THE HIGH COURT

[2017 No. 10507 P.]

BETWEEN

EUGENIE HOUSTON

PLAINTIFF

AND

DAVID BARNIVILLE, PAUL O'HIGGINS, FERGAL FOLEY,

MEL CHRISTLE, DECLAN DOYLE, PAUL MCGARRY, PADRAIG MCCARTAN, PAUL MCDERMOTT, SARA MOORHEAD, SHANE MURPHY, DAVID NOLAN, RONNIE ROBBINS, HELEN BOYLE, BRIDGET BIRMINGHAM, DAVID DODD, SEAN GUERIN, JOHN LUCEY, GERARD MEEHAN, RODERICK MAGUIRE, LALITA MORGAN PILLAY, NIALL O'DRISCOLL, DERVLA BROWNE, COLM O'HOISIN, MARY-ROSE GEARTY, PATRICK MCCANN, DENIS MCCULLOUGH, ALAN DODD AND ANNE-MARIE LAWLOR

DEFENDANTS

THE HIGH COURT

[2018 No. 785 P.]

BETWEEN

EUGENIE HOUSTON

PLAINTIFF

AND

HUGH GEOGHEGAN, DAITHI O'CEALLAIGH, NIALL GREENE, GRAINNE CLOHESSY AND EUNAN O'HALPIN

DEFENDANTS

THE HIGH COURT

[2014 No. 5258 P.]

BETWEEN

EUGENIE HOUSTON

PLAINTIFF

AND

THE GENERAL COUNCIL OF THE BAR OF IRELAND

DEFENDANT

THE HIGH COURT

[2014 No. 5715 P.]

BETWEEN

EUGENIE HOUSTON

PLAINTIFF

AND

THE GENERAL COUNCIL OF THE BAR OF IRELAND

DEFENDANT

THE HIGH COURT

[2014 No. 10610 P.]

BETWEEN

EUGENIE HOUSTON

PLAINTIFF

AND

PATRICK O'NEILL, ANNE-MARIE LAWLOR, MAURICE O'CONNELL, DONAL O'KELLY, PATRICK MCCANN, DENIS MCCULLOUGH, ALAN DODD, ÁINE HYLAND, NÓIRÍN GREENE AND MAIRE SWEENEY

DEFENDANTS

JUDGMENT of Mr. Justice Twomey delivered on the 18th day of July, 2019

SUMMARY

1. This case is a consolidated action brought by the plaintiff ("Ms. Houston") of Naas, County Kildare. It consists of five separate actions by Ms. Houston who is a barrister but no longer a member of the Law Library. The defendants were, at all relevant times, members of the General Council of the Bar of Ireland (the "Bar Council") or members of the Professional Practices Committee (the "PPC") of the Bar Council, or members of the Barristers' Professional Conduct Tribunal (the "Tribunal"), or members of the Barristers' Professional Conduct Appeals Board (the "Appeals Board"). In the defence to this action, it is pleaded that both the Tribunal and the Appeals Board are independent of the Bar Council and operate pursuant to the Code of Conduct for the Bar of Ireland (the "Code of Conduct").

2. This case can be summarised as follows. Ms. Houston directly contacted clients of two solicitors who had previously instructed her as a barrister, notwithstanding that the Code of Conduct provided at that time that a barrister could only make contact with a client

'*at a consultation at which the client and the solicitor are both present' or 'in writing to the client through the solicitor*'. At the time when Ms. Houston made direct contact with the clients, there was no provision under the Code of Conduct for a barrister to make direct contact with a client. The two solicitors separately complained about Ms. Houston, in one case to the PPC and in the other case to the Tribunal. The most significant outcome of the two complaints was not a penalty or censure but rather an '*advisory'* decision by the Tribunal which advised Ms. Houston not to engage with previous, or existing clients, in the manner giving rise to the complaint herein, or in any other manner contrary to the Code of Conduct for the Bar of Ireland.

3. Somehow the handling by the defendants of this relatively minor complaint which led to an advisory decision by the Tribunal, asking Ms. Houston to only contact clients in accordance with the Code of Conduct, has led to a very extreme reaction from Ms. Houston (*e.g.* she has described herself as having been treated by the defendants like a Jew in Nazi Germany and how at one stage she felt she was going to die because of the defendants), and has led to five sets of proceedings issued by Ms. Houston over the course of five years, and some €500,000 has been incurred in legal costs by the defendants in defending these proceedings.

4. The majority of this judgment deals with the application to dismiss made by the defendants at the close of Ms. Houston's evidence, on the grounds that she had not made out a *prima facie* case.

Application to defer delivering judgment

5. I set down the 31st May, 2019 as the date for the delivery of the judgment in this case, but just before judgment was delivered Ms. Houston made two submissions to this Court. The first submission related to the possible recusal application, however it became clear that having raised the issue, Ms. Houston was not pursuing this point, as she stated that "*I am not asking you to recuse yourself*". The second submission was an application by Ms. Houston to defer delivering judgment because the Court of Appeal had delivered a judgment on the 21st March, 2019 on the issue of applications to dismiss, which had recently been published on the courts service website, entitled *Burke v. Mullaly & Ors* [2019] IECA 82 which Ms. Houston claimed should have been drawn to this Court's attention because of its significance to the application to dismiss in this case. She quoted in particular from para. 33 of that judgment where McGovern J. when dealing with the same situation as in this case, namely where the defendants had advised that they would go into evidence if the application to dismiss was refused, stated that:

> "Having been informed that the first-named respondent would go into evidence if the application for non-suit was refused the trial judge should have deferred any decision on that until all the evidence was heard."

As counsel for the defendants was not familiar with the *Burke* case and its application, if any, to this case, I decided to defer giving judgment to allow both parties make submissions on the effect of that Court of Appeal decision on the application to dismiss in this case. On the 9th July, 2019, there was a separate hearing on this issue, which is referenced later in the body of this judgment, in the section dealing with the application to dismiss.

6. For the reasons set out below, this Court concludes that the application to dismiss Ms. Houston's claims should be granted.

7. Ms. Houston has given evidence that she has no assets, and for this reason, this litigation is an example of how it is a case of win/win for plaintiffs but 'lose/lose' for defendants being sued by an impecunious plaintiff with an unmeritorious claim, *i.e.* the defendants lose by settling an unmeritorious claim, but also lose if they decide to fight and 'win' against an unmeritorious claim. There is no downside for an impecunious plaintiff (since they do not have assets to pay the defendant's legal costs), only the upside of a potential settlement if the defendant wishes to avoid incurring the massive costs of a High Court action which will be irrecoverable from the plaintiff. This case therefore illustrates why the real power in unmeritorious claims is the threat of the irrecoverable legal costs which can be inflicted on a defendant by an impecunious plaintiff. This is why it makes economic sense for claims by impecunious plaintiffs to be settled, even though there is no negligence or wrongdoing by a defendant. They are settled, not because the claim has any merits, but because of the enormous costs which can be inflicted by an impecunious plaintiff on a defendant. Since this case is one where no settlement was possible, this therefore is a rare example of a case that went to hearing even though there was little prospect of the defendant recovering in excess of €500,000 in costs from the plaintiff. As such it highlights that in cases against an impecunious plaintiff with an unmeritorious claim, a defendant can 'lose' financially by fighting and 'winning' the case.

8. This case also illustrates how the high costs of litigation, particularly of unmeritorious litigation, can have a very significant impact upon insurance costs, in this case the insurance costs of the professional body representing barristers, which increased by 300%. As noted by Charleton J. (when writing extra-judicially in the *Irish Judicial Studies Journal* [2019] Vol. 3 at pp. 5 and 6) the enormous costs of litigation are a huge issue for the administration of justice in Ireland:

> "The Irish system, over the last two decades, has increasingly suffered from the defect that it has become extremely expensive through the continual and unchecked escalation of legal fees, which undermine the constitutional duty to make access to the courts available to the people. […] The control of lawyers' fees is a matter that has been subject to much statutory regulation without any success, making a rethink at the level of principle necessary."

BACKGROUND

9. One of the key issues for Ms. Houston is her treatment by the PPC, the Tribunal and the Appeals Board which resulted in her being subject to an advisory decision on the 19th February, 2015 by the Appeals Board to the effect that she should only contact clients in accordance with the Code of Conduct, which the Appeals Board, in giving its decision, described as 'a very mild measure'. In order to fully understand how this has led to five years of litigation and some €500,000 in legal costs, it is necessary to provide a short background of some relevant facts, as well as the effect this disciplinary process has had on Ms. Houston, before then considering the application to dismiss.

10. Ms. Houston was called to the Bar of Ireland in July 2008. Prior to being called to the Bar, Ms. Houston made an application on 27th June, 2008 to become a member of the Law Library. In submitting this application Ms. Houston consented to:

- the terms of the Constitution of the Bar of Ireland and
- the Code of Conduct of the Bar of Ireland.

11. On 30th June, 2008 Ms. Houston signed a Declaration to the Benchers of the King's Inns (the "Declaration") as part of her admission to the degree of barrister-at-law. In signing this Declaration Ms. Houston undertook to:

- only practice as a barrister while a member of the Law Library,

- continue in practice only while retaining membership of the Law Library,
- submit to the disciplinary jurisdiction of the Bar Council,
- comply with the Rules and Regulations of the Bar Council,
- observe the Code of Conduct for the Bar of Ireland, and
- comply with the Rules and Regulations of the Honorable Society of King's Inns.

12. The applicable rules of the Law Library, of which Ms. Houston undertook to become a member pursuant to the terms of the Declaration, provided at Clause 18 *et seq* for the payment of subscription fees.

Clause 1.

Clause 1 of the Constitution of the Bar Council, to which Ms. Houston consented in her application to join the Law Library, expressly states that the Bar Council has the power to *'exercise disciplinary powers over all practicing barristers'*. The Constitution also provides that the permanent committees of the Bar Council included the PPC (Clause 31). Its role is described as to *'monitor all matters concerning proper professional practice of barristers'*. It is clear matters of discipline are to be dealt with by the Tribunal and the Appeals Board, since under the heading "*Discipline*", Clause 55 of the Constitution of the Bar Council states:

> "All practising members of the Bar shall be subject to the terms and conditions for the Code of Conduct for the Bar for the time being in force and to the decisions of the Barristers' Professional Conduct Tribunal and Appeals Board of the Bar of Ireland."

Is Ms. Houston bound by Code of Conduct & Bar Council Rules and Regulations

13. As a preliminary point, it is relevant to note at this stage, that it is not alleged that at the time of making her application to the Law Library or that at the time of signing the Declaration that Ms. Houston took any issue at all with the requirement to comply with the Code of Conduct or the Rules and Regulations of the Bar Council or the various other rules and provisions to which she agreed on the 27th and 30th June of 2008 to be bound. However, as part of her case Ms. Houston is now claiming that the requirement for members of the Law Library to submit to the Rules and Regulations of the Bar Council and in particular the Code of Conduct is an abuse by the Bar Council of its dominant position and is a breach of competition law.

14. Although in her evidence to this Court Ms. Houston claimed that she did not *'scrutinise the legality'* of the Declaration before signing it, it is apparent that Ms. Houston did not take issue with the Declaration until her first dispute with the Bar Council in 2011. Indeed, she stated in evidence that she *'didn't know there was anything wrong with [the undertaking in the Declaration] until the behaviour of 2011'*.

15. In particular, Ms. Houston claims that when she signed the Declaration in 2008 agreeing to be bound by the foregoing rules, she read the document but did not scrutinise it from a legal perspective and so may not have appreciated that she was agreeing to be bound by these rules. This Court does not however accept that for this reason Ms. Houston is not fully bound by the terms of the document she signed. She is no different that any other litigant before the Courts who argues that a binding legal term should not apply to them and, in particular, her failure to consider in detail the significance of the terms which she signed does not mean she was not fully bound by them. This Court has little hesitation therefore in concluding that as a matter of contract, and as a term of her being admitted to the degree of barrister-at-law, Ms. Houston agreed to be bound by the Code of Conduct and the Rules and Regulations of the Bar Council.

Proceedings issued by Ms. Houston after two complaints against her by solicitors

16. It was following two complaints made against her, the first in 2011 made on behalf of Ms. Mary Morrissey, solicitor, (the "Morrissey Complaint"), and the second in 2013, made by Ms. Wendy Doyle, solicitor, (the "Doyle Complaint"), that Ms. Houston initiated proceedings against the defendants. In June 2014, Ms. Houston initiated her first case against the defendants (2014/5258P). In July and December of the same year Ms. Houston took another two cases, one against the Bar Council (2014/5715P) and one against members of the Tribunal (2014/10610P) respectively.

17. On 18th March, 2016 Ms. Houston was officially excluded from the Law Library. This followed almost a year of extensive correspondence between Ms. Houston and the Law Library Committee regarding Ms. Houston's outstanding Law Library subscription fees. As noted below, Ms. Houston does not deny that she did not pay these subscription fees. Her position appears to be that she was involved in litigation with the Bar Council at that time and so she did not pay the amounts owing to the Law Library.

18. Following her exclusion from the Law Library in 2016 Ms. Houston initiated the final two sets of proceedings. The first of these was issued in November 2017 (2017/10507P) and this was a claim against members of the PPC and the Standing Committee of the Bar Council. The second was in January 2018 (2018/785P), which was a claim against the Appeals Board. It is important to note that although excluded from the Law Library, Ms. Houston may reapply for membership of the Law Library in the future, (although she has indicated strongly to this Court that she has no intention of doing so), subject to clearing her subscription arrears. In the alternative, Ms. Houston is perfectly entitled to practice as a barrister without being a member of the Law Library.

19. It was by Order of the High Court (Noonan J.) dated 25th April, 2018 that the five separate sets of proceedings brought by Ms. Houston were consolidated into one action and proceeded to hearing before this Court.

THE DETAIL OF MS. HOUSTON'S CLAIMS

20. Since Ms. Houston's Statement of Claim has outlined more than forty specific reliefs that she is seeking, it is useful to summarise the essence of her claim against the defendants. In her own direct evidence, Ms. Houston summarised her claim as follows:

> "This is about trespass to the person. It is assault and trespass to the person. It is breach of my constitutional rights. It is breach of competition law and I say that I have been defamed."

21. Based on the evidence which Ms. Houston adduced before this Court, it seems to this Court that she has three somewhat broad claims against the defendant, namely:

- Competition law claims,

- Defamation claims,
- Assault claims.

In relation to the assault claim, it is important to clarify at an early stage that Ms. Houston is not alleging that any of the defendants were ever physically violent or physically threatening to her. Rather, she is claiming that she felt under duress and strain as a result of the complaints made against her and the manner in which the defendants handled these complaints, to such a degree that she claims that she felt threatened and so it is on this basis she claims that she was assaulted.

22. It is also clear to this Court that the very core of Ms. Houston's dispute is the manner in which a committee of the Bar Council, namely the PPC, and two independent disciplinary bodies, namely the Tribunal and the Appeals Board, dealt with two complaints which were made against her, the first in 2011 and the second in 2013. Therefore, it is useful at this juncture to provide a brief summary of those complaints.

The Morrissey Complaint

23. The Morrissey Complaint arose two weeks after Ms. Houston notified the Law Society that a solicitors' firm, *Morrissey & Co.*, of Tullow, County Carlow, that had previously instructed her in a number of matters on behalf of its clients, was allegedly using a limited company to provide legal services to the firm in breach of s. 64 of the Solicitors Act, 1954. Only two weeks following Ms. Houston's notification to the Law Society of this alleged breach by *Morrissey & Co.* of the Solicitors Act, 1954 a formal complaint was made by Hugh Millar, solicitor ("Mr. Millar") on the 8th November, 2011 on behalf of Mary Morrissey, solicitor ("Ms Morrissey"), a partner in *Morrissey & Co.*, to the PPC about Ms. Houston making direct contact with clients of that firm and advising those clients of *'the possible benefit of consulting other solicitors'* , to quote the expression used in Ms. Houston's letter to Mr. Millar dated 25th November, 2011 to describe why she contacted those clients. Ms. Houston claims various acts and omissions were committed by the PPC in its handling of that first complaint made on behalf of Ms. Morrissey.

24. Ms. Houston maintains that she was entitled under the terms of the Code of Conduct of the Bar of Ireland to notify clients of a firm of solicitors of the fact that, in her view, the firm was acting illegally. In this regard, paragraph 3.2 of the Code of Conduct provided at the relevant time that:

> "If by reason of the negligence of his or her instructing solicitor or otherwise a barrister forms the view that there is a conflict of interest between the client and the instructing solicitor, the barrister should advise that it would be in the client's interest to instruct another solicitor. A barrister should use discretion as to whether such advice should be given either at a consultation at which the client and the solicitor are present or be given in writing to the client through the solicitor or given to the solicitor."

25. After receiving submissions from Ms. Houston, the PPC decided at its meeting on 28th November, 2011 that paragraph 3.2 of the Code of Conduct should be amended. The decision of the PPC noted that:

> "In the light of difficulties that had arisen between a number of colleagues and Instructing Solicitors, that the terms of paragraph 3.2 of the Code of Conduct for the Bar of Ireland needs to be revised as it does not appear to make adequate provision for a situation where a Barrister having concern that the Instructing Solicitor has a conflict of interest with the lay client, may not be facilitated by the Instructing Solicitor in arranging a consultation between the Barrister, Solicitor and client."

26. As a result of the engagement between the PPC and Ms. Houston, matters reached the stage where, by the 1st December, 2011, Ms. Houston was happy to give the following undertaking in her letter of that date to Mr. Millar:

> "I have today been advised by the Professional Practices Committee of the Bar that the relevant provisions of the Code of Conduct are insufficiently clear as to what a Barrister should do in such circumstances and, therefore, that I should agree not directly to contact any clients of Ms. Morrissey without [the PPC's] advice on a case by case basis. I am happy to agree to that and [Ms. Morrissey], therefore, has my assurance that I will not in the future contact any former clients of mine who have been clients of Ms. Morrissey without first seeking and obtaining the advice of the Professional Practices Committee of the Bar Council."

27. In addition, on the 16th December, 2011 the PPC wrote to Mr. Millar to the effect that it had concluded that he was incorrect to suggest that it was never appropriate for a barrister to make direct contact with clients of a solicitor.

28. One would have thought that this would be the end of the matter. Indeed, this was the impression one would have also got from the letter of 27th February, 2012 written by Ms. Houston to the Secretary of the PPC. This is because in that letter Ms. Houston indicated that she was most grateful for the considerable amount of time and assistance that was given to her at the end of 2011 in resolving her issues and she thanked the PPC for its assistance in dealing with the Morrissey Complaint and asked the PPC to let her know if they had any further questions in the matter.

29. However, for reasons that are not entirely clear to this Court, Ms. Houston subsequently became unhappy with how the Morrissey Complaint had been resolved. It is also relevant to point out that the decision of the PPC that the Code of Conduct lacked clarity was acted upon in July 2014 when the Code of Conduct was duly amended by the Bar Council to provide clarity for barristers regarding directly contacting clients of solicitors.

30. However, by email of 17th April, 2012, Ms. Houston sought to speak to the PPC at its next meeting. Accordingly, a letter was written on behalf of the PPC to Ms. Houston on 17th April, 2012 seeking a list of the issues she wished to be addressed (which is referred to by the parties as the 'wish list), at a meeting between her and members of the PPC. However, Ms. Houston refused to outline the issues she wished to discuss and indicated by email of 17th April, 2012 to Mr. Jerry Carroll, the secretary of the PPC, that '*the Bar Council is already on notice that your conduct is among that in issue'*. Then by letter dated 11th June, 2012 to *Morrissey & Co.*, Ms. Houston withdrew with immediate effect the undertaking that she had given, some six months earlier, not to contact clients of *Morrissey & Co*. She also stated in this letter that the *'manner in which this undertaking was procured renders it void ab initio'*. Then on 21st June, 2012, Ms. Houston made a complaint to the Tribunal about members of the PPC. She outlined her complaint, in so far as relevant as follows:

> "[T]he Professional Practices Committee of the Bar Council has invited me to submit to it a 'wish list' and the names of those of its members who I would select to deal with it. The purpose of this exercise would be to allow it to in some way undo a very serious wrong that was done to me.

> I cannot acquiesce to the PPC sitting in judgment of itself. The Bar Council repeatedly has refused any other alternative. Of course, the option remains of seeking a declaration from the High Court that a barrister is entitled to put the interests of his or her client first and to act in accordance with the law; this may need to happen in any event.
>
> As to the conduct of the individual members of the PPC, they were put on written notice last week that their persistent failure to agree to independent adjudication of their conduct would result in complaints to the Tribunal. That last chance was rebuffed in writing. Accordingly please find attached a complaint form [….]"

31. The essence of Ms. Houston's complaint at this stage was that the PPC did not have jurisdiction to deal with the Morrissey Complaint and that the handling of the Morrissey Complaint by the PPC was done in an unfair manner since she was not given sufficient time to respond to the complaint and that there was no hearing. It must be remembered that this allegation flies in the face of the undertaking of the 1st December, 2011 given voluntarily by Ms. Houston and her letter of the 27th February, 2012 to the PPC expressing gratitude for its assistance in resolving the Morrissey Complaint.

32. In any case, the Tribunal in considering Ms. Houston's complaint about the PPC expressly assumed *'that all members of the [PPC] participated in all of the decisions […] while* working as Barristers' (emphasis added) and on this basis the Tribunal assumed it had jurisdiction to deal with the complaints of misconduct made by Ms. Houston against the members of the PPC under the Code of Conduct. This assumption was made, it appears, in Ms. Houston's interests to allow the complaint be considered by the Tribunal, notwithstanding the fact that it was arguable that the Code of Conduct was aimed at the conduct of a barrister in his/her professional work as a barrister rather than in any voluntary work they might do sitting on committees of the Bar Council, such as the PPC which as previously noted has as its primary role the monitoring of *'all matters concerning proper professional practice of barristers'.*

33. On this basis, the Tribunal assumed that it had jurisdiction to consider Ms. Houston's complaint against the members of the PPC and it gave its Decision on 21st December, 2012. It decided that, at its height, the complaint by Ms. Houston against the individual barristers who were members of the PPC was one of error of judgement by those members and that the actions complained of did not amount to misconduct under the Code of Conduct.

34. On the 1st February, 2013, Ms. Houston appealed the decision of the Tribunal to the Appeals Board. The decision of the Appeals Board was given on 20th March, 2013 and it decided that:

> "The Barristers' Professional Conduct Tribunal and the Barristers' Professional Conduct Appeals Board are confined to the functions assigned to them in the Disciplinary Code for the Bar of Ireland. The Appeals Board is unable to interpret the Code as conferring any jurisdiction on the two bodies over the Professional Practices Committee or the individual members of it in relation to making decision or carrying out functions in their capacity as such members. The Professional Practices Committee is an administrative body with some investigative powers. There is nothing in the Code to suggest that it can in any way be supervised or, as it were, "judicially reviewed" by the Tribunal or the Appeals Board."

35. Thus, the Appeals Board held that the Tribunal had no jurisdiction to entertain Ms. Houston's original complaint and on this basis, the Appeals Board dismissed Ms. Houston's appeal. This ended the Morrissey Complaint, but of course it did lead to these proceedings against the various members of the PPC, the Tribunal and the Appeals Board as defendants.

The Doyle Complaint

36. The second solicitor's complaint against Ms. Houston, the Doyle Complaint, was made on the 19th September, 2013 to the Tribunal by another solicitor, Ms. Wendy Doyle of Baggot Street, Dublin, who had also previously instructed Ms. Houston as a barrister on behalf of clients. That complaint was regarding Ms. Houston's direct contact by email with a client of the firm suggesting that he seek independent legal advice regarding his affairs and referring him to the Negligence Panel of the Law Society, which is a panel maintained by the Law Society of solicitors who are prepared to take negligence actions on behalf of clients against other solicitors. Ms. Houston claims that various acts and omissions were committed by the Tribunal and on appeal by the Appeals Board in how they handled this complaint by Ms. Doyle. On the 10th September, 2014, the Tribunal found that that:

> "The clear and unequivocal import of the email [sent to Ms. Doyle's client] is to suggest to [the client] that [Ms. Doyle] had acted negligently in representing him and [Ms. Houston] purports to advise [the client] as to how he should "protect your interests". Of significance is the fact that this advice was unsolicited and was made known to [Ms. Doyle] by [the client] who forwarded the email to [Ms. Doyle] within thirty minutes of receiving it."

On this basis, the Tribunal found that Ms. Houston had breached professional standards and had failed to *'uphold the standards of the Code of Conduct'*.

37. The Tribunal concluded its decision by asking for representations from Ms. Houston and Ms. Doyle regarding the appropriate disciplinary measure to be imposed before the Tribunal reached a decision in this regard. On the 12th December, 2014, the Tribunal handed down a penalty simply in the form of 'advice' in the following terms:

> "Pursuant to D3 (b) of the Disciplinary Code for the Bar of Ireland the Tribunal *advises* [Ms. Houston], in the strongest possible terms, not to engage with previous, or existing clients, in the manner giving rise to the complaint herein or in any other manner contrary to the Code of Conduct of the Bar of Ireland." (emphasis added)

38. On the 6th January, 2015, Ms. Houston appealed this decision to the Appeals Board and on the 19th February, 2015 the Appeals Board upheld the findings of the Tribunal and dismissed Ms. Houston's appeal in the following terms:

> "It is clear that the Tribunal correctly concluded that [Ms. Houston] failed to uphold the standards set out in the Code of Conduct. *A very mild measure under the Code, considering the circumstances, was then applied* though none of the factual matters appear to be seriously in dispute as an appeal issue." (emphasis added)

39. While the manner in which the PPC, the Tribunal and the Appeals Board handled the foregoing two complaints is the essence of Ms. Houston's dispute with the defendants, it is also the case that it is out of the handling of these two complaints that Ms. Houston's related actions, now consolidated, arise, since she alleges that the conduct of some of the defendants in investigating the two complaints amounted to, *inter alia*, trespass against the person and defamation and that the Bar Council is in breach of competition law. In particular, Ms Houston alleges, *inter alia*, that she was assaulted by some of the defendants (not in the sense of ever having suffered any physical injury, but in the sense that she was in fear for her safety because of how the two complaints were handled), that she was defamed by some of the defendants and that the Bar Council is in breach of competition law and abuses its

dominant position.

PROFOUND EFFECT ON MS. HOUSTON OF DEFENDANTS' ACTIONS
40. While there is a stark divergence between the parties regarding their respective characterisation of the events that have occurred, what is clear is that these events have had a very profound effect on Ms. Houston. This may explain why, when the Morrissey Complaint appeared to have been resolved, she re-opened matters, why she has pursued these proceedings for five years and why she indicated to this Court that she proposes, in the event of her not being successful at first instance, to pursue these proceedings for several more years to the Court of Appeal and to the European Court of Justice.

41. If anything, as happens in many cases, this litigation seems to have prolonged, rather than shortened, the continuing negative personal impact on Ms. Houston of the original dispute between the parties, *i.e.* the handling of the two complaints against her in 2011 and 2013. However, there seems little prospect of Ms. Houston ceasing this litigation, since it is clear to this Court from her evidence that she is 100% convinced that she is in the right.

42. Some reference should however be made to the precise effect this litigation has had on Ms. Houston, since it may go some way to explaining why an advisory decision asking a barrister to only contact clients in accordance with the Code of Conduct would lead to five sets of High Court proceedings which Ms Houston has now stated she is determined to pursue for years to come. In this regard, it is clear from Ms. Houston's direct oral evidence and her pleadings and the correspondence, that it would be an understatement to say that she feels very strongly about what she regards as her mistreatment by the defendants. For example, although it is not alleged that Ms. Houston was subjected to any physical injury, she nonetheless states that:

- the defendants attacked her rights and dehumanised her and she was treated like a Jew in Nazi Germany. Indeed, she alleges that just as it is said about the Holocaust, '*how did we let it happen?*', she believes the same could be said about her treatment by the defendants and that her situation is reminiscent of the Holocaust because 'good people' accepted an 'unacceptable regime',

- the defendants carried out a '*punishment beating'* on her at the behest of a solicitor, Mr. Millar,

- her treatment at the hands of the defendants during the handling of the 2011 complaint was the equivalent of her being put in a burqa and placed in the middle of the field waiting to have her head chopped off,

- she was inflicted with modern-day slavery by the defendants,

- the defendants inflicted a reign of terror upon her,

- she was so frightened by the contents of text messages received from the defendants, regarding the complaints received by the Bar Council about her, that she went to An Garda Síochána and ended up leaving her home (*albeit* that in evidence she did accept, with hindsight, that leaving her home was illogical),

- in proceedings before a High Court judge regarding her dispute, she states that she saw '*hatred'* in the eyes of that judge towards her,

- after her experience at the hands of the defendants she is '*lucky to be alive'*. In fact, Ms. Houston describes how, at the end of July in 2014, when her disagreement with the defendants was at its height, she thought she was dying and wrote a note to that effect as she felt her immune system and her emotions were shutting down.

Absence of objectivity
43. The foregoing summary may go some way to explaining why there is such a massive difference between Ms Houston's perception on the one hand, and the defendants' perception on the other hand, of the intention and effect of the very same acts during the handling of the Morrissey Complaint and the Doyle Complaint. All the severe reactions suffered by Ms. Houston and complained of in these proceedings arose in the context of two complaints about Ms. Houston to her professional body, which complaints did not lead to a penalty or censure in any meaningful way, but rather to merely an '*advisory'* decision. Yet, Ms. Houston does not at any stage concede that her description of the effect on her of the handling of these complaints by the defendants (*i.e.* being treated like a Jew in Nazi Germany) was an overreaction on her part.

44. While this Court does not dispute that Ms. Houston felt deep emotional pain and fear such that she left her home and felt like she was dying, Ms. Houston's reaction was not, in this Court's opinion, justified in any way by what had happened to her and her characterisation of those events as the equivalent of the treatment of Jews in Nazi Germany is rejected by this Court as being completely unjustified.

45. Apart from her concession that moving out of her home may have been an overreaction, the most that Ms. Houston conceded was that, as a barrister acting for herself without an independent solicitor or barrister, she may be like '*the cobbler with the worst shoes'*. This Court agrees with her in this regard and this lack of objectivity was exacerbated by the fact that, at times, Ms. Houston became understandably emotional about the effect the dispute has had upon her.

46. As a general point, it does seem to this Court that Ms. Houston is too closely connected to her dispute with the defendants to provide herself with objective legal advice in relation to this matter and this may be, in part, why these proceedings which started in 2014 are still in being at enormous expense, some five years later.

APPLICATION TO DISMISS PLAINTIFF'S CASE
47. As previously noted, when Ms. Houston completed her evidence, counsel for the defendants brought an application to dismiss the case in its entirety, which will now be considered. Counsel for the defendants made clear that, in the event of his application being unsuccessful, he would be going into evidence.

Law relevant to an application to dismiss
48. The law in relation to applications to dismiss is well settled and is set out in detail in the judgment of Clarke J., as he then was, in *Moorview Developments v. First Active* [2009] IEHC 214, in reliance upon, *inter alia*, the Supreme Court decision in *O'Toole v. Heavey* [1993] 2 I.R. 544. It seems clear from the *Moorview* case that the following principles apply to this Court's consideration of the application to dismiss in this case:

• If, as in this case, the defendants indicate that they do intend to go into evidence if the application to dismiss is refused, then the trial judge has to decide whether the plaintiff has made out a *prima facie* case, which in the case of a jury trial means that one must ask if no other evidence was given, would it be open to a jury to enter a verdict for the plaintiff.

• If granting the application in whole or in part, this Court must give a reasoned judgment as to why all or parts of the proceedings are being dismissed at this stage. If refusing the application in whole or in part, this Court should simply say that the defendants have a case to meet. Accordingly, in Ms. Houston's case, where there are five sets of proceedings containing several causes of action, if some of the proceedings are being dismissed and some not, then a reasoned judgment needs to be given regarding the proceedings being dismissed, if any. In relation to those proceedings or causes of action not being dismissed, if any, the Court should simply say that there is a case to meet in relation to these causes of action/proceedings.

• In reaching its decision regarding the application to dismiss, this Court takes the plaintiff's case at its height. However, while taking the plaintiff's case at its height, this Court must subject the plaintiff's evidence to some scrutiny to see if it could reasonably be relied upon for the proposition which it is sought to support. In the *Moorview* case, Clarke J. was referring *'in particular'* to the subjecting of expert evidence to scrutiny in an application for non-suit (see para. 5.13) because that case, unlike this case, rested on expert evidence. However, it seems clear to this Court that it must be the case that the same scrutiny applies to all the evidence upon which the plaintiff relies, and not just expert evidence, since if a proposition upon which a plaintiff relies in their case is not supported by evidence, logic dictates that the application to dismiss must be granted, whether the evidence in question is expert evidence or non-expert evidence.

49. However, as previously noted, on the 9th July, 2019 the parties made submissions regarding the relevance, if any, of the Court of Appeal decision in the Burke case to this Court's jurisdiction to consider an application to dismiss. Counsel for the defendants made written and oral submissions to the effect that the decision in Burke makes no change to the existing law on applications to dismiss and is simply an application of the settled law laid down in *Hetherington v. Ultra Tyre* [1993] 2 I.R. 535, *O'Toole v. Heavey* [1993] 2 I.R. 544 and *Moorview v. First Active* [2009] IEHC 214.

50. Ms. Houston made no written submissions and her only oral submission on this point, was not on the substance or effect of the *Burke* case on applications to dismiss, but simply was a submission by her disputing the suggestion by counsel for the defendants, that it was inappropriate of her to seek to delay the delivery of the judgment by bringing to the attention of the Court a case, which she could have brought to the attention of the Court during her replying submissions to the defendants' application to dismiss.

51. She had of course when first bringing the *Burke* case to the Court's attention relied upon the statement of McGovern J. that:

> "Having been informed that the first-named respondent would go into evidence if the application for non-suit was refused the trial judge should have deferred any decision on that until all the evidence was heard."

52. Having considered the submissions, it seems clear to this Court that the Burke case does not impact upon the jurisdiction of this Court to entertain applications to dismiss. Rather the *Burke* case is merely an example of the principle which was set down by the Supreme Court by Finlay C.J. in *O'Toole v. Heavey*, regarding how this Court deals with applications for non-suit where more than one defendant is being sued. At p 547 of that Supreme Court decision, Finlay C.J. stated:

> " Where more than one defendant is sued and where claims or cross-claims for contribution have been made between the defendants on the basis that they are joint tort feasors, the trial judge should not, it seems to me, decide on an application for a non suit made at the conclusion of the plaintiff's evidence unless he is completely satisfied that the eventual outcome of the case could not result in the patently unjust anomaly that a plaintiff having sued more than one defendant and one of the defendants having been dismissed out of the action at the conclusion of the plaintiff's evidence the other defendant or defendants could also escape liability by affixing the blame through their evidence on the defendant already dismissed."

This principle does not mean, as implied by Ms. Houston that this Court should defer any decision on the application to dismiss *'until all the evidence was heard'*, *i.e.* the evidence which the defendants would rely upon, if the application to dismiss was refused.

What this principle means is that when the Court is dealing with an application to dismiss in a case involving multiple defendants, the Court needs to exercise caution to ensure, before dismissing one (but not all) of the defendants out of the action, that this dismissal does not impact upon establishing whether the remaining defendants are liable for the plaintiff's claim.

This issue is relevant in an action where there is a dispute about liability among the various defendants, as happened in the *Burke* case, which involved a claim in personal injuries by a plaintiff who sued a number of defendants in relation to an injury suffered during motocross training. A release of one defendant in that situation could be prejudicial to the plaintiff and this was why the application to dismiss was over-turned on appeal.

In this case, while it is true that there are several defendants because Ms. Houston is suing unincorporated bodies in five different actions, there is no dispute over liability among the various defendants regarding the various causes of action, which causes of action have for convenience been consolidated in one set of proceedings. Each cause of action against one group of defendants (e.g. the competition claim) remains distinct from the cause of action against the other defendants (e.g. the defamation claim). Furthermore, as will become clear from the decision below, this is not an instance where this Court is considering dismissing some, but not all, of the defendants and so this Court need not consider the impact of dismissing one defendant upon the remaining defendants. Accordingly, this Court is completely satisfied that this is not a situation where the eventual outcome of this application could not result an unjust anomaly (as indentified by the Supreme court in the *O'Toole* case and applied by the Court of Appeal in the *Burke* case) of a plaintiff having sued more than one defendant, and one of the defendants having been dismissed, that the other defendants could also escape liability by affixing the blame, through their evidence, on the defendant already dismissed.

53. On this basis therefore, this Court will now assess the various causes of action of Ms. Houston by applying the *Moorview* principles to the following headings which this Court believes most conveniently encompass the proceedings taken by Ms. Houston against the defendants.

COMPETITION CLAIMS

54. Ms. Houston claims that the actions of the defendants and, in particular, the actions of the Bar Council, the PPC, the Tribunal and

the Appeals Board are anti-competitive and that they have abused their dominant position. Indeed, Ms. Houston during her opening submissions to this Court stated that her case was *'at its foundation a competition case'*.

55. For present purposes, it is not necessary to outline each and every claim of anti-competitive behaviour made by Ms. Houston against the defendants. To take just one example, Ms. Houston claims that it is discriminatory pricing that barristers get charged different subscription rates for membership of the Law Library depending on their years of practice, and depending on whether they practice in Cork or in Dublin (since it seems Dublin based members are charged more than Cork based members on the basis that they have greater access to the Law Library as it is located in Dublin).

56. However, whether dealing with this claim of discriminatory pricing or any of Ms. Houston's other claims under competition law, an anti-competitive claim by its very nature must involve detailed analysis of the effect on competition. Indeed, this is acknowledged by Ms. Houston herself in her Statement of Claim, since at paragraph 10 of the Consolidated Statement of Claim, she states:

> "The Plaintiff's claim is provable substantially by documents, except for the effect on the Plaintiff of the conduct of the Defendants and the distress caused by the Defendants to the Plaintiff. *Expert evidence in (sic) required in respect of the anti-trust elements of the claim."* (emphasis added)

57. However, the claims made by Ms. Houston in these proceedings generally and, more particularly, in relation to breaches of competition law can be characterised as claims which are unsubstantiated by any evidence. Thus, despite this acceptance by Ms. Houston in the Statement of Claim that expert evidence is required to substantiate her various anti-competitive claims against the defendants, not a shred of evidence has been provided by her to support the numerous claims she made when giving direct evidence that the defendants were abusing their dominant position or were guilty of anti-competitive practices. By her own admission, she required expert evidence to support this claim and none was provided, so this part of her claim against the defendants could not conceivably get off the ground.

58. At its most basic level, Ms. Houston provided no evidence of what product market was being subjected to anti-competitive practices or abuses of a dominant position. She seems to equate the making of a mere assertion of a claim, that there are anti-competitive practices, with proving such a claim. However, it is not sufficient to simply make a claim of anti-competitive behaviour for it to be successful. This is because it is a basic pre-requisite for a successful competition law claim that there be evidence provided by the plaintiff regarding the alleged market which was subject to the anti-competitive behaviour. Establishing the relevant market can be a complex issue and in this case, no such evidence of the relevant market was provided by Ms. Houston during her evidence.

59. The case of *Rye Investments v. The Competition Authority* [2009] IEHC 140 is a case which illustrates, not only the necessity for a plaintiff alleging anti-competitive effects to provide evidence of the relevant market, but it also illustrates the complexity of anti-competitive claims even where a product market is identified. The *Rye Investments* case involved the effect on competition of a proposed merger between a member of the Kerry Group plc and a subsidiary of Dairygold Co-operative Society Limited. In reaching its decision on the proposed merger, the Competition Authority analysed the effect on competition of the proposed merger in the processed cheese market. On appeal, the High Court held that the Competition Authority erred in its definition of the relevant product market as one for processed cheese only, rather than a market for cheese generally. The High Court held that the Competition Authority had reached a flawed conclusion that there are two distinct markets, one for processed cheese and one for natural cheese. At paras. 7.19 – 7.20, the complexity of this issue is illustrated by the comments of Cooke J.:

> "The Court considers that the basis upon which the Authority has thus reached and explained its crucial conclusion in relation to the definition of the product market in the cheese sector is inadequate and unsound. In contrast with the analysis that is conducted of product markets elsewhere in the Determination, the analysis in section Eight contains no detailed investigation of demand side substitutability which is relied upon elsewhere by the Authority as the primary basis of assessment and as envisaged in the Merger Guidelines. In particular, as summarised by reference to paras. 8.2 – 8.15 of the Determination above, the notifying parties had put forward both in their written response to the Assessment and in a slide presentation at the oral hearing, a number of cogent propositions as to characteristics of the cheese market and how both the natural and processed products are presented to consumers and apparently treated by them without distinction, but no attempt is made to address or rebut these concrete propositions in the relatively brief analysis of paras. 8.16 – 8.28 of the Determination.
>
> For these reasons the Court finds that the Authority has erred in its definition of the relevant product market for the cheese sector with the result that its conclusion as to a resulting substantial lessening of competition in a product market comprising processed cheese is fundamentally flawed."

For this reason, the High Court set aside the decision of the Competition Authority on the merger.

60. Unlike in the *Rye Investments* case, where there was evidence provided of the alleged product market, albeit that it was held to be the wrong product market, in Ms. Houston's case there was no evidence whatsoever provided by her of any market, let alone the *wrong* market. Ms. Houston's failure to provide any evidence of the relevant market was highlighted when counsel for the defendants, in support of the application to dismiss and after Ms. Houston had finished her evidence, pointed out that she had failed to provide any evidence of what market was subject to the anti-competitive behaviour. By way of example, and to illustrate Ms. Houston's failure in this regard and to illustrate the complexity of the issue of the correct market, counsel for the defendants referred to the *Competition Authority Report on Solicitors and Barristers* of December, 2006, which assumed, without analysis, at para. 1.16 for the purposes of that Report that the relevant market was the market for legal services provided by both barristers *and* solicitors. In her replying submission to the application to dismiss, Ms. Houston submitted that the relevant market was barristers' services alone for the purposes of her proceedings. However, this submission, after she had completed her evidence, was not evidence and served simply to highlight the fact that Ms. Houston had adduced no evidence whatsoever to support her claim that the alleged anti-competitive actions of the defendants occurred in any particular market.

61. For all these reasons, this Court concludes that in relation to all the anti-competitive claims made by Ms. Houston the evidence provided by her is insufficient to be reasonably relied upon for the proposition which it is sought to support, and so in this respect the application to dismiss is successful.

REFERRAL TO THE EUROPEAN COURT OF JUSTICE

62. At regular intervals during the hearing, Ms. Houston indicated that she wished to have various parts of her claim and other additional issues referred to the Court of Justice of the European Union (the "CJEU").

63. Article 267 of the Treaty on the Functioning of the European Union states:

"The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay."

64. It is clear from this Article that the jurisdiction of this Court to refer to the CJEU is confined to matters of EU law, being either a question of the interpretation of the Treaties or a question of the validity and the interpretation of acts of the institutions, bodies, offices or agencies of the EU. It is obvious that no such issues arise in this case and so this Court would not entertain an application to refer. In any case, on the last day of this hearing, in her closing submissions in reply to the application to dismiss, Ms. Houston backed down from her application to refer the matter to the CJEU, as she stated:

"Then the issue about the preliminary reference. I have indicated to the Court that I may bring, may ask the Court to make a preliminary reference, and you replied to that, Judge, that I would have to make a formal application. I haven't done that yet so I don't see how they would try to strike out my action because I haven't brought a preliminary reference."

It is clear therefore that the referral to the CJEU is moot, and if it was not moot, there is no basis for such a referral.

DEFAMATION CLAIMS

65. As part of her consolidated action, Ms. Houston is claiming damages for defamation. Ms. Houston alleges that statements made by the defendants during the course of their handling of the Morrissey Complaint and the Doyle Complaint were defamatory. The key defamation claim made by her is that, in replying to a letter from the Data Protection Commissioner regarding personal data held by the Bar Council, the defendants made defamatory statements about her regarding the Morrissey Complaint. The defendants claim that these statements are true and were also made on an occasion of qualified privilege. The relevant law is contained in ss. 14, 16, 18 and 19 of the Defamation Act, 2009 as recited below:

"Meaning

14.— (1) The court, in a defamation action, may give a ruling—

(a) as to whether the statement in respect of which the action was brought is reasonably capable of bearing the imputation pleaded by the plaintiff, and

(b) (where the court rules that that statement is reasonably capable of bearing that imputation) as to whether that imputation is reasonably capable of bearing a defamatory meaning, upon an application being made to it in that behalf.

(2) Where a court rules under subsection (1) that—

(a) the statement in respect of which the action was brought is not reasonably capable of bearing the imputation pleaded by the plaintiff, or

(b) that any imputation so pleaded is not reasonably capable of bearing a defamatory meaning,

it shall dismiss the action in so far only as it relates to the imputation concerned.

(3) An application under this section shall be brought by notice of motion and shall be determined, in the case of a defamation action brought in the High Court, in the absence of the jury.

(4) An application under this section may be brought at any time after the bringing of the defamation action concerned including during the course of the trial of the action.

Truth

16.— (1) It shall be a defence (to be known and in this Act referred to as the "defence of truth") to a defamation action for the defendant to prove that the statement in respect of which the action was brought is true in all material respects.

Qualified Privilege

18 - (2) Without prejudice to the generality of *subsection (1),* it shall, subject to section 19, be a defence to a defamation action for the defendant to prove that—

(a) the statement was published to a person or persons who—

(i) had a duty to receive, or interest in receiving, the information contained in the statement, or

(ii) the defendant believed upon reasonable grounds that the said person or persons had such a duty or interest, and

(b) the defendant had a corresponding duty to communicate, or interest in communicating, the information to such person or persons.

Loss of defence of qualified privilege

19.— (1) In a defamation action, the defence of qualified privilege shall fail if, in relation to the publication of the statement in respect of which the action was brought, the plaintiff proves that the defendant acted with malice."

66. It is clear based on these provisions that if the alleged defamatory statements made by the defendants in handling the complaints were true, or if the statements were made on an occasion of qualified privilege without malice, then Ms. Houston has no cause of action.

67. It is also important to note, as Barr J. did in *R.P.* and *J.P. v. B.K.* [2018] IEHC 139 at para. 87, when quoting *McMahon and Binchy, Law of Torts* (4th Ed.) at para. 34.250, that proving malice is not an easy endeavour, since:

> "[M]alice will not necessarily be proved merely because the defendant's thought process was flawed or inconsistent. In this regard, the law is somewhat indulgent of the defendant. It does not demand that he be 'right'; it only demands that he be honest.
>
> > 'The freedom of speech protected by the law of qualified privilege may be availed of by all sorts and conditions of men…in affording to them immunity from suit if they have acted in good faith…the law must take them as it finds them…in greater or lesser degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfections of the mental process by which the belief is arrived at it may still be 'honest' *i.e.* a positive belief that the conclusions they have reached are true. The law demands no more.' [per Diplock L.J. in Horrocks v. Lowe [1974] 1 All E.R. 662, at p. 669]."

68. To determine if the defendants will be successful in this application to dismiss the defamation claim, it is necessary to consider the merits of Ms. Houston's allegations of defamation and the possible applicability of the relevant defences to see if Ms. Houston has made out a *prima facie* case. Accordingly, it is necessary to examine the statements which Ms. Houston alleges are defamatory.

Alleged defamatory statements in the data protection letter

69. The key claim of defamation made by Ms. Houston relates to a letter dated 17th June, 2013 written by the Director of the Bar Council to the Office of the Data Commissioner. This letter arose out of the Morrissey Complaint, which was made about Ms. Houston by Ms. Morrissey, to the PPC on the 8th November 2011, through Ms. Morrissey's solicitor, Mr. Millar.

Data protection issues in the Morrissey Complaint

70. As previously noted, Ms. Houston had given an undertaking dated 1st December, 2011 not to make contact with clients of *Morrissey & Co.* without first getting the advice of the PPC. It was shortly after she withdrew this undertaking by letter dated 11th June, 2012 to Ms. Morrissey, that on the 9th July, 2012, Ms. Houston wrote to the Director of the Bar Council in relation to the Morrissey Complaint pursuant to s. 6A of the Data Protection Acts 1988 and 2003 (the "Data Protection Acts"), in the following terms:

> "As a last resort and in what I expect to be an isolated event and related only to these parties, *specifically, solely and exclusively* in respect of any complaint to the Bar Council from or on behalf of Hugh Millar, Mary Morrissey (orse Mary Morrisey) or Morrissey & Co Solicitors or their servants or agents or any party connected to these persons for the purposes of such a complaint, pursuant to s.6A of the Data Protection Acts 1988 and 2003, I am writing to exercise my right to object to the processing by the Bar Council of my personal data on the ground that it has caused, is causing and is likely to continue to cause substantial damage and distress to me."

71. It appears that a Data Access Request was then made pursuant to the Data Protection Acts, by Ms. Houston on the 10th July, 2012, since by letter dated 17th August, 2012, the Director of the Bar Council replied to Ms. Houston as follows:

> "Further to your request of 10 July 2012 received on 11 July 2012, please find enclosed a copy of the information constituting personal data held by the Bar Council of which you are the data subject.
>
> This information falls into the categories of financial data relating to your membership of the Law Library and information relating to your membership of the Library and your practice as a barrister.
>
> [….] We have not included personal data relating to you consisting of expressions of opinion about you given in confidence or on the understanding that it would be treated as confidential, in accordance with section (4A) of the Data Protection Act."

72. Almost six months later, on the 5th February, 2013, Ms. Houston wrote to the Director of the Bar Council as follows:

> "I refer to your letter to me dated 17th August 2012, which was your response to my statutory request for access to data, a request that was made by letter dated 10th July 2012 and with which you have failed to comply. You did disclose a few documents in your response. [….]
>
> If my data access request is not complied with *in full by 5 pm on Thursday 7th February 2013*, then my request for an investigation will be delivered to the Office of the Data Commissioner without delay. Please be advised that this decision is final."

73. It is clear that Ms. Houston also at this time made a complaint to the Data Protection Commissioner regarding an alleged failure of the Bar Council to comply with a data access request, since in a letter dated 15th May, 2013 from the Data Protection Commissioner to the Director of the Bar Council, it is stated, insofar as relevant, that:

> "The Data Protection Commissioner has received a complaint from Ms Eugenie Houston, Law Library, Four Courts, Dublin 7 concerning an alleged failure to comply in full with an access request submitted by her on 10 July 2012 under Section 4 of the Data Protection Act 1988 & 2003 (the Acts) and also your alleged failure to comply with to a Section 6A request submitted by her on 9 July 2012. (copies enclosed) […..]

> While Ms Houston acknowledges that she received some personal data in relation to her access request, she is not satisfied she has received all personal data which she set out in her access request to The Bar Council of Ireland. The response to Ms Houston's access request from The Bar Council of Ireland dated 17 August 2012 sets out that some of Ms Houston's personal data was not included as it is personal data relating to her "*consisting of expressions of opinion about you given in confidence or on the understanding that it would be treated as confidential*."
>
> It is the view of this Office that personal data consisting of an opinion given in confidence on the understanding that it will be treated as confidential must satisfy a high threshold of confidentiality. Simply placing the word "confidential" at the top of the page will not automatically render the personal data confidential.
>
> Furthermore, it would be unusual that an entire document would be an expression of opinion given in confidence. Parts or sections may well be so, but other parts could be factual personal data for example which cannot be withheld by the same restriction.
>
> In order for this Office to assess the use of this exemption I would ask that you set out at Appendix A details of the personal data you are withholding and set out a general description of what is in each."

74. At the core of Ms. Houston's defamation claim is the reply from the Bar Council to the Data Protection Commissioner's letter of 15th May, 2013 which is alleged by Ms. Houston to be defamatory. The reply from the Bar Council states, insofar as relevant, that:

> "I note that you have commenced an investigation, and that Ms Houston supplied you with materials with her complaint. As you may be aware by virtue of the correspondence shared with you by Ms Houston, the requests in relation to data protection by Ms Houston arose specifically in the context of a complaint by Hugh Millar, Solicitor, on behalf of Mary Morrissey, Solicitor, seeking to have the Professional Practices Committee ("PPC") of the Bar Council direct Ms. Houston to desist from what was implicitly alleged to have been misconduct. Following three pre-hearing rulings, two in favour of Ms Houston, the complaint was not pursued. Apart from standard membership data, the correspondence of the parties in relation to the complaint comprises the only material held by the Council with reference to Ms Houston at the time of the request. [….]
>
> Finally, I should say that, since the request and reply, Ms Houston's complaint against members of the PPC has been pursued and resolved, as has an appeal."

75. In considering whether this letter could be defamatory of Ms. Houston, it is first of all necessary to note that the reply was given by the Director of the Bar Council in response to a request from the Data Protection Commissioner pursuant to his statutory functions under the Data Protection Acts 1988 & 2003. Accordingly, it seems quite clear that the statement made by the Director of the Bar Council, in replying to that request, was a situation in which the Director had a duty or interest in communicating the information to the Commissioner, who himself had a duty or interest in receiving it, and thus it seems quite clear that, by virtue of s. 18(2) of the Defamation Act, 2009, the statements in this letter were issued on an occasion of qualified privilege.

76. Ms. Houston complains that the statements made by or on behalf of the Bar Council in this reply were defamatory. However, having established that this reply was sent on an occasion of qualified privilege, it is clear that for these statements to be defamatory, Ms. Houston must establish malice on the part of the defendants. Quite apart from the fact that, as is clear from the case of *R.P.* and *J.P. v. B.K.*, it is a difficult task to establish malice, it is also the case that Ms. Houston has not provided this Court with a shred of evidence to support a finding that the Director of the Bar Council or any of the defendants were acting out of malice in responding to the Data Protection Commissioner in these terms. Any suggestions of malice by her amount therefore to mere assertions. For this reason alone, this Court concludes that the evidence relied upon by Ms. Houston in her claim that this letter dated 17th June, 2013 was defamatory of her, could not reasonably be relied upon for the proposition which it is sought to support. On this basis, this Court would dismiss this part of the defamation claim.

77. In any case, the statement of which Ms. Houston particularly complains is true ("*Following three pre-hearing rulings, two in favour of Ms Huston, the complaint was not pursued*."). This is because it is the case that of the three rulings made by the PPC, two were in her favour. It appears that the first pre-hearing ruling in Ms. Houston's favour was the decision of the PPC to the effect that, in some cases, the PPC would authorise direct contact between counsel and client. This decision was clearly in favour of Ms. Houston and went against the assertion made by Mr. Millar that *'counsel should never contact clients of solicitors directly'*. It appears that the second pre-hearing ruling in Ms. Houston's favour was the decision of the PPC that particulars of the Morrissey complaint should be provided by *Morrissey & Co*. to Ms. Houston. These particulars had previously been requested by Ms. Houston in a letter dated 25th November, 2011 to Mr. Millar but had not been forthcoming.

78. In any case, the statement that two pre-hearing rulings were in Ms. Houston's favour does not imply, as suggested by Ms. Houston, that the Director was insinuating that there was a ruling made against her. Quite simply, as a matter of fact the letter does not state (or imply) that a ruling was made against her – the letter simply states factually accurate information, namely that two rulings were made in her favour. More significantly, this letter also does not state, or imply, that the complaint to the PPC against her was pursued. On the contrary, it explicitly states that the complaint was not pursued against Ms. Houston and thus this statement could not in any event be regarded as in any way negative of Ms. Houston or defamatory of her.

Other alleged defamatory statements

79. Ms. Houston has also claimed that the findings made by the PPC and then the Tribunal and the Appeals Board in relation to the Morrissey Complaint, as well as the findings made by the Tribunal and the Appeals Board in relation to the Doyle Complaint were defamatory.

80. In relation to the Morrissey Complaint, the actual finding of the PPC was that Ms. Houston should not directly contact clients of *Morrissey & Co*. and that she should give an undertaking to that effect. In its letter of 30th November, 2011 to Ms. Houston, it stated that the PPC had decided:

> "That you should not write any further letters to any clients, except on the advice of the Committee; and
>
> That in the circumstances you ought to give the undertaking sought by [Mr. Millar] in respect of [*Morrissey & Co*.], pending the outcome of any complaints and/or litigation that might take place concerning any party involved."

81. The decision of the PPC of 30th November, 2011 also indicates that the PPC agreed with Ms. Houston that it was not always inappropriate for a barrister to make direct contact with a client and that certain exceptional circumstances would warrant such

contact. Indeed, the PPC advised Ms. Houston that the Code of Conduct of the Bar of Ireland needed to be amended to provide clarity regarding the procedures that barristers should follow where they felt that a solicitor had a conflict of interest in acting for a client. This opinion of the PPC was followed when on 23rd July, 2014 the Code of Conduct was duly updated by providing that in certain circumstances a barrister can provide *'advice to the client directly and in writing'* in order to provide clearer guidance for barristers in such situations.

82. As regards the role of the Tribunal in the Morrissey Complaint, all the Tribunal did in relation to the complaint of misconduct against the PPC was to assume that it had jurisdiction to deal with a complaint against a member of the PPC under the Code of Conduct, when he/she was exercising his/her functions as such a member. It then concluded that at its height Ms. Houston's complaint was that the members of the PPC had made an error in dealing with this matter and thus this was not an act of misconduct and there was no breach of the Code of Conduct.

83. As regards the Appeals Board role in the Morrissey Complaint, the Appeals Board dismissed Ms. Houston's appeal of the Tribunal decision as it found that the Tribunal had no jurisdiction to entertain her original complaint against members of the PPC. In all these circumstances, therefore, while these conclusions are ones with which Ms. Houston disagrees, it is impossible to see how these findings by the PPC, the Tribunal and the Appeals Board could be defamatory of Ms. Houston.

84. In relation to the Doyle Complaint, it is clear that Ms. Houston was unhappy with the opinion of the Tribunal regarding the Doyle Complaint, which was adverse to her, since it:

> "advised [Ms. Houston], in the strongest possible terms, not to engage with previous, or existing clients, in the manner giving rise to the complaint herein, or in any other manner contrary to the Code of Conduct of the Bar of Ireland."

However, there is nothing defamatory in this finding. It is simply a conclusion with which Ms. Houston does not agree. This finding of the Tribunal and its confirmation by the Appeals Board was in any case just advisory in nature. However, being the recipient of an adverse finding is in no way commensurate with that finding being defamatory.

85. More generally, it is clear that the findings of the Tribunal and the Appeals Board in relation to the Doyle Complaint and the findings of the PPC and the Tribunal and the Appeals Board in relation to the Morrissey Complaint (and any statements made by the defendants in the handling of those two complaints) were made in situations where the persons making the statements had a duty or interest in making them to persons who had a duty or interest in receiving them, and thus all those findings were issued on occasions of qualified privilege. As previously noted, this means that under s. 18(2) and s. 19 of the Defamation Act, 2009, in order to make a successful claim of defamation, Ms. Houston must prove that the defendants acted with malice in making those findings or in making any associated statements which she claims were defamatory. Ms. Houston has provided absolutely no evidence to this Court of malice on the part of the defendants and to the extent that she has made claims of malice, they amount to mere assertions.

86. On this basis, this Court concludes that the evidence relied upon by Ms. Houston in her claim that any written or oral statements made by the defendants were defamatory of her could not reasonably be relied upon for the proposition which it is sought to support. On this basis, the application to dismiss is successful and so this Court will dismiss the defamation claim.

THE ASSAULT CLAIMS

87. In the Statement of Claim Ms. Houston particularises her claim for damages arising out of trespass to the person and the focus of the claim as set out in the Statement of Claim is on trespass to the person in the form of the intentional infliction of emotional distress. In the Statement of Claim there is no plea of assault against the defendants. Yet, in the course of giving her evidence, Ms. Houston described her claim for trespass to the person as assault rather than as *'intentional infliction of emotional distress'* as had been emphasised in the Statement of Claim. In support of this claim of assault, Ms. Houston gave evidence to the Court that she made a complaint to the Gardaí in November 2011 on foot of receiving a text message from one of the defendants. This text message is alleged in the Statement of Claim to have come from the Chairman of the PPC on Tuesday 15th November, 2011 at 7:12 pm and stated:

> "Dear Eugenie,
>
> I had a call from Hugh Miller. Would you please:-
>
> a) call me sometime Wed before 1.00 pm;
>
> b) reply to Jerry Carroll's letter;
>
> c) not contact any clients directly.
>
> I have always found it better to do things 'by the book.'"

She maintained in her submissions to this Court that her complaint to the Gardaí on foot of the text message proved that she was assaulted and she stated to this Court that:

> "the fact that I've given evidence of having to go to the guards is sufficient proof that I was in apprehension and that constitutes an assault."

It is also relevant to note that Ms. Houston, during the course of her evidence, was very clear that she has not suffered any personal injury and she stated to the Court that she had *'not experienced a personal injury during this whole thing'*.

88. In summary therefore, as regards the intentional infliction of emotional distress, it is clear that in order to sustain such a claim, Ms. Houston would be required to have suffered some recognised psychiatric injury as a result of the conduct that she alleges against the defendants. However, as noted, Ms. Houston, during the course of her evidence, made very clear to this Court that she has suffered no personal injury whatsoever as a result of the conduct of the defendants.

89. As regards the claim of assault, Ms. Houston suggested that the fact that she made a complaint to the Gardaí regarding a text message sent to her by one of the defendants was sufficient proof that she was the victim of an assault. However, not only was this text message not produced in evidence, the content of this text message as claimed by Ms. Houston herself was merely a request that she *'not contact clients directly'*. The alleged content of this text message, does not amount to sufficient evidence of an assault having been committed against Ms. Houston. This is because, as is clear *from McMahon & Binchy, Law of Torts*, 4th Ed. at para.

22.20, there must be a reasonable apprehension of an immediate battery in order for an assault to have taken place:

> "An assault consists of an act that places another person in reasonable apprehension of an immediate battery being committed upon that person."

90. The only evidence which is before this Court to support Ms. Houston's claim of an assault is her direct evidence that she went to the Gardaí after receiving a text from one of the defendants. This is very far removed from what could be regarded as sufficient evidence to support a claim for the *'reasonable apprehension of an immediate battery'* and thus an assault. If it were sufficient evidence of assault for a person to simply prove that they went to the Gardaí, it would be a very easy matter for a person to establish assault. It is clear to this Court that one is dealing with mere assertions on the part of Ms. Houston regarding her alleged assault and much more is needed. Mere assertions are wholly insufficient to establish a claim for assault.

91. Therefore, in this Court's view, the evidence provided by Ms. Houston is insufficient to be reasonably relied upon for the proposition which it is sought to support, namely trespass to her person by the defendants, and accordingly, in this respect, and in respect of the alleged intentional infliction of emotional distress, the application to dismiss is successful.

92. In addition to the foregoing claims, during the course of the hearing, Ms. Houston made two other claims of significance, the first concerned the refusal by the Bar Council to give her a Certificate of Good Standing and the second regarded the legality of the PPC, the Tribunal and the Appeals Board as bodies which were not based on statute.

REFUSAL OF CERTIFICATE OF GOOD STANDING

93. Ms. Houston claimed in her Statement of Claim and in her evidence to this Court that the refusal by the Bar Council to give her a Certificate of Good Standing to entitle her to practice in a foreign jurisdiction was unlawful, anti-competitive and that she has thereby been denied her right of establishment.

94. It is common case that the reason for the refusal related to Ms. Houston's financial standing with the Bar Council, *i.e.* her failure to pay her Law Library fees, which as noted below is not disputed by Ms. Houston. In this regard, it is to be noted that one of the requirements regarding eligibility for a Certificate of Good Standing, as adopted by the Library Committee of the Bar Council in 2005, is *'confirmation of no outstanding debts to the Bar Council or associated companies'.*

95. After initiating proceedings against the Bar Council on 12th June, 2014, Ms. Houston wrote to the Library Committee of the Bar Council on 17th June, 2014 stating that, due to those proceedings, she would not be in a position to pay her outstanding Law Library fees until July of that year. In a replying letter dated 20th June, 2014 the Bar Council informed Ms. Houston that failure to pay her outstanding fees would result in the loss of her library services.

96. A year later, on the 11th June, 2015, Ms. Houston wrote to the Bar Council requesting that she be provided with a Certificate of Good Standing. In a reply dated 18th June, 2015 Ms. Houston was informed by the Bar Council that, as her subscription fees remained unpaid, she was not entitled to the Certificate. However, the Bar Council suggested in this letter to Ms. Houston that it might be possible for her to enter an agreement with the Bar Council for the discharge of her outstanding fees and that if she entered such an agreement, a Certificate of Good Standing would be forthcoming. Indeed, this offer to enter a reasonable payment agreement was extended to Ms. Houston in several letters sent to her by the Bar Council.

97. As is clear from subsequent correspondence between Ms. Houston and the Bar Council, Ms. Houston was not willing to enter into any agreement regarding her subscription arrears. Instead, Ms. Houston wrote to the Bar Council on several occasions questioning the lawfulness of the Bar Council's refusal to provide her with the Certificate of Good Standing.

98. On 18th March, 2016, Ms. Houston was ultimately excluded from membership of the Law Library, for failure to pay her subscriptions fees.

99. This Court cannot see on what possible grounds Ms. Houston could have a cause of action in relation to the refusal by the Bar Council to issue a Certificate of Good Standing. This is because it is clear that Ms. Houston undertook as a matter of contract when making an application to become a member of the Law Library to submit to the relevant rules, which provided at Clause 18 *et seq* for the payment of subscriptions, and she agreed to submit to the disciplinary jurisdiction of the Bar Council and comply with the Rules and Regulations of the Bar Council. It seems quite clear therefore that Ms. Houston was bound by the requirements regarding eligibility for a Certificate of Good Standing, as adopted by the Library Committee of the Bar Council in 2005, namely that she have discharged all outstanding debts to the Bar Council or associated companies. It is also clear that Ms. Houston failed to discharge her outstanding subscription fees to the Law Library. Accordingly, as a matter of contract, she was not entitled to a Certificate of Good Standing. It seems quite clear from the correspondence that if Ms. Houston had discharged the sums lawfully due for membership of the Law Library, she would have received her Certificate of Good Standing. Therefore, the only one she has to blame for the failure to receive a Certificate of Good Standing is herself.

100. Therefore, in this Court's view, the evidence provided by Ms. Houston is insufficient to be reasonably relied upon for the proposition which it is sought to support, namely a breach of her alleged entitlement to a Certificate of Good Standing. Accordingly, in this respect, the application to dismiss is successful.

DISCIPLINARY PROCEDURES NOT ON A STATUTORY FOOTING

101. More generally, Ms. Houston claimed that the disciplinary procedures adopted by the PPC, the Tribunal and the Appeals Board in dealing with the two complaints made against her were unlawful because they were not based on statute. Indeed, in her Statement of Claim, Ms. Houston suggested that the *'purported disciplinary code'* was *'reminiscent of the Nazi regime'.*

102. Ms. Houston's overarching issue with the disciplinary procedures adopted by the Bar Council appears to be based on her view, expressed in both her Statement of Claim and in her evidence, that the Bar Council is a *'private club'* since it is not based on statute and therefore lacked the jurisdiction to investigate both the Morrissey Complaint and the Doyle Complaint.

103. However, it is clear to this Court that Ms. Houston's relationship with the Bar Council was contractual in nature whereby in return for admission to the degree of barrister-at-law, she agreed to become a member of the Law Library (and thus comply with its rules), submit to the disciplinary jurisdiction of the Bar Council, comply with the Rules and Regulations of the Bar Council, observe the Code of Conduct for the Bar of Ireland, and comply with the Rules and Regulations of the Honorable Society of the King's Inns. It seems quite clear that, as a matter of contract, Ms. Houston was bound by the disciplinary procedures contained in these rules and in particular the Code of Conduct. The fact that these disciplinary procedures are founded in contract, rather than statute, does not impact upon their lawfulness or the degree to which they are binding upon Ms. Houston.

104. The cases of *Murphy v. Turf Club* [1989] I.R. 171 and *Rajah v. Royal College of Surgeons* [1994] 1 I.L.R.M. 233 are clear authority for the proposition that a private agreement between individuals (such as the agreement by Ms. Houston to be bound by the foregoing terms) can contain enforceable disciplinary procedures between those individuals regarding the exercise of their trade or profession. The *Murphy* case concerned the Turf Club, which issued licences to trainers of horses, and which made a decision to revoke a trainer's licence which was challenged by the plaintiff. Barr J. held at p. 175 that this was a decision:

> "of a domestic tribunal exercising a regulatory function over the applicant, being an interested person who had voluntarily submitted to its jurisdiction."

As such there was no basis upon which the High Court could invalidate the decision under public law or on the grounds that it was not based on statute. Similarly, in this case, Ms. Houston voluntarily submitted to the jurisdiction of the PPC, the Tribunal and the Appeals Board and this Court does not accept Ms. Houston's proposition that the disciplinary procedures to which she was subjected were unlawful because they were not based on statute, since she is bound by those terms as a matter of contract.

105. For the foregoing reasons therefore, in this Court's view, the evidence provided by Ms. Houston is insufficient to be reasonably relied upon for the proposition which it is sought to support, namely that the disciplinary procedures were unlawful because they were not based on statute. Accordingly, in this respect, the application to dismiss is successful.

106. In any case, it is also relevant to note that Ms. Houston has not provided any evidence that the procedures adopted by the PPC, the Tribunal and the Appeals Board in dealing with the two complaints were not fair to Ms. Houston. What is clear is that Ms. Houston does not agree with the conclusions reached by these three bodies. However, that is not evidence to support her claim that there was any unfairness in the procedures.

CONCLUSION REGARDING THE APPLICATION TO DISMISS
107. In relation to the numerous claims made, and the reliefs sought by Ms. Houston, the evidence provided by her is insufficient to be reasonably relied upon for any of those claims or reliefs and so, in respect of all the claims made by her, the application to dismiss is successful. This Court concludes that Ms. Houston has not made out a *prima facie* case for her claims and so dismisses these proceedings. It is difficult not to feel sympathy for the enormous toll these proceedings have taken on Ms. Houston over the past five years. However, she is not in Court seeking sympathy, she seeks damages and other court orders and as this judgment has gone against her, she may not take any notice of this Court's hope that this litigation would now come to an end to enable her to concentrate her energies on her legal career.

EFFECT OF UNMERITORIOUS CLAIMS BY IMPECUNIOUS PLAINTIFFS
108. It remains to be observed that although this Court has found that the claims made by Ms. Houston are without any merit, and so the defendants have 'won' this litigation, in reality the defendants have 'lost', since they have had to spend hundreds of thousands of euro to defend these unmeritorious claims. While any losing plaintiff, such as Ms. Houston, is likely to have costs awarded against her, Ms. Houston advised the Court that she does not have any money and that she had made the decision to file for bankruptcy and so, it is probable that the defendants will not recover any of their legal costs from her. In essence therefore, Ms. Houston, who appeared without solicitor or counsel, was litigating at little or no financial cost to herself, or to use a colloquial expression, she had *'no skin in the game'*, while all the time inflicting at will hundreds of thousands of euro in costs on the defendants.

Defendants incurred €500,000 in irrecoverable legal costs
109. In this regard, at the request of this Court, counsel for the defendants estimated that its legal costs in defending these actions were in the region of €500,000. As that estimate was given on day two of a seven day case, the final figure is likely to be much greater than €500,000.

Defendants incurred 300% rise in insurance costs
110. This case also starkly illustrates the effect of unmeritorious claims on insurance premiums. The effect of court claims on insurance premiums was noted by Hardiman J. in *O'Keeffe v. Hickey & Ors*. [2009] 2 I.R. 302 at 317 in the context of personal injury litigation:

> "A finding of liability for perhaps very serious or gross injuries is not a light thing and has an effect quite separate from its consequences in damages. The fact or risk of such a finding may have a "chilling effect", even on State, private or charitable initiatives and will certainly have an effect on the cost of insurance."

Similarly, in *Kearney v. McQuillan* [2012] IESC 43, at para. 27 MacMenamin J. stated:

> "The resources of society are finite. Each award of damages for personal injuries in the courts may be reflected in increased insurance costs, taxation, or perhaps a reduction in some social services."

111. While Hardiman J. and MacMenamin J. were referring to the finding of liability by a court against a defendant in a personal injuries case, it is also true (as in this case) that the very act of having to defend an unmeritorious claim is likely to have an effect on insurance premiums, because of the enormous costs of High Court litigation, and because the money has to be found somewhere (if, as in this case, it is not recoverable from a plaintiff).

112. In this regard, it is clear that Ms. Houston was well aware of this aspect of the powerful and coercive effect of her claim against the Bar Council, since she referred in her evidence to the fact that her proceedings had led to a 300% increase in the cost of insurance for the Bar Council and that it had to get a co-insurer for its activities and that it was no longer insured for certain activities.

Financially more attractive to settle rather than fight unmeritorious claims
113. Because of the enormous cost of High Court litigation and the knock-on effect on the defendants' insurance, from a financial perspective, the defendants would have been financially better off to settle with Ms. Houston, notwithstanding her unmeritorious claim. However, in the unusual circumstances of this case, a settlement was not possible. This became clear when the Court canvassed with the parties whether there was any prospect of settlement and Ms. Houston stated that there was such a possibility if the defendants '*just get out the cheque book*'. However, unlike, say a personal injuries action, where a defendant may decide to '*get out the cheque book'* and pay an impecunious plaintiff a sum to settle the litigation to avoid incurring further irrecoverable legal costs, this was a case where Ms. Houston was seeking not just damages but also the dismantling of the Bar Council and declarations that they were abusing their dominant position. Accordingly, this was not a case where a payment of a settlement sum by the defendants (even if the defendants were open to such a possibility) would lead to a settlement.

The coercive power of an impecunious plaintiff with an unmeritorious claim
114. Because this case did not settle, it illustrates quite starkly, a matter of considerable significance, in this Court's view, namely that any defendant whether,

- an uninsured individual in a private dispute,
- an organisation such as the Bar Council in a professional dispute or
- a small or large business in a personal injuries claim,

can have thousands of euro in irrecoverable legal costs inflicted upon it by an impecunious plaintiff taking an unmeritorious claim. For this reason, an unmeritorious claim by an impecunious plaintiff has a hidden but hugely powerful and coercive effect on a defendant not just in this type of case, but in all types of litigation.

Lose/lose for a defendant against impecunious plaintiff with unmeritorious claim
115. A defendant is in a lose/lose situation in a case against an impecunious plaintiff with an unmeritorious claim (or as they are sometimes called, 'nuisance claims'), since:

- if the defendant fights the unmeritorious claim and wins, he 'loses' because his legal costs will not be paid by the plaintiff, or
- the defendant settles to avoid incurring those legal costs he 'loses' by paying money to an undeserving plaintiff and their solicitor, barrister, medical experts, engineering experts etc (albeit usually less than he would have incurred in legal costs in 'winning' the case).

In contrast, an impecunious plaintiff has no downside but has only a potential upside (of a likely settlement, since it will make economic sense for the defendant to settle). Indeed, the higher the legal costs which the impecunious plaintiff can potentially inflict on the defendant, the greater economic sense it makes for the defendant to settle.

The greater the costs the more incentive to settle nuisance claims
116. In addition, there will be a greater financial incentive to 'buy-off' a High Court claim, with costs in the tens if not hundreds of thousands of euro, than if the costs were District Court costs (in the hundreds of euro) or Circuit Court costs (in the thousands of euro). Economic logic therefore dictates that an unmeritorious claim by an impecunious plaintiff is more likely to lead to a settlement if the proceedings are taken in the High Court because of the enormous costs which can be saved by the defendant settling the claim.

Real power is not merits of case but legal costs inflicted by impecunious plaintiff
117. This also illustrates that the real power in these cases, and the driver of settlements, is the right of impecunious plaintiffs to impose, at will, massive legal costs on defendants, with no financial downside to that plaintiff. Thus, settling these nuisance claims will often have nothing to with the merits of the claims but about the avoidance of massive legal costs by defendants, even if it means paying the plaintiff and his lawyers some money. Economic reality means that, where there is no negligence or wrongdoing by a defendant, a claim will still be settled to avoid the defendant incurring legal costs, in excess of the settlement sum, which he will never recover from an impecunious plaintiff.

118. Thus, as the law currently stands, the exercise by an impecunious plaintiff of his/her right of access to the courts can inflict massive financial loss which is irrecoverable on defendants. Unless the law is changed to provide some financial incentive for impecunious plaintiffs not to take unmeritorious claims (whether by means of security for costs, or a means of recovering costs from impecunious plaintiffs, or some other way), there is only an upside for such plaintiffs taking such claims in the hope that it will be more financially attractive for a defendant to settle with them, for the very simple reason that a defendant cannot 'afford' to win the case, *i.e.* he cannot afford to spend legal costs on winning a case, where those costs will not be recoverable from an impecunious plaintiff.

119. While the present case involved a 'professional dispute' between a barrister and her insured professional body, it is equally possible that an uninsured private individual who is a defendant in say an adverse possession case, a defamation claim, a breach of contract claim etc could be faced with the dilemma of having to pay money to a plaintiff and his lawyers to settle an unmeritorious claim by an impecunious plaintiff in order to avoid the huge costs involved of 'winning' the case.

Protection against impecunious plaintiffs with unmeritorious claims
120. Finally, this Court has concluded that the defendants have been put to enormous costs (a sum of €500,000 which a person on the average wage would have to work for approximately 15 years to earn) by Ms. Houston's pursuit of her unmeritorious claims in, not one set of High Court proceedings but, in five separate sets of proceedings. Yet, since Ms. Houston has, on her own admission, no money, the defendants are unlikely to ever recover the €500,000 or more in legal costs which they have incurred in 'winning' this case. It is also the case that Ms. Houston, as a person without assets, has no incentive not to take other claims against the defendants thus forcing them to incur even more legal costs.

121. In the absence of any law which makes it financially unattractive for impecunious plaintiffs to take unmeritorious claims, it seems that the only way in which a defendant can stop an impecunious plaintiff, such as Ms. Houston, with unmeritorious claims, from inflicting further financial loss on them is by seeking an Isaac Wunder Order preventing that plaintiff taking any further proceedings, without court approval.

122. In this regard, if these five sets of proceedings had been issued and heard by the High Court consecutively, rather than together and Ms. Houston had lost each one (which she would have, in this Court's view), it is possible the defendants would have applied for an Isaac Wunder Order against Ms. Houston, after the third or fourth set of proceedings, to prevent her inflicting any further irrecoverable legal costs on them. While in this case the defendant was a professional grouping with insurance, it is worth remarking that if the defendant had been an individual without insurance, one would be dealing with a plaintiff who was able to impose irrecoverable costs of €500,000 on such an individual, a sum which a person on the average income would take 15 years to earn, all of these costs arising from a minor dispute with her professional body regarding Ms. Houston contacting clients directly which led, not to a penalty or censure, but merely an 'advisory' decision by the Barristers' Professional Conduct Tribunal. Of course, as anyone with insurance knows, the insured inevitably ends up paying indirectly for the costs of claims through insurance premiums and so it is in this case, where Ms. Houston gave evidence that this litigation led to a massive 300% increase in the Bar Council's insurance premiums.

123. However, as all these proceedings have only now been dismissed for the first time, it may well be that the defendants will seek an Isaac Wunder Order to prevent Ms. Houston taking any further proceedings against them and thereby prevent her from inflicting hundreds of thousands of euro in additional legal costs on them. This Court would emphasise that it has found Ms. Houston to be frank and truthful to the Court in *her perception* of events. However, the fact that she is so convinced that she is right and that everyone else is wrong (the PPC, the Tribunal and now, no doubt, this Court) combined with the very profound turmoil she has endured (the effect of which on Ms. Houston cannot be underestimated), means that these proceedings appear to be in the nature of a crusade against the Bar Council on her part. While this Court hopes that this matter would now come to an end and Ms. Houston would use her qualifications and experience in representing other clients, Ms. Houston has however indicated that she will appeal this Court's Orders in the event of her being unsuccessful.

124. Judgment in this case was delivered on 18th July, 2019. At a hearing on the 23rd July, 2019, for the purposes of making final orders after the parties had been given a chance to consider the written judgment, Ms. Houston made an application for me to recuse myself. Her application was made on the grounds that judgment had not, in her view, been delivered on the 18th July, 2019 and that the entire matter should be sent back for re-hearing to Noonan J. The grounds for recusal were that extracts from a copy of the written judgment stamped with the terms 'unapproved judgment', which was delivered on 18th July, 2019, were publicised in national newspapers, rather than the final form of judgment which had not, at that stage, been put up on the courts website. This recusal application was refused, first because the judgment had been delivered in this case and that I was functus officio and my only function now was to make final orders, and secondly because once the judgment is handed out in open court a judge has no control over the publication of that judgment by third parties and so this could not, in this Court's view, be a ground for a judge to recuse himself/herself.

125. As regards final orders, costs were awarded against Ms. Houston with a stay on the costs order, pending an appeal, the defendants were given liberty should they wish to apply to seek to prevent the issue of further proceedings in the future by Ms. Houston against them, and the personal representatives of Mr. Maurice O'Connell were substituted for Mr. O'Connell in these proceedings.