCOLL AND GRATTAN D'ESTERRE ROBERTS

APPLICANTS

AND

THE LAW SOCIETY OF IRELAND AND THE SOLICITORS DISCIPLINARY TRIBUNAL

RESPONDENTS

Judgment of Mr. Justice William M. McKechnie delivered the 27th July, 2007.

1. Background:
At all times relevant to the facts, matters and circumstances hereinafter referred to, both the first and second named applicants were the sole partners in a firm of solicitors known as Ahern Roberts Williams and Partners, which firm carried on business in the County and City of Cork.

The first named respondent is charged with the duties and obligations entrusted to it under the Solicitors Acts, 1954 to 2002. In short, it has the responsibility of educating and regulating the practice of, as well as representing solicitors. In order to so do, it has lawfully established a number of committees including one known as the Complaints and Client Relations Committee ("the CCR Committee" or "the Committee"). That committee is at the centre of the allegations made in this case.

The second named respondent is a statutory body, independent of the Law Society, which deals with unresolved complaints of misconduct against solicitors. Apart from receiving two applications (Form D.T.1), both dated the 4th April, 2006, in which the Law Society sought an inquiry into certain allegations of misconduct against the applicants, the Solicitors Disciplinary Tribunal ("the Tribunal" or "the Disciplinary Tribunal") has taken no further or other step in the disciplinary process. It therefore played no part in the lead up to these proceedings and as a result has made no independent submissions in this case.

2. In 2002, the Oireachtas enacted the Residential Institutions Redress Act, 2002. The purpose of this Act was to provide a statutory framework by which any person, who had suffered abuse whilst resident in a nominated institution, could seek compensation in respect thereof. To implement this scheme, the Act established the "Residential Institutions Redress Board" ("the RIRB" or "the Redress Board") to deal with all such applications. The firm of Ahern Roberts Williams and Partners had approximately seven clients in all who sought redress under the Act. These included a Mr. N. O'S. and a Mr. D.P., both of whom subsequently contacted the Law Society about the fees which their solicitors had charged them.

3. Having received an offer of compensation acceptable to their client, Mr. N.O'S, the applicant solicitors submitted a bill of costs to the Redress Board on the 6th October, 2003. In that bill, a professional fee of €8,510, exclusive of V.A.T., was sought in respect of the services provided. On the 16th October the Redress Board, as against that item, offered €6,000, excluding V.A.T. On the 5th November, 2003, a second or amended bill of costs was sent to the Board in which this offer was accepted. That left a shortfall in the sum of €2,510, which was then sought directly from the client by way of a supplementary bill dated the 5th November, 2003. Together with V.A.T. the entire sum came to €3,037.10.

4. A similar situation arose with regard to a second client, namely, Mr. D.P. On the 4th May, 2004, a bill of costs was sent to the Board in which a professional fee of €11,500 plus V.A.T. was sought. The offer, dated the 11th May, suggested a sum of €8,800 plus V.A.T. This figure was accepted on the 12th May and confirmed by the issue of a second, or amended bill of costs. On the 28th May, 2004, the applicants sought from Mr. D.P. the sum of €3,500, which they described as being the "shortfall" in their professional fee. Together with V.A.T., the total sum claimed was €4,235.00. No point has been taken on the accuracy of this figure.

It was the seeking of these sums by the applicants from their respective clients, which ultimately led to the Law Society's involvement in this matter.

Adjudication on Complaints
5. With regard to Mr. N.O'S. the following events took place in 2005:-

> * 13/10/05 This client makes telephone contact with the Law Society in respect of the aforesaid charge of €3,037.10: The actual date may be the 18/10/05 (see Exhibit LK2 in Ms. Kirwan's affidavit of the 25th July, 2006).
>
> * 18/10/05 The applicants, unaware of this complaint, write to Mr. N.O'S. and indicate that if he is not satisfied with the charge, he should contact them immediately so that the matter can be resolved to his satisfaction.
>
> * 25/10/05 The Law Society, in its letter to the firm in question, gives notice that it had received a complaint in respect of these legal fees; that it requires a copy of the entire file and all other relevant documentation and that the matter would be dealt with by the CCR Committee on the 10th November, 2005.
>
> * 03/11/05 The information requested is supplied.
>
> * 10/11/05 A hearing takes place before the CCR Committee at which Mr. Colm O'Rourke, the then managing partner of the firm, attends. Mr. O'Rourke confirms that the monies in question would be refunded because appropriate procedures may not have been followed, although the firm retained the view that the fees charged were justified. At the conclusion of the hearing, the Committee found that the fees were excessive and should be refunded. It also decided <u>that there was evidence of misconduct</u> which warranted a referral to the Disciplinary Tribunal. (Emphasis added).
>
> * 15/11/05 The Law Society formally writes to the solicitors in question setting out in part the conclusions previously reached by the said Committee.

6. With regard to Mr. D.P., the following similar events also took place in 2005:-

* 18/10/05 The applicants write to Mr. D.P., indicating that if he is not satisfied with the aforementioned charge, he should contact them immediately so that the matter can be resolved to his satisfaction.

* 08/11/05 Mr. D.P. writes to the Law Society and having referred to an unspecified solicitor and client charge, asks that society to let him know "how he stands" in relation to this matter.

* 24/11/05 The Law Society writes to the solicitors on the 25th October, 2005 and seeks the same information which it had previously sought in relation to Mr. N.O'S. on the 25th October, 2005. In addition, the letter indicates that the matter would be dealt with by the CCR Committee on the 15th December, 2005.

* 30/11/05 The solicitors respond to the Law Society and raise a number of queries.

* 06/12/05 The applicants furnish the information as requested.

* 08/12/05 The Law Society purports to reply to the queries raised on the 30th November, 2005.

* 15/12/05 At the meeting of the CCR Committee, both Mr. O'Driscoll and Mr. Roberts were represented by independent solicitor and counsel. Having indicated their intention to repay the money, together with interest and an apology, counsel on their behalf referred to s. 9 of the Solicitors (Amendment) Act, 1994 and requested the Committee, in accordance with that section, "to take appropriate steps" to resolve the matter by agreement between the parties. At the conclusion of the hearing the Committee decided that the fees charged were excessive and should be refunded. Moreover, it also decided to refer this matter to the Disciplinary Tribunal.

7. To put the later correspondence into context, it is necessary to refer in more detail to:

(a) the Law Society's letter of the 25th October, 2005, which letter can be taken as applying to both clients;

(b) the minute of the Committee's inquiry dated the 10th November, 2005, in relation to Mr. N. O'S.; and

(c) the minute of its hearing dated the 15th December, 2005, in relation to Mr. D.P.

Because of its importance to this case the said letter of 25th October should be quoted in full:-

"Dear Sir

The Law Society have been contacted by … [Mr. N. O'S.] concerning legal fees in connection with your client's application to the … RIRB. Accordingly, the Law Society has commenced an investigation into this matter. This letter shall serve as notice to you of the making of a complaint under s. 9(1) of the Solicitors (Amendment) Act, 1994.

The investigation will include investigation of whether there have been any breaches of s. 68 of the Solicitors (Amendment) Act, 1994, the Solicitors Accounts Regulations, 2001, and any other applicable provisions of the Solicitors Acts, 1954 to 2002 and other Regulations made thereunder.

In order to assist the Law Society with its investigation … (please furnish) … a full account … of all information … pertaining to this matter. In particular, and without prejudice to the generality of the foregoing, you are required to fully and properly address the following aspects of this matter:

1. Furnish the particulars … as required by s. 68(1) of the … 1994 Act.

2. Furnish any agreement … for the purposes of s. 68(3) of the 1994 Act.

3. Furnish the bill of costs furnished to your client pursuant to s. 68(6) of the 1994 Act.

4. State whether you charged any fees … in addition to any which have been paid by the RIRB … and if so furnish;

    i) …

    ii) …

    iii) …

5. State whether any deductions … were made from the amount of any award to your client by the RIRB.

6. Furnish the bill of costs … furnished by you to the RIRB.

7. …

Your response to the Law Society must include all documentation and all other information required to fully and properly explain the matter about which this letter enquires …

All documentation required by the Law Society … must be furnished …

This matter will be considered by the Complaints and Clients Relations Committee. You are required to attend a meeting of … the Committee … which will take place on … The purpose of your attendance is to examine you in relation to this matter. You are required to produce to the Committee at the meeting the entire client matter file …

If for any reasons …

You are hereby notified that the Committee may make a decision on whether to refer this matter to the Solicitors

Disciplinary Tribunal, the High Court and/or the Garda Siochána and/or whether to take any other action which may be deemed appropriate, whether under the Solicitors Act 1954 to 2002 or Regulations made thereunder or otherwise.

You are reminded of the importance of fully complying with the requirements set out in this letter. You are hereby notified that if at any time in connection with this matter it appears to the Committee that you are obstructing the investigation by the Law Society by refusing, neglecting or otherwise failing, without reasonable cause …

(1) To …

(2) To …

the Law Society will apply to the High Court for an order compelling you to respond appropriately …

Should you have any queries … please contact Linda Kirwan.

Yours sincerely." (Emphasis added),

The letter was signed by Mr. John Elliott, the Registrar of Solicitors and Director of Regulation.

8. The Secretary to the CCR Committee, Ms. Kirwan, Solicitor, prepared a minute of that Committee's inquiry, held on the, 10th November, 2005, into the complaint of Mr. N.O'S. The note specified, that the "Nature of the Complaint" was "Overcharging" with the amount involved being €2,510 (plus V.A.T.), and recorded *inter alia*, that Mr. O'Rourke (the managing partner who attended on behalf of the applicants) confirmed; that there was no s. 68 letter; that there was no narrative in the "bill" as prepared (although Mr. N. O'S. had been copied the bills sent to the Redress Board); that the fees offered by the Redress Board were accepted without the consent of the client; and that the firm had decided to make a full refund of the monies in question. This, because "procedures" may not have been followed, although in the firm's view the suggested fee was justified. The findings of the Committee were then noted as being that the fees charged were excessive and should be refunded and that there "was evidence of misconduct which would warrant a referral of Mr. Roberts and Mr. O'Driscoll to the Disciplinary Tribunal".

9. In the minute of the inquiry held on the 15th December, 2005, the nature of the complaint was again given as "overcharging". On this occasion Mr. Brian O'Moore S.C., instructed by Vincent & Beatty Solicitors, appeared on behalf of the applicants. Mr. O'Moore S.C., in answering questions asked by committee members, confirmed that the assistant solicitor in the applicants' firm, who had dealt with this matter, believed that she had sought the client's permission before accepting the costs offered by the RIRB, but that she could not point to any specific date or time in this regard. In addition, counsel indicated that in Messrs Cyril O'Neill's view (legal cost accountants) the fees charged were on the low side and that, with the benefit of hindsight, the same should have been taxed rather than settled. (See exhibit "GDR-15" in Mr. Roberts grounding affidavit). In addition, he confirmed that his clients would repay the monies, together with interest and that an apology would be made to Mr. D.P. This, notwithstanding their view that the fees charged were not excessive. In addition, the minute records Mr. O'Moore S.C.'s assertion that the Committee's function was "to sort matters out". Indeed, according to his submission it had a statutory obligation to so do. However, having considered the issue, the Committee decided that the fees charged were excessive and should be refunded, and that the matter should be referred to the Disciplinary Tribunal. On being informed of these findings, counsel once again expressed his disappointment at the Committee's failure to take any steps to resolve this matter and, secondly, he also pointed out that, given his clients' willingness to refund, no direction from the Committee in that regard was required. This minute, like the previous one, was made by the Committee's secretary Ms. Kirwan, Solicitor.

10. Post Inquiry correspondence common to both findings

(1) On the 22nd December, 2005, Messrs Vincent & Beatty Solicitors wrote to the secretary of the Committee in relation to both complaints, and having quoted that part of s. 9 of the Act of 1994 which requires the Law Society to "take all appropriate steps to resolve the matter by agreement between the parties concerned", they enquired as to what steps the Law Society had taken pursuant to this section in relation to both matters.

(2) On the 19th January, 2006, Ms. Kirwan replied by stating "Following the referral of this matter to the Disciplinary Tribunal, the file has been transferred to Ms. Joan O'Neill, to whom a copy of your letter of the 22nd September *(sic)* was forwarded."

(3) On the 27th January, 2006, Messrs Vincent & Beatty express deep surprise at this reply, correctly pointing out that: as Ms. O'Neill was not a member of the CCR Committee, she could hardly explain its consideration of s. 9. They repeated their original request and sought a reply, correctly, as a matter of urgency.

(4) A further reminder was sent on 16th February, 2006.

(5) Eventually, Messrs Vincent & Beatty were sent two undated letters, the first of which related to Mr. N.O'S. and was received on the 3rd March, 2006. At para. 2 Ms. Joan O'Neill, who signed the letters, dealt with the query by saying "Having spoken to the secretary of the Committee, Ms. Linda Kirwan, I would advise that the Committee did not think there were any appropriate steps to take to resolve the matter prior to making its direction".

(6) In the second letter which was received on the 7th March, Ms. O'Neill, when dealing with the complaint of Mr. D.P., said, "whereas neither I nor the secretary of the Committee, Ms. Linda Kirwan, can speak for the Committee it can only be assumed that the Committee took the view that the most appropriate form of resolution of the complaint under s. 9 was an immediate refund of the fees charged to Mr. D.P."

Form D.T.1.

11. To complete the sequence of events, it should be noted that on the 4th day of April, 2006, the Law Society (and not the CCR Committee) made an application, on form D.T.1, to the Solicitors Disciplinary Tribunal seeking an inquiry into certain allegations of misconduct against both Mr. O'Driscoll and Mr. Roberts. In the case of Mr. N.O'S. the Law Society claimed that the applicants:-

(a) "Charged or caused to be charged a fee to their client which was excessive and where there was no evidence of the work done to justify that fee;

(b) Breached or caused to be breached s. 68(1) of the Solicitors (Amendment) Act, 1994 by failing to provide or to ensure there was provided to their client the particulars in writing of charges as provided in the said section;

(c) Agreed party and party costs with the RIRB on behalf of their client but without their client's knowledge and authority;

(d) Subsequently raised a bill of costs notwithstanding that they had agreed or caused to be agreed their client's party and party costs with the Redress Board without their client's knowledge, authority or consent;

(e) Breached s. 68(6) of the Solicitors (Amendment) Act, 1994 by failing to furnish or cause to be furnished to their client a bill of costs in the format as prescribed by the provisions of the said section; and

(f) Up to the date of swearing this affidavit failed to confirm compliance with the direction of the Complaints and Client Relations Committee on 10th November, 2005 that they refund fees charged to their client Mr. N.O'S." (See para. 13 of Ms. Kirwan's affidavit of 3rd April, 2006).

12. In the case of Mr. D.P. a similar application was made but on this occasion only four allegations of misconduct were specified. It was said that the applicants

(a) "Agreed party and party costs with the Residential Institutions Redress Board on behalf of their client without their client's knowledge and authority;

(b) Subsequently raised a bill of costs notwithstanding that they had agreed or caused to be agreed their client's party and party costs with the Redress Board without their client's knowledge, authority or consent;

(c) Breached s. 68(6) of the Solicitors (Amendment) Act, 1994 by failing to furnish or cause to be furnished to their client a bill of costs in the format prescribed by the provisions of the said section; and

(d) Failed to comply with the direction of the Complaints and Clients Relations Committee on 15th December, 2005 that they refund fees charged to their clients." (See para. 15 of Ms. Kirwan's affidavit of 3rd April, 2006).

13. In passing could I say that it is difficult to follow the last mentioned allegation contained in both applications. On uncontraverted evidence, these charges were without foundation from as early as the 22nd December, 2005. On that date, the applicants sent to Mr. D.P. a full refund together with interest and an apology, and had done the same with regard to Mr. N.O'S. on the 11th November, 2005. As there was no requirement in either of the Committee's directions to confirm that the refunds had in fact been made and as no query had been raised by the Law Society in this regard, it is hard to understand the justification for including these charges. In any event these facts were pointed out to the Law Society by letter dated the 20th April, 2006.

RTÉ Broadcast:
14. The immediate cause of the institution of these judicial review proceedings was a letter dated the 12th May, 2006, sent by R.T.É. to Mr. O'Driscoll and Mr. Roberts. In that letter R.T.É. gave notice of its intention to broadcast an interview with Mr. N.O'S. on one of its prime time shows and outlined in general terms what he might say. It sought a response from the applicants either by way of interview or otherwise. That programme dealing with the overcharging issue, was scheduled for broadcast on the 29th May, 2006. In light of the undoubted publicity which, inevitably, would immediately follow, the applicants successfully moved this Court and obtained leave to institute these proceedings, on the 23rd May, 2006.

15. Hanna J., in that order, gave the applicants liberty to apply for an order of *certiorari* quashing both "Determinations" of the CCR Committee and also quashing both applications made by the Law Society to the Solicitors Disciplinary Tribunal on the 4th April, 2006. The grounds upon which this leave was granted, were firstly, that the Committee in both of its "Determinations", failed to follow the procedures set out in s. 9 of the Act of 1994, secondly, that prior to the determinations made on the 10th November and 15th December, 2005, it failed to take all or any appropriate steps to resolve matters by agreement, as required by that section; and thirdly that the Committee had pre-judged the issues and had thereby denied the applicants a fair hearing.

The affidavit filed in support of the Statement of Grounds was of that Mr. Roberts, the first named applicant. Ms. Kirwan swore the principal affidavit on behalf of the respondents with a supporting affidavit from Mr. Gerry Doherty, Solicitor, the Chairman of the CCR Committee. Mr. Roberts subsequently filed a responding affidavit to those last mentioned. Written submissions were made by the parties, which were supplemented by oral presentations. There was no cross examination of any deponent on his or her affidavit and, therefore, the case was determined solely on affidavit evidence.

Statutory Provisions/Council Regulations
16. Whilst section 9 of the Act of 1994 is the only statutory provision directly in issue, the following sections of that Act are also relevant in that they firstly describe the overall structure of the statutory disciplinary process and secondly they are helpful in the proper interpretation of section 9:

The Solicitors (Amendment) Act 1994

* "8.—(1) Where the Society receive a complaint from a client of a solicitor, … alleging that the legal services provided … were inadequate … and were not of the quality that could reasonably be expected … then the Society, unless they are satisfied that the complaint is frivolous or vexatious, shall investigate the complaint and shall take all appropriate steps to resolve the matter by agreement between the parties concerned and may, if they think fit, following investigation of the complaint, do one or more of the following things, namely—

(a) determine whether the solicitor is entitled to any costs in respect of such legal services … and if he is so entitled, direct that such costs … shall be limited to such amount as may be specified …;

(b) direct the solicitor to comply, … with such of the requirements set out in subsection (2) of this section as appear … to be necessary …;

(c) direct the solicitor to secure the rectification, at his own expense … of any … deficiency arising in connection with the said legal services …;

(d) direct the solicitor to take, at his own expense …, such other action in the interests of the client as the Society may specify;

(e) direct the solicitor to transfer any documents … to another solicitor … , subject to such terms and conditions as the Society may deem appropriate …

(2) The requirements referred to in *subsection (1)* of this section are—

(a) a requirement to refund, … , any amount already paid by … the client …

(b) a requirement to waive, …, the right to recover … costs …

(3) (a) The Society shall not make a determination or give a direction under *subsection (1)* of this section unless they are of opinion that it would in the circumstances be appropriate to do so.

(b) In determining whether it would be appropriate to make a determination or give a direction, the Society may have regard to such matters as they think fit including—

(i) the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings;

(ii) whether proceedings seeking any such remedy have not been commenced by the client and whether it would be reasonable to expect the client to commence such proceedings;

(iii) whether *section 13* of this Act applies to the subject matter of the complaint.

(4) Where the Society have made a determination or given a direction under *subsection (1)* of this section as to the costs of a solicitor … then—

(a) for the purposes of any subsequent taxation of a bill of costs covering those costs, the amount charged by the bill of costs in respect of those costs shall be deemed to be limited to the amount specified in the Society's determination …

(5) Where a bill of costs covering costs of a solicitor has been taxed in accordance with subsection (4) (a) of this section, the determination of the Society under *subsection (1)* of this section shall, so far as relating to those costs, cease to have effect.

* "9.—(1) Where the Society receive a complaint from a client of a solicitor, … that a solicitor has issued a bill of costs that is excessive, … , the Society, unless they are satisfied that the complaint is frivolous or vexatious, shall investigate the complaint and shall take all appropriate steps to resolve the matter by agreement between the parties concerned and may, if they are satisfied that the bill of costs is excessive, direct the solicitor to comply or to secure compliance with one or both of the following requirements, namely—

(a) a requirement to refund without delay, … to any … , any amount already paid by …;

(b) a requirement to waive, … the right to recover those costs.

(2) Nothing in *subsection (1)* of this section shall prevent any person from exercising any existing right in law to require a solicitor to submit a bill of costs to a Taxing Master of the High Court for taxation on a solicitor and own client basis.

(3) Where the Society have received a complaint under *subsection (1)* of this section and the client concerned … has duly requested the solicitor … to submit his bill of costs to a Taxing Master … for taxation on a solicitor and own client basis, the Society shall not make a direction under *subsection (1)* of this section unless, after due notice to that solicitor, they are of the opinion that the solicitor or his agent in that regard is unreasonably delaying in submitting such bill of costs to a Taxing Master of the High Court for such taxation.

(4) Where a bill of costs, which has been the subject of a complaint under *subsection (1)* of this section has been subsequently taxed, then—

(a) if the Society have given a direction under *subsection (1)* of this section, such direction shall cease to have effect, or

(b) if the Society have not given a direction under *subsection (1)* of this section, the Society shall not enter upon or proceed with the investigation of such complaint or otherwise apply the provisions of this section.

(6) The Society shall not enter upon or proceed with the investigation of a complaint under this section or otherwise apply the provisions of this section, where the Society are of the opinion that the bill of costs, the subject of such complaint, was issued prior to a date that is five years before the date on which the complaint was made.

(7) …

* "10.—(1) Where it appears to the Society that it is necessary to do so for the purpose of investigating any complaint made to the Society—

(a) alleging misconduct by a solicitor, or

(b) alleging that the provision of legal services by a solicitor was inadequate in any material respect and was not of the quality that could reasonably be expected of him as a solicitor, or

(c) alleging that a solicitor has issued a bill of costs that is excessive,

the Society may give notice in writing to the solicitor or his firm requiring the production or delivery to any person appointed by the Society, at a time and place to be fixed by the Society, of all documents in the possession or under the control or within the procurement of the solicitor or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).

* "11.—(1) …

(2) Where a solicitor in respect of whom a determination or direction has been made or given by the Society under the provisions of *section 8 (1), 9 (1)* or *12 (1)* of this Act has not applied within the period provided to the High Court under *subsection (1)* of this section, such determination or direction shall become absolutely binding on the solicitor immediately upon the expiration of such period.

The period so specified is 21 days of the notification of such determination or direction.

(3) …

(4) …

(5) …

* "17.—(1) The Act of 1960 is hereby amended by the substitution of the following section for section 7: (as subsequently amended by section 9 of the Solicitors (Amendment) Act 2002)

7. (1)— An application by a person … about the conduct of a solicitor … or by the Society for an inquiry into the conduct of a solicitor on the ground of alleged misconduct shall, subject to the provisions of this Act, be made to and heard by the Disciplinary Tribunal in accordance with rules made under section 16 of this Act.

"(2) (a) Where an application … is duly made … the Disciplinary Tribunal shall—

(i) …

(ii) before deciding whether there is a *prima facie* case for inquiry:

(I) send a copy of the application and of any accompanying documents to the respondent solicitor, and

(II) request that any observations which he or she may wish to make on the application be supplied to the Disciplinary Tribunal within a specified period.

(b) If, … the Disciplinary Tribunal find that there is no *prima facie* case for inquiry, they shall so inform the applicant, the Society … and the respondent solicitor and take no further action in relation to the application.

(3) If the Disciplinary Tribunal find that there is a *prima facie* case for inquiry, the following provisions shall have effect:

(a) they shall proceed to hold an inquiry ...

(b) …

(i) …

(ii) …

(c) on completion of the inquiry the Disciplinary Tribunal shall specify in a report (which shall include a verbatim note of the evidence given and submissions made) to the High Court—

(i) …

(ii) the finding made on each allegation of misconduct and the reasons therefor,

(iii) …

(iv) in case they find that there has been misconduct on the part of the respondent solicitor …

(I) their opinion as to the fitness or otherwise of the respondent solicitor to be a member of the solicitor's profession, having regard to their findings, and

(II) their recommendations as to the sanction which in their opinion should be imposed,…

and in that case the Society shall bring the report before the Court.",

(4) …

(5) …

(6) …

(7) …

(8) The Society shall be entitled to make an application to the Disciplinary Tribunal in accordance with the provisions of this section, notwithstanding that any other person may be entitled to make such an application.

(9) Where, on completion of an inquiry under subsection (3) of this section, the Disciplinary Tribunal find that there has been misconduct on the part of the respondent solicitor, they shall have power, by order, to do one or more of the following things, namely—

(a) to advise and admonish or censure the respondent solicitor;

(b) to direct payment of a sum, not exceeding €15,000, to be paid by the respondent solicitor to the Compensation Fund;

(c) to direct that the respondent solicitor shall pay a sum, not exceeding €15,000, as restitution or part restitution to any aggrieved party, without prejudice to any legal right of such party;

(d) to direct that the whole or part of the costs of the Society or of any person appearing before them, as taxed by a Taxing Master of the High Court, in default of agreement, shall be paid by the respondent solicitor, and, in making any such order, the Disciplinary Tribunal shall take account of any finding of misconduct on the part of the respondent solicitor previously made by them (or by their predecessor, the Disciplinary Committee) and not rescinded by the Court, and of any order made by the Court under the Solicitors Acts, 1954 to 2002, in respect of the respondent solicitor.", (see s. 9 of the 2002 Act).

* "18.—(1) The Act of 1960 is hereby amended by the substitution of the following section for section 8 as amended by s. 10 of the Solicitors (Amendment) Act 2007:

"Proceedings before High Court.

8.—(1) Where the Disciplinary Tribunal, after holding an inquiry into the conduct of a solicitor, make a report to the High Court under section 7 (as substituted by the Solicitors (Amendment) Act, 1994) of this Act which is brought before the Court by the Society under the said section 7, the following provisions shall have effect:

(a) the High Court, after consideration of the report—
(i) may by order do one or more of the following things, namely—

(I) strike the name of the solicitor off the roll;

(II) suspend the solicitor from practice for such specified period and on such terms as the Court thinks fit;

(III) prohibit the solicitor from practising on his own account as a sole practitioner or in partnership for such period, and subject to such further limitation as to the nature of his employment, as the Court may provide;

(IV) restrict the solicitor practising in a particular area of work for such period as the Court may provide;

(V) censure the solicitor or censure him and require him to pay a money penalty; and in making any such order, the court shall take account of any finding of misconduct on the part of the respondent solicitor previously made by the Disciplinary Tribunal … and not rescinded by the court under the Solicitors Acts, 1954 to 2002, in respect of the respondent solicitor".

…

(iii) …

(iv) …

(v) …

(b) …

(c) in addition to doing any of the things specified in the foregoing paragraphs of this subsection, the Court may also by order do any one or more of the following things, namely —

(i) direct the solicitor to make such restitution to any aggrieved party as the Court thinks fit;

…

(vi) direct either—

(I) that no bank shall, without leave of the Court, make any payment out of an account in the name of the solicitor or his firm, or

(II) that a specified bank shall not, without leave of the Court, make any payment out of an account in the name of the solicitor or his firm;

(2) …

(a) …

(b) …

(3) …

(4) …

(2) …

* "24. Section 3 of the Act of 1960 is hereby amended by the substitution of the following para. for para. (c) in the definition of "misconduct", and as further amended by the substitution, for paras. (c) and (d) of the definition of "misconduct" of the following paragraph (s. 7 of the Solicitors (Amendment) Act 2002) "misconduct" includes –

…

TABLE:

(a) the commission of any treason or a felony or a misdemeanour,

(b) the commission, outside the State of a crime or an offence which would be a felony or a misdemeanour committed in the State

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

(d) in the course of practice as a solicitor-

(i) having any direct or indirect connection, association or arrangement with any person (other than a client) whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of section 55 or 56 or section 58 (which prohibits an unqualified person from drawing or preparing certain documents), as amended by the Act of 1994, of the Principal Act, or section 5 of the Solicitors (Amendment) Act, 2002, or

(ii) accepting instructions to provide legal services to a person from another person whom the solicitor knows, or upon reasonable enquiry should have known, is a person who is acting or has acted in contravention of those enactments,

(e) any other conduct tending to bring the solicitors' profession into disrepute.".

17. As one would expect, the Law Society, as that body is constituted, would be quite incapable in itself of performing all of the powers functions and duties required of it. Accordingly the Law Society has been given power to establish committees and to delegate to such committees many of its statutory functions. This entitlement, which has a long history, is presently implemented through Council Regulations made annually by that body. In 2004/2005 the Council adopted Regulations which include regulations numbered 53 and 54. Under regulation 53, it was provided that:-

> "The powers and functions of the Society listed below … shall be and are hereby delegated to the Complaints and Client Relations Committee and may be performed or exercised without reference to the Council:- …".

Sections 8, 9, 10, and 11 of the 1994 Act, are then listed with the result that the CCR Committee stands in the shoes of the Law Society for the purposes of these provisions. Regulation 54 is in a similar format, but in this instance, the exercise by the CCR Committee is conditional on a reporting obligation to the Council. The statutory provisions mentioned in this regulation include that referred to at sub. para. (v) which reads:-

> "Section 17, Act of 1994 (as amended by s. 9 Act of 2002), substituting Section 7 Act of 1960. Power/Function: To bring applications to the Disciplinary Tribunal, to bring reports to the High Court and to appeal to the High Court against findings or orders of the Disciplinary Tribunal".

Accordingly the CCR Committee is entitled to exercise the powers vested in the Society under ss. 8 to 11 inclusive of the Act of 1994, and subject to the aforesaid requirement, the power contained in s. 17 of that Act, as amended.

Decision:

18. Delay

Before identifying the two principal issues which require resolution in this case, I propose to deal with a number of discrete objections which have been raised by the Law Society. The first such issue is one of delay in initially seeking relief by way of judicial review.

Under Order 84 Rule 21(1) of the rules of the Superior Courts, 1986, an application for leave must be made promptly and in any event within six months when the relief sought is *certiorari*. An application moved outside these limits will not be granted unless the court is satisfied that there are good reasons for extending such periods.

19. There is now in existence a substantial body of case law dealing with this rule. Many of the decided cases have laid down general principles and others have sought to particularise within the generality of such principles. There is no doubt but that whichever analytical approach is taken, the pursuit of justice is the overriding criteria applicable to all stages of either process. Whether one approaches this task by firstly establishing the presence or absence of inordinate and inexcusable delay, or whether one firstly identifies particular factors such as: the nature of the order being sought; the conduct of the parties; the impact on third party rights; the existence of prejudice; or other like matters, the dominant achievement remains one of justice. That issue can only be determined in light of the circumstances of each case. See Keane C.J. in *De Róiste v. Minister for Defence* [2001] 1 I.R. 190 at pp. 196, 197, Denham J., at pp. 203, 208 and Fennelly J. at p. 291 et seq all of the same report.

20. In addition could I make the further following reservations:-

(a) Order 84 rule 21, is not to be applied as if it is the equivalent of a limitation period;

(b) The reference to six months is indicative as to how the word "promptly" should be interpreted;

(c) An application for *certiorari* brought within this period will typically be held compliant with the rule;

(d) The requirement to seek leave, which only applies exceptionally to private law issues, should be viewed against the constitutional right of access;

(e) The words "good reason" are expansive in scope and meaning;

(f) A failure, in itself, to explain and justify a delay will not be fatal to an extension of time; and

(g) Whilst the absence of prejudice alone, unsupported by any probative evidence may not be sufficient, nevertheless, where no person is adversely impacted by an application to enlarge time, the courts will more readily accede to it.

Finally, as Fennelly J. said in *De Róiste v. Minister for Defence* at p. 221, a short delay may require a lesser explanation than a lengthy one.

21. As appears from para. 5 and 6 above, the CCR Committee made its first, direction on the 10th November (communicated on the 15th November) and the second on the 15th December, 2005 (communicated on the 19th December). It is obvious, therefore that the leave application (23/5/06) was made within six months from these last mentioned dates. That being so, the application must be regarded at least *prima facie*, as having been made promptly. Given that fact, and the views which I am about to express regarding the second direction, it seems to me that justice demands the rejection of the respondents delay point in this regard. There is nothing in the evidence which challenges the validity of the explanation given hereunder and there is no question of the Law Society being prejudiced in any way. Accordingly, I am satisfied that the application is within time. This finding in my view, is a factor which must be taken into consideration when dealing with the position of the second direction.

22. In the grounding affidavit Mr. Roberts offers an explanation as to why the court was not moved until the 23rd May, 2006. He says that the applicants were waiting until early March 2006 before receiving a reply from the Society as to what "appropriate steps" the Committee had taken under s. 9 of the Act of 1994. Despite making this point however, he does acknowledge that Mr. O'Driscoll and himself were both aware of the Committee's findings as and from the dates of its respective decisions. Notwithstanding this, they each decided against pursuing judicial review proceedings at that time, even though they were satisfied that the directions of the CCR Committee lacked conformity with s. 9 of the 1994 Act. They so decided because of the fear of adverse publicity. This justification, however, ceased to exist when they received a letter from RTÉ dated the 12th May, 2006. (See para. 14 above). That letter indicated an intention, not only of covering this controversy in general, but also of specifically broadcasting an interview with Mr. N.O'S. as part of its intended programme. In addition, the letter outlined what appears to be fairly serious allegations which Mr. N. O'S. was prepared to make on air against the applicants. Consequently, the entire spectrum could be said to have dramatically changed so far as the applicants were concerned.

23. The receipt of this letter, according to Mr. Roberts, had indeed precisely this effect. No longer could they hope to avoid what, inevitably, would now be damning publicity against the firm. It was clear that RTÉ was serious about transmitting this programme and in the process about interviewing Mr. N.O'S. Quite evidently, such an interview would be most damaging, if the brief summary contained in its letter was repeated and, even more so, if expanded upon. The applicants therefore felt that the value or benefit in deferring action no longer existed. Accordingly, they changed their minds and embarked upon these High Court proceedings.

24. In my view, little evidence is required in order to explain the delay in moving to challenge the first direction and in establishing an independent justification for it. The delay, in terms of the six month period was two weeks. I can fully understand why, objectively, a firm of solicitors could have legitimate reasons to avoid, if at all possible, adverse publicity which could only reflect badly on their professional practice and integrity. To make a calculated decision in such circumstances was in my view entirely reasonable and entirely justified. Equally so when the underlying basis for their original decision no longer existed they were entitled to alter their strategy and pursue these proceedings.

25. In addition, I consider that this case raises matters of some importance not only to the applicants but also to the Law Society. Moreover as I have said, the Law Society has suffered no prejudice apart from making an application to the Disciplinary Tribunal which could not be determinative. Accordingly I have no hesitation in extending the time for the making of this judicial review application in respect of the first direction (given on the 10th November, 2005) and if necessary the second direction (given on the 15th December, 2005).

26. Issue of Non-Disclosure

The Law Society alleges that if the following circumstances had been brought to the attention of Hanna J., when hearing the leave application, the learned Judge, in the exercise of his discretion, would have declined, as a matter of probability, to grant leave or, alternatively, would have done so on a more restricted basis. The matters referred to, which are said to have a material bearing on the case, are as follows:-

(1) The 'actual wording of the allegations' which the Law Society has referred to the Disciplinary Tribunal; Had such

allegations been identified in full it would have been clear that, save for one, none of them related to excessive charging. Rather they related in principle, to a failure to comply with s. 68 of the Act of 1994.

(2) The 'letter dated the 2nd March, 2006': in this letter Mr. Gary O'Driscoll informed the Law Society, that at all material times, he was both the managing partner and the partner in charge of litigation within the firm and that, as a result, "in the event of an adverse finding", he would have to accept full responsibility for any errors or breaches that may have occurred. He went on to say that Mr. Roberts had no knowledge of any litigation matters and could not possibly have been aware of any alleged breaches of procedures. In such circumstances, he, Mr. O'Driscoll, had decided to fully cease to practice as a solicitor.

This letter, it is said, should be read in conjunction with an earlier letter of the 21st February, 2006, and if both had been seen by the Court, the presiding judge would have been reluctant to grant the leave order.

(3) Section '11(2) of the Act of 1994'; under this provision a direction of the CCR Committee becomes "absolutely binding", unless an appeal is lodged, within 21 days from the date of its notification. As no appeal was so lodged in this case, that fact would have had a material bearing on the outcome of the application.

(4) The averment of Mr. Roberts that the 'CCR Committee reached its findings without sight of the file or examination of the papers or review of the solicitors work. It is claimed that this statement of Mr. Roberts could not be correct as the applicants were requested to furnish, to the Law Society, the entire file in this matter. All the documentation so given was before the Committee. Unless, therefore, the supplied documentation was incomplete, this statement was materially inaccurate.

(5) The 'letter dated the 20th April, 2006': in this letter, the managing partner of the firm informed the Society that the direction to refund contained in both decisions of the CCR Committee, had in fact been complied with. It was, therefore difficult to know what complaints the applicants truly had. In addition, Messrs Vincent & Beatty, by letter dated the 9th May, 2006, sought on behalf of their clients an extension of time within which to file a replying affidavit in the proceedings before the Disciplinary Tribunal. There was no mention in that letter of any intention to institute judicial review proceedings.

(6) The 'letter dated the 2nd December, 2005': Mr. Colm O'Rourke, the managing partner, wrote to the Law Society on this date and demanded a re-consideration by the CCR Committee of its decisions, failing which his firm would be left with no option but to make an application to the High Court for appropriate relief.

The fact that no such application was made despite the rejection of the demand is of no consequence.

27. In my respectful view there is no substance in any of these objections. With regard to Mr. O'Driscoll's letters dated the 21st February and the 2nd March, 2006, it is abundantly clear what the solicitor was intending to convey to the Law Society. In the March letter he pointed out that, as both the managing and litigation partner, he was the person responsible within the firm for all matters touching upon litigation and, as a result, if there was "an adverse finding", then, in that capacity, he would have to accept responsibility therefor. In essence, he was exonerating his co-partner on this factual basis, which, incidentally, could neither be termed an admission nor an acceptance of what the CCR Committee had done. In my view, the position adopted by Mr. O'Driscoll is entirely irrelevant to the s. 9 issue and to the issue of pre-judgment. Equally so, with regard to the correspondence exhibited at LK4 of Ms. Kirwan's replying affidavit. On 20th April, 2006, Mr O'Rourke informed the Law Society that the fees in question, together with interest, had been fully refunded and that apologies had been given to both Mr. N.O'S. on the 11th November, 2005 and to Mr. D.P. on the 22nd December of that year. Given the declared position of the applicants on the question of a refund, which position was unequivocally outlined at both meetings of the CCR Committee, (and in fact noted in the relevant minute) the omission to exhibit this letter is of no consequence.

Complaint is also made of Messrs Vincent & Beatty's failure to advise the Society in their letter of the 9th May, 2006, of the applicants' intention to seek judicial review proceedings. It will be recalled that an extension of time was sought in that letter for the purposes of preparing a replying affidavit in the proceedings before the Disciplinary Tribunal. As of the 9th May, 2006, the applicants quite obviously had not received RTÉ's letter dated the 12th May, and accordingly, on the uncontroverted evidence of Mr. Roberts, no decision had been made at that time to seek the instant judicial review proceedings. Therefore there was nothing misleading about their said letter.

28. There is no doubt but that under s. 11(2) of the Act of 1994, a direction by the CCR Committee under s. 9(1), thereof, becomes "absolutely binding" on those to whom it is addressed, unless an appeal is taken therefrom within a period of 21 days from the date of notification. As no appeal was taken in either case, the provisions of this section apply to both directions dated the 10th November and 15th December, 2005 respectively.

In the verbal submissions made to this Court I was informed that Mr. O'Moore S.C. recalls having specifically drawn the attention of Hanna J. to this provision. That, of course, is an entire answer to the point. Even, however, if I was to disregard that, I would still be of the view that a failure to refer to the section would not be critical to this application; although, of course, it clearly should have been opened to the presiding judge as part of the background. I say this because s. 11(2) cannot be read as constituting an ouster of the courts' jurisdiction on a judicial review application. This view is now accepted by the respondents who nevertheless argue that such a failure is a relevant factor in the exercise by this Court of its overall discretion. The point therefore is now one of weight and when so measured cannot be deemed fatal.

29. The remaining matters relied upon relate to an averment in the affidavit of Mr. Roberts that the CCR Committee did not have sight of the file or examine the papers or otherwise review his firm's work, before coming to a conclusion that the fees charged were excessive. As all of the material supplied was before the Committee this statement is at best self-contradictory and most probably wrong and inaccurate. In response, Mr. Roberts maintains his position, and points out that even though the files were physically available at both hearings, they were not looked for and therefore as such, could not have been examined by the CCR Committee. These proceedings are judicial review proceedings in which no legal issue turns on whether, or to what extent, the Committee assessed the work of the solicitors. It is not therefore, the function of this Court to assess the merits or otherwise of the fees charged.

Finally, it would appear that the actual allegations, forming the subject matter of the Society's applications to the Disciplinary Tribunal were not outlined to Hanna J. Whilst, undoubtedly, it would have been preferable to have done so, this case is centrally about the role of the CCR Committee under s. 9 of the Act of 1994 and, save for the follow-on consequences of its adverse findings, it is not

concerned with the Disciplinary Tribunal.

I therefore do not accept that any of the above objections are sustainable.

30. The Principal Issues
There are two principal issues in this case. The first is based on an allegation that the CCR Committee failed to comply with s. 9 of the Act of 1994 and, accordingly, both directions are a nullity. In addition, since the Law Society's applications to the Disciplinary Tribunal were made on foot of such directions, both applications must also be void. The second issue is based on a submission that the CCR Committee, on both the 10th November, 2005, and the 15th December, 2005, pre-judged the matters before it. On this ground alone it is said that such decisions cannot stand.

31. The Section 9 Issue:
The applicants submit that the CCR Committee, as the delegated body of the Society, was obliged by virtue of the provisions of s. 9(1) of the Act of 1994, to "take all appropriate steps to resolve the matter by agreement between the parties concerned". It is claimed that in accordance with well established principles, this requirement is mandatory; see Henchy J., in the *State (Elm Developments Limited) v. An Bord Pleanála* [1981] ILRM 108 at p. 110 and in *Monaghan UDC v. Alf-A-Bet Promotions Limited* [1980] ILRM 64 at p. 69. Since the evidence clearly demonstrates that no such steps were taken by the Committee, it must follow that its failure to comply with this statutory pre-condition, deprived it of jurisdiction and accordingly, both its findings and any action taken as a consequence thereof, are a nullity.

32. In response, the Law Society makes a number of points both of a general and of a specific nature. At the outset of its submissions, it forcibly asserts that the only step taken to date has been the referral of the applicants to the Disciplinary Tribunal. Nothing else has occurred. According to counsel for the Law Society, such a referral does not attract the "full panoply of rights of natural justice". This is a clear from cases such as *Ó Ceallaigh v. An Bord Altranais* [2000] 4 I.R. 54, In *re National Irish Bank Ltd (No. 1)* [1999] 3 I.R. 145 at 168 and *Miley v. Flood* [2001] 2 I.R. 50 at 63. This is particularly so where as here, the Disciplinary Tribunal, which is a statutory body independent of the Law Society, affords to every person called before it, the full extent of all natural and constitutional rights. Therefore a distinction must be made between the applicants when appearing before the CCR Committee, and when appearing before the Disciplinary Tribunal.

33. In addition, the Law Society repeatedly makes the point that it has no obligation, either under s. 9 or otherwise, to seek a resolution by agreement of misconduct allegations made against a solicitor. In this respect it relies heavily on its letter of 25th October (see para. 7 above), as having been sufficiently general to have enabled it to investigate and enquire into matters of potential misconduct. The role (therefore) of s. 9, as well as its particular application, is accordingly very much in issue in this case.

It is unclear to me whether, in its submissions, the Law Society is suggesting that there was in fact no s. 9 inquiry, or that there were two investigations running in parallel with each other, namely: one under s. 9 and one relating to allegations of misconduct: or whether the investigation dealing with misconduct was part of the s. 9 inquiry. Whatever about the ambiguity of its submissions in this regard, it seems to me that the letter of the 25th October, 2005, is perfectly clear in at least this one vital respect. From its content I am satisfied beyond question that the Law Society was conducting a s. 9 inquiry into the complaints made by both Mr. N.O'S. and Mr. D.P. This conclusion is inescapable from the wording of the letter itself (see para. 7 above). Firstly it refers to the client's contact with the Law Society which concerned "legal fees"; secondly, it gave notice that it had commenced an investigation "into the matter" (which could only mean the overcharging complaints); and thirdly, that it was treating the communication received as the making of a complaint under s. 9(1) of the Act of 1994. In addition, having so described what "this matter" was, the Law Society then makes repeated references to an inquiry into "such matter". I am therefore firmly of the belief that there was, most definitely, a s. 9 inquiry.

34. The position with regard to a parallel inquiry is less clear. At no stage did the Society say that it was investigating 'allegations of misconduct'. Whilst I appreciate that the reference to breaches of the Acts, the Accounts and other Regulations, falls within the description of possible 'misconduct' under s. 3(c) of the Act of 1960, (as substituted by s. 24 of the 1994 Act) and as subsequently amended by s. 7 of the Solicitors (Amendment) Act, 2002), the word "misconduct" is never used by the Society, either in correspondence or, until the actual decisions are noted, in the minute of either inquiry. Neither did the Society at any stage invoke the provisions of s. 10 of the 1994 Act whereunder it could have insisted upon the production of documents for the purpose of a misconduct investigation. It seems to me that the commencement of an investigation by the Society into allegations of misconduct is potentially a most serious matter for the solicitor in question. From carrying on his professional business, in many instances supporting other colleagues and staff, he may find himself being summoned, within an acute time frame, to appear before the CCR or other Committee, and suddenly in a most concentrated way he may be fighting for his practice and indeed even his career. His very livelihood may be in jeopardy and may be even eliminated in extreme cases. It is because of these potentially devastating consequences that the legislature has laid down firm and definite rules which are designed to protect and safeguard, not only members of the public, but also members of the Law Society itself. It therefore seems to me that, at a minimum, fair procedures must demand that the Law Society informs a solicitor of its intention to conduct a misconduct investigation and of the statutory provision(s) under which it proposes to so do. Otherwise there is a grave risk to justice.

Given, however, the submissions made in this case and the conclusions reached in this judgment it is not necessary to make any specific findings in this regard.

35. Before looking at the statutory scheme, reference should be made to Ms. Kirwan's affidavit where she gives a summary, in paras. 12 to 19 thereof, of the procedure which the Law Society follows within the disciplinary process. She has headed the various steps as follows:-

(a) The Investigation of Complaints;

(b) The Committee stage;

(c) The referral to the Solicitors Disciplinary Tribunal:

(d) The *prima facie* decision by the Solicitors Disciplinary Tribunal;

(e) The hearing before the Solicitors Disciplinary Tribunal:

(f) Appeal to the President of the High Court, and

(g) The final ruling of the President of the High Court.

36. Apart from noting that the first step taken by the Solicitors Disciplinary Tribunal is to determine the existence of a *prima facie* case, nothing else turns on the stages mentioned at sub. para. (d) to (g) above. Under the "Investigation of Complaints", Ms. Kirwan points out that preliminary information can be obtained from a variety of sources, including the receipt of a specific complaint or from a routine inspection of a solicitor's practice. At the second stage, that is, the Committee stage, she says at para. 14 of her affidavit "where the first named respondent obtains information which causes it to have a concern, it would seek information from the solicitor in question and may or may not call him to appear before the relevant committee. In this case, both solicitors were required to appear before the Complaints and Client Relations Committee of the first named respondent. …". She then goes on to say at para. 15 when dealing with the referral stage, that a relevant committee may refer a solicitor to the Disciplinary Tribunal, "if it considers that there is *prima facie* evidence misconduct (sic) such as to warrant a referral". She states that when so doing the Committee is acting administratively "and simply decides if the matter merits an application by the Society for an inquiry into the conduct of a solicitor".

37. As can therefore be seen, once a complaint is received, information is sought from the solicitor in question and the Law Society may or may not call that solicitor to appear at an inquiry before the relevant committee. Such a committee may, or again may not, refer a solicitor to the Disciplinary Tribunal. Before so doing however it comes to a conclusion that the solicitor in question is "*prima facie*" guilty of misconduct. Consequently, according to Ms. Kirwan such a committee not only gathers information, establishes facts and makes findings, but also reaches a conclusion, on a *prima facie* basis, as to the existence of misconduct on the part of the solicitor before it.

Against this practice of the Society it is of interest to have a closer look at the material provisions of the relevant statutory scheme.

38. As previously appears, Part III of the Act of 1994, which is headed "Investigation of Complaints" consists of ss. 8 to 25 inclusive. Section 8 deals with the power of the Society to impose sanctions for inadequate services; s. 9 gives the Law Society a similar right where excessive fees are charged, and s. 10 deals with the production of documents. Section 17, as amended by s. 9 of the Solicitors (Amendment) Act, 2002, deals with an inquiry by the Disciplinary Tribunal into allegations of misconduct and s. 18 as amended by s. 7 of the Solicitors (Amendment) Act, 1994 makes provision for the High Court to consider any report submitted to it by the said Tribunal. Accordingly, one can see that the Law Society has a specific power under s. 8 to deal with the inadequacy of services, and a similar power under s. 9 with regard to overcharging, with the more general power regarding matters of misconduct being contained in s. 17 of the Act.

39. As is clear from the above, s. 8 deals with the provision of inadequate or substandard legal services. Having received a complaint with regard to such matters the CCR Committee" … unless they are satisfied that the complaint is frivolous or vexatious, shall investigate the complaint and shall take all appropriate steps to resolve the matter by agreement between the parties concerned and may, if they think fit, following investigation of the complaint, do one or more of the following things namely- …" (emphasis added). Provision is then made for the Committee to make a determination or issue a direction under any one or more of the five subparagraphs which immediately follow in s. 8(1).

40. Section 9, which deals with complaints of overcharging, is structured in exactly the same way: where the Committee receives a complaint of a solicitor charging excessive fees "it shall, unless it is satisfied that [it is] frivolous or vexatious, investigate the complaint and shall take all appropriate steps to resolve the matter by agreement between the parties concerned and may, if [it is] satisfied that the bill of costs is excessive, direct the solicitor to comply or to secure compliance with one or both of the following requirements namely …" (emphasis added). The two requirements are then specified. The format of both sections appears therefore to be virtually identical. Concentrating on s. 9, it seems to me that on receipt of a complaint which is not frivolous or vexatious, the Committee must firstly investigate that complaint; secondly, it must take all appropriate steps to resolve the matter by agreement between the parties; and thirdly, it may, if satisfied that the bill is excessive, issue a direction to the solicitor. Whether these steps are sequential or are all part of the same inquiry is not relevant in this case. What is important however is whether the words "shall", as used in the context of the investigation and the attempted resolution, are mandatory in nature, or are merely directory. On this important point, I do not believe on closer examination that there is any true disagreement between the parties, and that, in fact, both accept that the relevant provisions of s. 9 are mandatory.

41. In any event, the applicable principles of law by which this issue must be determined are well established, having been laid down by Henchy J. in the *State (Elm Developments Limited) v. An Bord Pleanála* [1981] I.L.R.M. 108 where, at p. 110 the learned judge said:-

> "Whether a provision in a statute or a statutory instrument, which on the face of it is obligatory (for example, by the use of the word "shall"), should be treated by the courts as truly mandatory or merely directory depends on the statutory scheme as a whole and the part played in that scheme by the provision in question. If the requirement which is not been observed may fairly be said to be an integral and indispensable part of the statutory intendment, the courts will hold it to be truly mandatory, and will not excuse a departure from it. But if, on the other hand, what is apparently a requirement is in essence merely a direction which is not of the substance of the aim and the scheme of the statute, non compliance may be excused."

42. In applying this statement to s. 9 of the 1994 Act, I have no doubt whatsoever but that the 'get up' of the statutory scheme is directed towards a resolution of the complaint "by agreement between the parties concerned". It seems to me that since the complaint must obviously be investigated there cannot be a justification for treating the word "shall" as it applies to such investigation in a mandatory way, but only in a discretionary sense when the same word is applied to the resolution stage of the process. No good reason could exist for such a differentiation. In addition, the legislature has made a deliberate distinction between the mandatory nature of the investigation and resolution stage on the one hand and, by the use of the word may, the discretionary nature of the direction stage on the other hand. It is only if matters cannot be resolved by agreement that the Committee is entitled to issue a direction in the form of either subpara. (a) or subpara. (b) of subs. 9(1). This restriction is entirely logical given that the primary focus of the provision is dispute resolution. If the complaint can thus be resolved then the parties have achieved by agreement what otherwise is achievable only by direction. In such circumstances there is neither point or purpose in issuing a direction. It follows therefore that the resolution process is an integral part of the section itself.

43. This view, that the focus of s. 9 is resolution by agreement, is, I feel, supported by the provisions of subs. (3) and (4) of that section. Under subs. (3) if a client has requested his solicitor to submit a disputed bill of costs to taxation, then the Law Society (through the CCR Committee) is prohibited from making any direction under subs. (1), unless the solicitor delays unreasonably in submitting such a bill. Under subs. (4) where a bill of costs the subject matter of a complaint, has been subsequently taxed, then any direction previously given shall cease to have effect and if no such direction has been given, the Law Society is prohibited from even investigating the complaint. These provisions strongly suggest that the section, when invoked, treats a complaint of overcharging as

primarily being a matter between the client and his solicitor with the Law Society acting as a mediator either by achieving an agreed settlement or by imposing a just solution. In my view, therefore, the power to issue a direction is conditioned upon the implementation of the preceding step and that step proving unsuccessful.

The question therefore which must be asked is: what steps did the Law Society take under s. 9 of the Act of 1994 in relation to this overcharging complaint? Their response in this regard is, in my view, not only unsustainable but also incredible, i.e. it lacks credibility.

44. In the first place both Ms. Kirwan and Mr. G. Doherty, (Solicitor who was Chairman of the relevant CCR Committee), have sworn that the minutes made of both the inquiry hearings were true and accurate in all respects. That averment is almost certainly incorrect. The minute of the 15th December, 2005, noted that Mr. O'Moore S.C. made a number of references to the Committee's obligation to take appropriate steps to resolve this matter. Being evidently very much aware of this condition, it would seem reasonable to assume that counsel also made mention of s. 9 of the 1994 Act. That he did so and indeed that he opened the provisions of s. 9, is directly deposed to by Mr. Roberts at para. 13 of his grounding affidavit. In addition at para. 14, this applicant states that counsel, on three occasions, specifically requested the Committee to give the applicants an opportunity of resolving the matter directly with Mr. D.P. These averments have not been challenged. As the minute makes no mention whatsoever of s. 9, or of these specific requests made by Mr. O'Moore S.C., it cannot therefore be either a true or (a) complete record of the business conducted thereat.

Leaving aside this particular point for a moment, it is most surprising that if the minute was a true and accurate record of the Committee's determination, there is no reference to its views on s. 9. In particular, one would have expected some comment or some observation on the submissions made. Yet, the minute is entirely silent in that regard.

45. On the 22nd December, 2005, Messrs Vincent & Beatty wrote to Ms. Kirwan and having specifically quoted the relevant part of s. 9, formally requested her "to indicate to us what steps, if any, the Law Society took to resolve the matter by agreement between our clients and Mr. N. O'S. before coming to the determination in its letter of 15th November as required by s. 9 of the Act of 1994". A similar letter was sent with regard to Mr. D.P. The holding reply of the 19th January, 2006 was surprising in that instead of answering the query, Ms. Kirwan, who had acted as Secretary to the CCR, said that since the file had been transferred to Ms. Joan O'Neill, Solicitor to the Disciplinary Tribunal, she had been asked to reply. On the 27th January, 2006, Messrs. Vincent & Beatty expressed similar surprise at the Society's response. A reminder by that firm was again sent to Ms. Kirwan on the 16th February. On the 20th February Ms. Kirwan seemed to suggest that she had no further part to play in this matter, and indicated that all future correspondence should be directed to Ms. O'Neill. There the matter rested until a formal response was received by way of two undated letters which were sent in early March, 2006.

46. The first letter was received on the 3rd March, 2006, and dealt with Mr. N.O'S. and the second on the 7th March, which, though inadvertently naming Mr. N.O'S., was in fact referring to Mr. D.P. Both were sent by Ms. O'Neill. With regard to Mr. N. O'S. the letter said "Having spoken to the Secretary of the Committee, Ms. Linda Kirwan, I will advise that the Committee did not think that there were any appropriate steps to take to resolve the matter prior to making its decision". With regard to Mr. D.P. the response was "Whereas neither, I nor the secretary of the committee Ms. Linda Kirwan, can speak for the Committee, it can only be assumed that the Committee took the view that the most appropriate form of resolution of the complaint under s. 9 was an immediate refund of the fees charged to Mr. D.. Finally, to complete the Law Society's position on this point, it is stated at para. 5 of the Statement of Opposition, (without making a distinction as to complaint), that the CCR Committee took the view "that the most appropriate form of resolution was an immediate refund of the fees charged to the clients".

47. It seems to me that the following points are required to be made with regard to the Law Society's position. There is no doubt but that at the hearing on the 15th December, 2005, counsel made an issue of the requirement to comply with s. 9. He asked what steps the Committee had taken in that regard and I am satisfied that he also requested an opportunity for the applicants themselves to resolve the matter by agreement. Given the averments of both Ms. Kirwan and Mr. Doherty, namely, that the minute of the meeting was a true and accurate account of its business, it is highly surprising that, if s. 9 formed any part of the CCR's deliberation, there is no reference whatsoever to it. If that omission was due to inadvertence, which I could understand, one would then have expected the Committee to take the first available opportunity thereafter to correct the position. Within one week of the 15th December hearing, such an opportunity arose, when, by letter dated the 22nd December, the Secretary to the Committee was specifically asked to identify what steps were taken pursuant to s. 9. No explanation has been forthcoming as why that simple inquiry failed to attract any response until the 19th January, 2006. Even on that occasion what issued from the Secretary was a holding letter with an attempt to transfer responsibility onto Ms. O'Neill. Ms. O'Neill had no connection with the CCR Committee whereas the addressee of the inquiry was its Secretary. In addition, no attempt was made at that, or indeed at any time thereafter, to correct the minute of the 15th December meeting and accordingly, one can only assume that the Society legal position is that the minute is indeed an accurate note of the meeting's business.

48. This specific query was once again addressed to Ms. Kirwan on the 27th January, 2006. It took three weeks before the Law Society gave a similar response to its previous letter of the 19th January. Eventually, as above indicated, a reply was received in early March. It should be noted that, the source of the reply was Ms. Kirwan on whose behalf Ms. O'Neill stated "that the Committee did not think they were any appropriate steps to take to resolve the matter prior to making its direction". Again, even if this were so, one would have expected the minute to reflect this view and in any event, to have been furnished to the applicants several months previously. The second reply, dealing with Mr. D.P., was rather a little more curious. It starts by indicating that Ms. Kirwan could not speak for the Committee nor of course could Ms. O'Neill who, incidentally, bears no responsibility in this matter. It goes on to assume what view the Committee took, which was that the most appropriate form of resolution was the immediate refund of the fees charged to Mr. D.P. It otherwise shed no further light on the issue.

49. As can be seen, the position of the Law Society is inherently contradictory and has to be immediately rejected. In my view, the absence of any reference to s. 9 or of its provisions in that part of the minute dealing with the Committee's decision (or elsewhere), indicates that the "appropriate step" provision of that section, was either never discussed, deliberately or otherwise by the Committee, or else was discussed and not recorded. Either situation reflects badly on the process. In addition I fail to understand how the simple inquiry of the 22nd December, 2005 was not replied to for a period of more than ten weeks. Thirdly, Ms. Kirwan's failure to respond, and her reference over to Ms. O'Neill, is I have to say quite puzzling. It is all the more so, given that the ultimate source of the reply had to be Ms. Kirwan herself. Fourthly, the reply relative to Mr. N. O'S. is entirely different to the reply relative to Mr. D.P. In the former it is claimed that the committee decided there were "no appropriate steps" available to resolve the matter. In the latter, its decision was that the "most appropriate step" was to direct an immediate refund. Fifthly the Statement of Opposition suggests the latter to cover both cases. Given that the circumstances of both complaints were dealt with almost identically, I must say that these proffered explanations, in the context of the overall position adopted by the Law Society, are untenable. I would have expected and would have been much more understanding of the situation, if a coherent, clear cut, and intelligible explanation, or none as the case may be, had been offered. I therefore can only conclude, in such unacceptable circumstances, that the CCR Committee made no

attempt to identify or ascertain what appropriate steps might be available so as to resolve this issue by agreement between the parties. Accordingly, I am satisfied that the Committee failed to adhere to the mandatory procedures specified in s. 9 of the Act of 1994.

50. In light of this conclusion, the question now arises as to what consequences follow therefrom. In essence, I have held that before a direction can issue under s. 9 of the Act of 194, the CCR Committee is obliged to engage in a certain process. That engagement is a condition precedent to its power to issue a direction if otherwise it is mindful to do so. Therefore, it must follow that the directions given under s. 9 in this case, were made without jurisdiction and accordingly, cannot be lawful. A similar issue, though in the context of the planning code, arose in *Monaghan UDC v. Alf-A-Bet Promotions Limited* [1980] I.L.R.M. 64 where Henchy J., at p. 69 of the report said:-

> "I do however, feel it pertinent to express the opinion that when the 1963 Act prescribed certain procedures as necessary to be observed for the purpose of getting a development permission, which may affect radically the rights or amenities of others and may substantially benefit or enrich the grantee of the permission, compliance with the prescribed procedures should be treated as a condition precedent to the issue of the permission".

The court accordingly held that no permission could be obtained where the procedures in respect of an application had not been complied with. The instant situation is also not unlike that which occurred in the *State (Holland) v. Kennedy* [1977] I.R. 193, where the Supreme Court set aside an order of the District Court, purportedly made under s. 102(3) of the Childrens Act, 1908, on the basis that the District Judge had not complied with a statutory pre-condition in the making of her order. In this case as the CCR Committee failed to implement the pre-condition of facilitating a resolution between the parties, its subsequent directions cannot prevail.

In this context, I make no distinction between the direction given on the 10th November, 2005 and that given on 15th December of that year. Whilst it is true to say that no specific s. 9 submission was addressed to the Committee on the first occasion, that in itself does not excuse non-compliance, as there is a clear obligation on the Committee itself to follow statutory procedures. Therefore, in my view, both directions are unlawful.

51. Prejudgment

The second principal ground relied upon is that the CCR Committee had prejudged the issues before inquiry and accordingly, had denied the applicants their right to a fair hearing. This submission has three elements to it. Firstly, it is claimed that the Committee's complete failure to comply with s. 9 of the Act of 1994, is, in itself, evidence of a pre-declared position on the merits of the complaint; secondly, it is alleged that the Society's failure to abide by its own declared policy when dealing with a s. 9 complaint is further evidence of pre-judgment; and thirdly, and most importantly, are the statements attributably to a committee member, as published in the national press on the 15th October, 2005.

52. When presenting the first element of this submission, it is said that the CCR Committee deliberately ignored the provisions of s. 9 of the Act of 1994 so that it could issue directions and refer the matter to the Disciplinary Tribunal. It did this, so as to give on behalf of the Law Society, the public impression of taking a "hard line" on this issue. Despite the existence of some justifiable suspicion in this regard, and notwithstanding the findings above made, I am not satisfied on the balance of probability to attribute such an imputation to the Committee. As a result, I do not propose to decide the pre-judgment issue on this basis.

53. The second point made under this heading arises from a lecture which Ms. Kirwan gave on the 8th of November, 2005 as part of a continuing legal education programme. The paper, although headed "Section 68 of the Solicitors (Amendment) Act, 1994", made brief mention of excessive fees and how such allegations are generally dealt with under s. 9 of that Act. Whilst the applicants rely on certain parts of her presentation for the purposes of contrasting how the Law Society in general deals with a s. 9 complaint and how it dealt specifically with the instant complaints, I am not however satisfied that when read as a whole, the actions of the Law Society when measured against her essay, can support an allegation of prejudgment. I therefore, cannot agree that this is a determining factor on the second issue.

54. By far the most important ground, which the applicants rely upon in this regard relates to certain remarks attributable to Ms. Carmel Foley as published in the national press on 15th October, 2005. In the *Irish Independent* of that date, under the heading "Double – Charging abuse case solicitors may be struck off", it is reported that Ms. Foley had called an emergency meeting of the Law Society to discuss the issue, which she described as "nothing less than scandalous". She was further quoted as saying "I think it is nothing less than scandalous if solicitors are taking money over and above the fees which they are also getting. It must be remembered that their costs are being paid separately and to actually take money from a claimant's award is a very serious offence in my books". That this is an accurate report of what Ms. Foley actually said is not denied. As a result, it is claimed on behalf of the applicants that this statement constitutes clear and unequivocal evidence of prejudgment. Accordingly, on that basis alone, it is submitted that the action of the CCR Committee should be set aside.

55. In *Orange Communications Limited v. Director of Telecoms (No. 2)* [2000] 4 I.R. 159, the issue of bias and prejudgment arose. It was dealt with in several of the judgments. At pp. 185 - 186 of the report Keane C.J. said:-

> "That view of the law is also made clear by the recent decision of this court in *Radio One Limerick Limited v. IRTC* [1997] 2 I.R. 291. As was pointed out in that case at p. 315 bias may take a variety of forms:-
>
> > 'The decision maker may have a financial or proprietary interest in the outcome of the litigation. … He or she may have on some other occasion so prejudged the matters in dispute as to be incapable of reaching a detached decision or, at all events, a decision which reasonable people would regard as free from even the suspicion of bias.'
> >
> > … [I have no doubt but that there is] no room for doubt as to the applicable test in this country: it is that the decision will be set aside on the ground of objective bias where there is a reasonable apprehension or suspicion that the decision maker might have been bias, i.e. where it is found that, although there was no actual bias, there is an appearance of bias".

Geoghegan J. at p. 252 of the report, also dealt with this topic when he said:-

> "Even in cases where there is no evidence of actual bias and no evidence of the adjudicator having any propriety or other interest in the outcome of the matter, there will still be held to a be apparent bias if a reasonable person might have apprehended that there might be bias because of some particular proven circumstance external to the matters to be decided in the case such as for instance a family relationship in circumstances where objection may be taken, *O'Reilly v. Cassidy* [1995] 1 ILRM 306, or the judge having been involved in a different capacity in matters which were contentious in

> *Dublin Well Women Centre Limited v. Ireland* [1995] 1 ILRM 408, or where there was evidence of pre-judgment by a person adjudicating *O'Neill v. Beaumont Hospital Board* [1990] ILRM 419."

In the *O'Neill v. Beaumont* decision, the words of Finlay C.J. at pp. 438 and 439 of the report should also be quoted. The Chief Justice said

> "I am satisfied that the statements of opinion made by the chairman of the board in the course of that meeting … went so far as to express in a very definite fashion the exercise of a judgment on the merits of the contesting questions of fact which will go to determine the appropriate certificate to be issued under clause 11 of the contract. In those circumstances, I take the view that applying the test which I have outlined in short terms and which I believe to be the appropriate test in this case, that a person in the position of a plaintiff who is a reasonable man and not either over sensitive or careless of his position, would have good grounds for a fear that he would not get in respect of the issues involved from a body which included the chairman, an independent hearing".

These statements are now fully accepted as accurately representing the relevant principles of law on this issue.

56. To these principles could I add the following; the mere fact that Ms. Foley was but one of the Committee in question is, in my view, irrelevant. It matters not whether she was sitting in judgment alone or with others. This view is fully supported by the decision of Murphy J. in *Dublin and County Broadcasting Limited v. Independent Radio and Television Commission* (Unreported, High Court, 12th May, 1989) where at p. 532 of the report the learned judge said:-

> "I entirely accept that it would be irrelevant and immaterial, if, in a case such as the present, it was established as a matter of fact that bias was non-operative or that the particular person accused of the bias was outvoted or whatever. If it is shown that they are on the facts circumstances which would lead a rightminded person to conclude that there was a real likelihood of bias, this would be sufficient to invalidate the proceedings of the tribunal."

57. At all relevant times Ms. Foley was the Director of Consumer Affairs, having been appointed under the Consumer Information Act 1978. As a statutory office holder, she had particular responsibility for consumer affairs and consumers. Her position therefore on such matters was particularly striking. She was no ordinary member of the public. She was quite unlike a spokesperson for a lobby or pressure group. She bears no comparison to other public figures who offer views on matters of general or particular public interest. She was quite clearly distinguishable from members of the Executive or members of the Legislature who frequently express views on various topics e.g. the level of sentencing appropriate to particular crimes. Her position was totally dissimilar from all of the above; this not only because of her statutory appointment but also, and particularly so, because of her membership of the actual CCR Committee which sat in these cases. Given her specific area of interest, it would be difficult to believe that she did not carry into the discussions of such committee, the views as previously expressed by her on this topic.

58. I do not accept that her comments were truly general in the sense in which that word is normally understood. The issue here was one of overcharging. Whilst it may have involved more than one firm of solicitors, nonetheless it was in reality a discrete and confined issue, affecting a particular group of clients who were together bonded by their former experience and by a common tribunal to which their applications were made. The fact that she did not target any single firm of solicitors is in my view of little value. I therefore reject each of these suggestions as in any way establishing a position of neutrality on the part of Ms. Foley. In my opinion, she used strong language and gave the appearance of declaring a definite position on the issue. No qualifications were offered to meet circumstances in which a solicitor and client charge would be entirely lawful. Her views covered solicitors "taking money over and above the fees which they are getting". Such money was at the core of the allegation. I therefore think that a reasonable person could believe that she had firmly established a view and placed that view on public record. In my opinion, to publicly so declare was highly regrettable and whatever the motivation, her judgment in so acting was both inappropriate and unwise.

59. I have no doubt but that in accordance with the test specified in *O'Neill v. Beaumont Hospital* and in *Orange v. Communications* any firm of solicitors behaving reasonably, who were appearing before the CCR Committee on such a charge, would have good ground for fearing that they would not get an independent hearing. They would in my view, be justified in having a real and substantial apprehension that the issue had been predetermined against them. If Ms. Foley's views had been known to the applicants prior to the hearing (and they were not) and if application had been made for her to rescue herself, I have little doubt but that she would have had no option but to so do. Justice must not only be done but must be seen to be done. Consequently, I am satisfied that as her position could not be said to be free from suspicion the applicants could have a reasonable fear of prejudgment. Their right therefore, to a fair hearing had been compromised.

60. Consequently, although *certiorari* is a discretionary remedy I have no hesitation in setting aside both decisions of the CCA Committees, on the grounds of non compliance with s. 9 of the Act of 1994 and pre-judgment. In addition, as these directions were inextricably linked with, and used as the basis for the referral to the Disciplinary Tribunal, the applications to that body dated the 4th April, 2006, must also be set aside. This does not mean however that a future application to the Tribunal is being prohibited by this decision. If such circumstances arise, a number of issues may have to be addressed; such as to whether s. 9 is exclusively a stand alone section, whether and in what circumstances (if at all) the CCR Committee can under s. 9 make findings of or express views on the existence of misconduct and what matters must be found to exist before a referral to the Tribunal can be justified. None of these issues however arise in the instant case.

61. Conclusion:
I have not, as yet, in this judgment detailed the immediate background to the making of the aforesaid complaints against the applicants. In mid to late 2005, word got into the public domain of some solicitors seeking a solicitor/client charge, in addition to the fees which they had obtained from the RIRB, when representing their clients before that Board. One complaint immediately became many. Soon, the number multiplied further. There was widespread public concern. The issue was carried in the newsprint, mentioned in television and debated widely in radio programmes. This went on at least for several days. The phrase, a "public frenzy", which has been used, is only marginally off the mark. The Law Society, as the professions regulator, a phrase I loosely use, was deeply involved. Part of its response was outlined in the evidence. This included the publication of a notice or advertisement in the national press. It was addressed to applicants of the Redress Board. It asked did they wish to make a complaint about solicitor and client charges? If they did the Law Society "wants to hear from you". Such a step in itself must surely be at least a little unusual. We know that in response it received a verbal complaint from Mr. N.O'S. which it recorded on a questionnaire. The written complaint from Mr. D.P. asked the Law Society to let him know what the situation was. On the wording of both communications, it could be argued that neither constituted a complaint but rather an inquiry as to what the true position was. In any event is it not the situation that subject to compliance with s. 68 of the Act of 1994 a solicitor is lawfully entitled, in some circumstances, to ask a client to make up a shortfall in fees not fully covered by the unsuccessful party? Without knowing what the circumstances were, one might have thought that the Law Society would in the first instance, seek to establish the exact position, and then make a decision as to whether or not

further action was required (see paras. 36 and 36 supra). This did not happen. The Law Society treated both communications as complaints under s. 9 of the Act of 1994. In its initial communications with the solicitors, it not only sought all relevant information, but at the same time, conveyed a decision previously made that the CCR Committee would sit, inquire into and adjudicate on the issue. The letter of the 25th October, 2005, did not even stop there. It warned that there could be a referral to the Disciplinary Tribunal, or the High Court and to that one might say fair enough. But it also threatened a possible referral to An Garda Síochána. So even at that stage the threat was made to refer to the Gardaí. Whilst I am not familiar with the Law Society standard letter in which it seeks information on a complaint of overcharging, I sincerely hope that such request for information is more measured and balanced than that in this case. It is difficult to come to any conclusion from the above, other than that the Law Society was taking and was being seen to take, a stance much more reminiscent of guilt than innocence. It most certainly was not neutral. I believe that the background to this controversy heavily and unduly influenced the Law Society in the manner of both its general and specific response to the problem.

62. Whenever a chain of events is led by the force of public media or fuelled by public outcry, the risks of imputing guilt to the innocent or finding the guilty even more so, are palpable. When that occurs on a grand scale, core institutions of State are challenged and frequently damaged. When it happens on a lesser scale, reputations, businesses, standing in the community, health and family life suffer, sometimes irreparably. Examples on all levels are so numerous that judicial notice can comfortably be taken of such risks. It is therefore imperative on everybody whose decision impacts on the rights of others to be and to remain ever so vigilant against these pressures. Rights, procedures and due processes cannot yield to external forces even those as powerful as I have mentioned. Justice cannot be imperilled: it must be done and must be seen to be done.

63. Finally, there are three further matters that I should comment on. Firstly, this judgment has no diminishing effect on the lawful use of statutory powers to identify, enquire into, adjudicate upon and impose sanctions on those who have been found guilty of misconduct. Secondly, the protection available to the general public remains untouched. And finally, it is only fair to point out that there is evidence from a legal cost accountant which strongly disputes the allegations of overcharging.

64. For the above reasons, I will grant the relief sought at para. D 1 and 2 of the statement grounding the application for judicial review.