THE HIGH COURT

[2021] IEHC 41

[2020 No. 30 SA]

IN THE MATTER OF THE SOLICITORS ACTS 1954 TO 2011

BETWEEN

DEIRDRE O'FLYNN

APPELLANT

AND

J. M.

RESPONDENT

Judgment of Mr. Justice Richard Humphreys delivered on Monday the 1st day of February, 2021

1. The appellant, Ms. O'Flynn, together with her former husband, established a company called BOD Investments (IRL) Ltd. (Company No. 221820) in September 1994. Her ex-husband, Mr. O'Flynn, had 39,999 shares and the appellant had one share.

2. The respondent solicitor was instructed on behalf of the company in relation to the majority, and it may well be the vast majority, of the company's property transactions.

3. The appellant makes complaints about various matters occurring between 1997 and 2011, including not being kept informed of the affairs of the company and most strikingly claims that her signature was forged on various documents.

4. The company was struck off on two occasions. It was restored to the register on 26th March, 2000 and later on 24th October, 2005 after a second strike-off.

5. The appellant says that she learned of the company's significant indebtedness to Revenue in December 2012. A liquidator was appointed in April 2014, and on 11th March, 2015 she was listed as a tax defaulter in national newspapers. In fairness to the appellant it must be noted that she had no knowledge of the Revenue indebtedness at the time at which the liability arose.

6. She was then served with a notice of motion by the liquidator on 19th March, 2015 seeking to disqualify her as a director. On 13th July, 2015 Keane J. gave an *ex tempore* ruling refusing to disqualify the appellant. That is referenced in a written judgment issued on a later date, *Murphy v. O'Flynn* [2016] IEHC 197 (Unreported, High Court, 18th April, 2016).

7. The appellant complained to the Law Society about the respondent solicitor in May and June 2019 and then made the present complaint to the Solicitors Disciplinary Tribunal on 10th June, 2019.

8. The respondent swore an affidavit on 16th July, 2019 in response, raising a number of legal preliminary issues. Those included an allegation of delay, and the contention that he didn't act for the appellant and took his instructions from the Managing Director of the company, Mr. O'Flynn. He denied any involvement in forgeries, but said that, "[i]t may have been the case that in certain instances documents were signed by Mr. O'Flynn in the

presence of staff members of [Name of Solicitors' firm] and then given to Mr. O'Flynn to permit his co-director to sign the necessary documents" (p. 13 of affidavit). That implies that the appellant's signatures were indeed purportedly "witnessed" by himself or other members of the firm of which he was a principal despite Ms. O'Flynn not actually being there. That is pretty much an implied admission of serious wrongdoing and it is very hard to see how there is not a *prima facie* case against the respondent solicitor under those circumstances. Ms. O'Flynn's reply to this is as simple as it is devastating: "he either witnessed the signing of the documents by me in his presence or he did not. Furthermore, [the respondent] swore a Memorial to the effect that he had witnessed my signature when it is clearly not the case" (replying affidavit of 28th August, 2019).

9. The Solicitors Disciplinary Tribunal decided on 16th June, 2020 that there was *no prima facie* case for an inquiry into the conduct of the respondent.

10. On 9th July, 2020 the appellant issued a notice of motion by way of appeal under s. 7(12A)(a) of the Solicitors (Amendment) Act 1960 (as substituted by s. 17 of the Solicitors (Amendment) Act 1994 and as amended by s. 9 of the Solicitors (Amendment) Act 2002).

11. The matter was listed for mention on 14th September, 2020 when the disciplinary tribunal appeared and submitted that the court should not be concerned with that part of the complaint that referred to whether there were fair procedures before the tribunal.

12. I ruled that, given that the appeal was by way of *de novo* rehearing in accordance with the Supreme Court decision in *O'Reilly v. Lee* [2008] IESC 21, [2008] 4 I.R. 269, I was concerned with whether there was a *prima facie* case, rather than with a review of the tribunal procedures. I therefore excused the tribunal from further attendance on the basis that any complaints about whether or not it had provided fair procedures to the appellant were not matters for the statutory appeal.

13. The substantive hearing of the appeal then took place on 16th December, 2020 and I have received helpful submissions from Ms. O'Flynn, the appellant, *pro se*, and from Ms. Marguerite Bolger S.C. for the respondent solicitor.

Redaction

14. Ms. Bolger requested redaction of the name of the respondent solicitor while accepting that there was no statutory procedure for doing so. She referred to the practice of the disciplinary tribunal, but that is not itself relevant to the administration of justice by a court. The Supreme Court in *Gilchrist v. Sunday Newspapers Ltd*. [2017] IESC 18, [2017] 2 I.R. 284, recognised the jurisdiction to depart from fully open justice despite the absence of a statutory basis for that. But that must be approached on a restrictive basis and with scepticism. *Gilchrist* has been applied in the disciplinary context by Kelly P. in *Medical Council v. T.M.* [2017] IEHC 548 (Unreported, High Court, 3rd October, 2017) and *Medical Council v. Anonymous* [2019] IEHC 109 (Unreported, High Court, 1st March, 2019).

15. I have due regard to the fact that the appellant was not strongly arguing for naming of the respondent at this stage, albeit that her preference was that he would be named. On balance in all the circumstances I am inclined to order redaction at least as matters stand now. Ms. O'Flynn didn't want her name redacted either way, so it doesn't seem necessary to do so.

***De novo* rehearing *versus* review by way of identification of error**

16. While accepting that the function of the court under s. 7 of the 1960 Act is a *de novo* rehearing (see *O'Reilly v. Lee* referred to above), the respondent also argued that the court had to be satisfied that the tribunal had committed an identifiable error. Unfortunately, that is self-evidently a contradictory proposition. If the appeal is *de novo* it doesn't require demonstration of an error at all. The doctrine of curial deference doesn't and can't logically apply to a *de novo* rehearing.

17. Various cases across a range of provisions under the Solicitors Acts were relied on by the respondent as if they dealt with interchangeable situations. That is not so. This will be clearer if we distinguish between three particular routes discussed in the relevant caselaw by which a case can reach the High Court:

    (i). appeal against a decision that there is no *prima facie* case under s. 7(12A)(a) of the 1960 Act;

    (ii). an application by a solicitor for relief against an adverse finding under s. 11 of the 1994 Act; and

    (iii). appeal against a substantive finding of no misconduct under s. 7(12A)(b) of the 1960 Act.

18. These situations are not identical, but the respondent has sought to read across from decisions under the second two categories in order to draw an incorrect conclusion about the first category. I will deal with each category in turn.

Category I - Appeals under s. 7(12A)(a) of the 1960 Act

19. In *O'Reilly v. Lee* [2008] IESC 21, [2008] 4 I.R. 269, the Supreme Court decided that an appeal under s. 7(12A)(a) of the 1960 Act is by way of *de novo* rehearing. It follows that the court is not conducting a review of the tribunal procedures. That is reinforced by the limited function of the tribunal on an appeal as set out in O. 53, r. 12(a) RSC, which provides that an appeal "(iii) may be responded to by an affidavit or affidavits sworn by or on behalf of the respondent solicitor" and "(iv) shall (if applicable) be responded to by affidavit of the Tribunal Registrar on behalf of the Disciplinary Tribunal limited to exhibiting true copies of any documents not exhibited by the appellant that were delivered to and produced before the Disciplinary Tribunal when it was making such a finding and true copies of any documents recording such a finding by the Disciplinary Tribunal". That is simply not consistent with the intention that the High Court would conduct a review-for-error of the tribunal's handling of the matter, but implies a *de novo* reconsideration - as the Supreme Court held.

20. Section 7 of the 1960 Act, dealt with in *O'Reilly v. Lee*, provides in pertinent part that "any person who has made an application under subsection (1) of this section may appeal to the High Court within the period specified in subsection (12B) of this section— (a) against a finding of the Disciplinary Tribunal that there is no *prima facie* case for inquiry into the conduct of the respondent solicitor". That provides for a general "appeal", without identifiable qualification, to a court that has a first instance jurisdiction, which is suggestive of a *de novo* appeal.

21. All things being equal, an unqualified "appeal" to a court or body that is purely appellate and doesn't have a first instance jurisdiction should generally be thought of as probably intended to be on a review-for-error basis, whereas an "appeal" to a body which itself has a first-instance jurisdiction should, as here, probably normally be thought of as intended to be a *de novo* appeal. That is more a theoretical take on *O'Reilly* than anything else because *O'Reilly* speaks for itself.

22. The present matter is an appeal under s. 7(12A)(a) and consequently is by way of rehearing *de novo*.

23. Fundamentally, a *de novo* consideration, whether for example a circuit appeal or otherwise, is one where the court applies its own fresh mind to the matter without being influenced by the reasoning of the court or tribunal below or indeed preferably without even being aware of those reasons or even of what the decision below was: as put by Clarke J. in *Fitzgibbon v. Law Society* [2014] IESC 48, [2015] 1 I.R. 516 at p. 553, "the use of the term '*de novo* appeal' or similar terminology, carries with it a requirement that the appellate body exercise its own judgment on the issues before it without any regard to the decision made by the first instance body against whom the appeal lies".

24. An appellant in a *de novo* context does not have to demonstrate error and does not have to particularise grounds of appeal or legal and factual problems below. Even if this is sometimes done for information it doesn't affect the jurisprudential basis of the appellant decision, which is the fresh decision that the appellant is entitled to, not some quasi-review type process whereby error must be identified. Curial deference in such a context is utterly irrelevant. Indeed the less information about the original decision that is given to the appellate entity in a *de novo* context the better: see for example *Mulcahy v. Cork* City Council [2020] IEHC 547, [2020] 10 JIC 2104 (Unreported, High Court, 21st October, 2020) and *Naudziunas v. OKR Group (No. 1)* [2020] IEHC 566 (Unreported, High Court, 17th November, 2020).

Category II - Applications under s. 11 of the 1960 Act

25. In *Fitzgibbon v. Law Society*, the Supreme Court decided that an application to the court against an adverse ultimate substantive decision under s. 11 of the Solicitors (Amendment) Act 1994 did not give rise to *de novo* reconsideration.

26. One might perhaps ask why the Supreme Court should have decided that one of these types of application is *de novo* (1960 Act, s. 7(12A)(a)) and another is not (1994 Act, s. 11). The answer I think is in the different wording of the two provisions.

27. Section 11 of the 1994 Act provides in part that "A solicitor in respect of whom a determination or direction has been made or given by the Society under section 8 (1), 9 (1) or 12 (1) of this Act ... within a period of 21 days of the notification of such determination or direction to him, or the receipt of such notice by him, apply to the High Court for an order directing the Society to rescind or to vary such determination or direction, or to vary or withdraw such notice, and on hearing such application the Court may make such order as it thinks fit". Thus the solicitor is an applicant rather than an appellant, and moreover an applicant for an order rescinding or varying a previous determination or direction. The logical emphasis is therefore on the applicant showing why such a determination or direction should be set aside and therefore on a showing of error. The point for present purposes is that this section has no application to the present case, which is a statutory appeal under the 1960 Act.

Category III - Appeals under s. 7(12A)(b) of the 1960 Act

28. Reliance was placed by the respondent on the recent decision in *D.K. v. M.K*. [2020] IEHC 520 (Unreported, High Court, Hyland J., 15th October, 2020), which was a decision on an appeal under s. 7(12A)(b) of the 1960 Act and which proceeded on the agreed basis that the appeal was a review-for-error with curial deference rather than *de novo*. Courts are of course dependent on the submissions made by the parties in particular cases, and there are a number of factors that significantly qualify the precedential status of that particular approach.

29. Firstly, para. 14 of the judgment states that the application of the *Fitzgibbon* approach (which, as noted above, dealt with an application under the 1994 Act, not appeals under the 1960 Act) was by agreement of the parties rather than having been a contested matter: "Both parties agreed that this is an appeal against error, with elements of an appeal on the record and I should apply the test identified by Clarke J. in *Fitzgibbon v. Law Society of Ireland* [2014] IESC 48 *i.e.,* that I should only overturn the Tribunal's decision where the appellant has persuaded me as a matter of probability that the decision of the Tribunal was vitiated by a serious and significant error or series of errors". Concessions do not create precedents.

30. Secondly and relatedly, it wasn't pointed out to the court that *Fitzgibbon* was decided under a different statutory provision and not under s. 7 of the 1960 Act.

31. Thirdly, the decision of the Supreme Court in *O'Reilly v. Lee* was not opened to the court. Admittedly that was a decision under s. 7(12A)(a) rather than s. 7(12A)(b), but it was much closer to the legal context of the *D.K.* case than *Fitzgibbon* was.

32. Fourthly, the relevant provisions of O. 53 RSC, referred to above, were not opened to the court either. Those provisions limit the role of the tribunal before the High Court under both paras. (a) and (b) of s. 7(12A), so suggest an understanding by the rules committee that the *O'Reilly* doctrine is applicable to both.

33. The bottom line for present purposes is that *D.K.* is not in any way determinative of the present matter because it deals with a different paragraph and anyway was decided on a concession so is not a precedent on that point.

34. While *obiter* for present purposes, if and when the point regarding the nature of an appeal under s. 7(12A)(b) of the 1960 Act falls for decision, I appreciate one could make an argument that the appeal is not a *de novo* one because the court is also concerned with whether to rescind or vary the tribunal decision. In a s. 7(12A)(b) hearing, unlike that in a s. 7(12A)(a) hearing, there is a substantive decision of the tribunal to review, so in deciding whether to rescind or vary any finding of the tribunal one might contend that a consideration of its findings is called for, leading on to an argument that there should be a review-for-error with curial deference. For what it's worth, I am not hugely persuaded by such an argument, in that I think the fact that the s. 7(12A)(b) process is an appeal rather than an application, together with the lack of language cutting back that appeal, and the express terms of O. 53 (albeit on the basis that rules illuminate rather than substantively affect the meaning of the statute), bring the situation much closer to *O'Reilly* than to *Fitzgibbon*, leading to a conclusion that the s. 7(12A)(b) appeal is also a *de novo* one. A formal decision will have to await another day of course.

Other relevant caselaw

35. The respondent's submissions separately go on to contend that "[v]ery many of the appeals brought by individuals against decisions of the Disciplinary Tribunal that there was no *prima facie* case before it, have been dismissed by the High Court." But that submission comes uncomfortably close to making a numerical or a statistical argument that the majority of such appeals are unfounded so therefore this one is probably going to be unfounded as well. The respondent describes the existing jurisprudence as one of seeking to identify an error in the tribunal, but on closer examination that is clearly not the case. Some of the decisions do this alright, although without any reference to the jurisprudence, particularly the binding decision in *O'Reilly*, but many decisions do not and are framed on a *de novo* basis. The specific decisions relied on by the respondent are as follows:

(i). *White v. Law Society of Ireland* [2010] IEHC 181 (Unreported, High Court, 10th May, 2010) - but that doesn't in any way support the conception that the court is identifying an error or a high hurdle. Kearns P. clearly made his own decision on the merits of whether there was a *prima facie* case (see pp. 11-12).

(ii). *Spring v. Evans* [2009] IEHC 514 (Unreported, High Court, Kearns P., 23rd November, 2009) - while there is passing reference to error in the judgment, the fundamental reason is that there was "abundant evidence" to support a finding of no *prima facie* case. That decision can't be seen as intended to qualify the *O'Reilly v. Lee* decision of the Supreme Court if for no other reason than that it is not referred to in the judgment.

(iii). *White v. Reen* [2010] IEHC 76 (Unreported, High Court, 15th February, 2020) - in that case Kearns P. did not deal with the matter on the basis of there being no

error. He clearly made his own decision that the delay in the case "was on any interpretation both inordinate and inexcusable", not that the appellant had failed to show an error in that regard.

(iv). *Breen v. Murphy* [2010] IEHC 299 (Unreported, High Court, Kearns P., 19th July, 2010) - admittedly, some of the language in that case could be construed as asking whether an error had been demonstrated, but that judgment can't have been intended to qualify *O'Reilly v. Lee* and that decision is not referred to.

(v). *Law Society of Ireland v. Curneen* [2012] IEHC 358 (Unreported, High Court, Kearns P., 30th July, 2012) - the analysis on pp. 8-9 is clearly the court's own assessment and investigation, not an inquiry as to whether there was an error by the tribunal.

(vi). *Corkery v. Holmes* [2011] IEHC 17 (Unreported, High Court, Kearns P., 17th January, 2011) - at pp. 7-9 it is clear that the court assessed the matter itself and not inquired into the question of error.

Misconduct

36. Misconduct is defined in s. 7 of the 1960 Act as amended: see *O'Laoire v. Medical Council* (Unreported, High Court, Keane J., 27th January, 1995). It has been distinguished from "simple error" by the Supreme Court in *Corbally v. Medical Council* and Others [2015] IESC 9, [2015] 2 I.R. 304 *per* Hardiman J. at para. 50. That is not an issue here because the crucial allegations are ones relating to the honesty of the respondent solicitor and go well beyond mere error, poor professional practice, negligence or other sub-misconduct problematic conduct. It must be remembered of course that we are only dealing at this point with whether there is a *prima facie* case, not with the ultimate correctness or otherwise of the complaint.

Appellant's complaints

37. In referring to the appellant's complaints I will use the numbering in the tribunal decision. But any reference to the tribunal's findings is for convenience and doesn't take from the fact that my consideration of the matter is *de novo*.

38. Before dealing with the matters that require more detailed comment, a number of the complaints are clearly not going anywhere, specifically as follows:

(i). para. 3(3)(a), regarding conflict of interest - I consider that as having been adequately responded to;

(ii). para. 3(3)(b), delay in the deed of transfer - that has not been shown to be misconduct on a *prima facie* basis;

(iii). para. 4(1) and (2), failure to look after the legal affairs of the company or to advise the company - it is hard to see much in these complaints that is not encompassed in the more specific allegations;

(iv). para. 4(3) and (4), failure to ensure that the company is run in a proper manner or to ensure that the interests of shareholders were safeguarded - that doesn't add anything to the more specific complaint regarding Revenue matters which I deal with below;

(v). para. 4(6) and (7), a complaint regarding a property at Beecher St. - that has been adequately responded to in the sense that the evidence is that the property was not company property; and

(vi). para. 4(12), alleged fraud in the company - that doesn't add anything to the more specific complaints.

Failure to bring Ms. O'Flynn's attention to the non-payment of tax

39. Paragraphs 3(4), (5) and (6)(c) complain that the respondent solicitor failed to bring the question of non-payment of tax to the attention of the board or to the attention of both directors. The tax in question was corporation tax payable on profit on the sale of certain properties. The obligation of the vendor's solicitor in that context is to obtain CG50 certificates which essentially confirm either that the vendor is resident in the State or alternatively that the relevant tax due has been paid (either capital gains tax or in the case of a company, corporation tax). Implicit in that is that the vendor's solicitor is not required to himself or herself ensure that the CGT or corporation tax is actually ultimately paid by a resident vendor. Under those circumstances I don't think that this complaint meets the *prima facie* hurdle on the basis of the information currently presented.

Payment of company monies to Mr. O'Flynn

40. At para. 3(2) and 4(11) the complaint alleges that the respondent paid company money to the Managing Director, Mr. O'Flynn personally, including during a period when the company was struck off. The respondent's affidavit avers that all such sums were paid on Mr. O'Flynn's instructions. Given that this was an almost entirely one-person company, I don't think it could be said to be *prima facie* misconduct, without more, to pay the company's monies to the principal of such a company on his instructions. While it would be problematic to pay out company monies during a period when the company was struck off, the exact periods of strike-off haven't been properly established in evidence and I don't think it would be right in fairness to the respondent solicitor to allow this aspect to go further. While there might be cases where the court might require the parties to produce further evidence at this stage of proceedings, I don't think in all the circumstances that this present matter is one of them.

False witnessing of signatures

41. The complaint at paras. 3(1), 4(5), 4(9) and 4(10) alleges that forgery of the appellant's signature was facilitated by the respondent solicitor and his firm falsely purporting to witness the appellant's signature when in fact the documents were signed by somebody else. The context here is that this allegation of forged signatures is not just based on the appellant's own say-so. She has produced an expert report of a handwriting specialist to support that. Counsel for the respondent submits that conveyances and the like are not sworn documents and one is not putting one's "hand on the Bible" as she put it. However, that submission falls flat for two reasons. Firstly, honesty is fundamental to the

solicitors' profession, and one can't say that false statements by solicitors are only a serious problem if they are on oath. Secondly, the respondent solicitor *did* swear a memorial that the conveyance had been properly witnessed ("there is a jurat" in the memorial is all that counsel would concede on behalf of the respondent). *That* surely did require his hand on the Bible.

42. The situation here is that the appellant has presented evidence that the respondent solicitor both stated positively and then swore to something that wasn't true and that both he and solicitors under his direction purported to witness signatures falsely. That is consistent with the implied admission against interest as set out in the respondent's own affidavit and recited above.

43. The respondent majored on the contention that he didn't knowingly witness the actual affixing of the forged signature. But putting one's name to a blank document purportedly as a witness where the signing party is not present obviously does leave open the door to the possibility of forgery, even if that is not the respondent's subjective intention. In addition, swearing the memorial containing a false averment could constitute the offence of perjury.

44. Much is made of the alleged unavailability of Mr. O'Flynn at this point. One might say that it hasn't really been properly established how unavailable he actually is, but even if he is unavailable, that isn't really the point. The question is not so much what happened with the documents after they left the respondent's office, but the *prima facie* evidence that the respondent and his firm signed documents as witnesses without the executing party being there and went on to swear that the conveyances were properly executed.

45. Counsel for the respondent also submits that much of this was done by other solicitors in the practice, describing them as "other professional colleagues" as if they were wholly independent of the respondent. But he was the principal of the firm. She submits that at worst this was poor professional practice or negligence, but given the potential falsehood and perjury involved, it seems to me that is an understatement and that such conduct well clears the bar of potential misconduct.

Misleading the appellant's new solicitor

46. The appellant engaged new solicitors, David J. O'Meara & Company, to seek to investigate the company's affairs. The complaint at paras. 3(6)(a), (b), and (d), 3(7) and 4(8) alleges that the respondent essentially misled the new solicitor by saying he had sent documents to the appellant when he had not. For example, a letter from the respondent on 27th September, 2013 says that he advised both Mr. and Mrs. O'Flynn of various matters, but in fact the correspondence, in particular a letter of 22nd August, 2008 enclosing accounts, was addressed to Mr. O'Flynn only. The respondent submits that this is not serious enough to warrant being called misconduct. I disagree. One has to go back to the key point that honesty is fundamental to the role of a solicitor. Knowingly or recklessly making false statements whether on oath, in correspondence, or otherwise, or doing so without first making such inquiries as a solicitor is obliged to make, amounts to

misconduct. Failure in honesty must be viewed as a serious departure from the necessary minimum standard of conduct required to practice as a solicitor.

Conclusion

47. The fact that both of the matters in which I consider that there is a *prima facie* case relate to questions of honesty and also go well beyond the "he said, she said" and have documentary support, means that the question of lapse of time is less decisive than might otherwise be the case. Also reducing the relevance of delay is the fact that the appellant was blindsided by the alleged fraud which she says was facilitated by the false witnessing of documents. She only found out about it at a much later stage so she can't be held responsible for any delay prior to that point.

48. Furthermore, even if I am wrong that I don't have to identify an error in the tribunal's approach, I would hold that the appellant has persuaded me that there are serious and significant errors by the tribunal warranting the court's intervention.

49. Thus, for the reasons set out above, the position in relation to each of the complaints is as follows:

(i). para. 3(1) - forgery of the appellant's signature - there is a *prima facie* case requiring inquiry;

(ii). para. 3(2) - respondent paying company money to the Managing Director, Mr. O'Flynn personally - no *prima facie* case;

(iii). para. 3(3)(a) - conflict of interest - no *prima facie* case;

(iv). para. 3(3)(b) - delay in the deed of transfer - no *prima facie* case;

(v). para. 3(4) - failed to raise issue of non-payment of tax - no *prima facie* case;

(vi). para. 3(5) - failed to correspond with appellant regarding company annual returns - no *prima facie* case;

(vii). paras. 3(6)(a) - respondent misled the new solicitor - there is a *prima facie* case requiring inquiry;

(viii). paras. 3(6)(b) - respondent misled the new solicitor - there is a *prima facie* case requiring inquiry;

(ix). para. 3(6)(c) - failed to raise issue of non-payment of tax - no *prima facie* case;

(x). para. 3(6)(d) - respondent misled the new solicitor - there is a *prima facie* case requiring inquiry;

(xi). para. 3(7) - respondent misled the new solicitor - there is a *prima facie* case requiring inquiry;

(xii). para. 4(1) - failure to look after the legal affairs of the company - no *prima facie* case;

(xiii). para. 4(2) - failure to advise the applicant in her capacity as a director - no *prima facie* case;

(xiv). para. 4(3) - failure to ensure that the company is run in a proper manner or to ensure that the interests of shareholders were safeguarded - no *prima facie* case;

(xv). para. 4(4) - failure to ensure that the company was compliant with Revenue obligations - no *prima facie* case;

(xvi). para. 4(5) - forgery of the appellant's signature and falsely swearing to have witnessed documents - there is a *prima facie* case requiring inquiry;

(xvii). para. 4(6) - complaint regarding a property at Beecher St. - no *prima facie* case;

(xviii). para. 4(7) - complaint regarding a property at Beecher St. - no *prima facie* case;

(xix). para. 4(8) misleading the new solicitor - there is a *prima facie* case requiring inquiry;

(xx). para. 4(9) - falsely swearing to have witnessed the appellant's signature - there is a *prima facie* case requiring inquiry;

(xxi). para. 4(10) - as principal, allowing a junior associate to falsely swear to have witnessed the appellant's signature - there is a *prima facie* case requiring inquiry;

(xxii). para. 4(11) - payment of company money to the Managing Director, Mr. O'Flynn personally - no *prima facie* case; and

(xxiii). para. 4(12) - alleged fraud on the company - no *prima facie* case.

Order

50. For these reasons, the order will be as follows:

(i). I will allow the appeal in respect of the following two categories of allegations:

(a). personally and as principal, falsely witnessing the appellant's signature and falsely swearing to have done so, and related matters alleged at paras. 3(1) and 4(5), (9) and (10) of the complaint; and

(b). providing false or misleading information to the new solicitor instructed by the appellant and related matters as alleged at paras. 3(6)(a), (b), and (d), 3(7) and 4(8) of the complaint;

(ii). I will make a finding that there is a *prima facie* case in relation to those allegations of misconduct and will require the Disciplinary Tribunal to proceed to hold an

inquiry under s. 7(3) of the Solicitors (Amendment) Act 1960 in relation to those allegations; and

(iii). I will otherwise dismiss the appeal and confirm the findings of the Disciplinary Tribunal in relation to the other complaints.