



**AN CHÚIRT UACHTARACH
THE SUPREME COURT**

S:AP:IE:2020:000068

**O'Donnell C.J.
Dunne J.
Charleton J.
Baker J.
Woulfe J.**

BETWEEN/

**BARRY SHEEHAN PRACTISING UNDER THE STYLE OF BARRY SHEEHAN
SOLICITOR**

Appellant

AND

SOLICITORS' DISCIPLINARY TRIBUNAL

AND

BERNARD BINGHAM

AND

VIOLA BINGHAM

Respondents

AND

THE LAW SOCIETY OF IRELAND

Notice Party

Judgment of Ms. Justice Dunne delivered on the 17th day of February, 2022

Introduction

1. This is the second judgment of this Court in relation to these proceedings. The first judgment of this Court on the 16th September, 2021 concerned the scope of the statutory appeal provided by s. 7(11) of the Solicitors (Amendment) Act, 1960, as substituted by s.17 of the Solicitors (Amendment) Act, 1994, and amended by s.9(f) of the Solicitors (Amendment) Act, 2002, and whether in the course of the statutory appeal to the High Court a solicitor, whose conduct was at issue, could challenge the jurisdiction of the first named respondent (the SDT) to make a finding of professional misconduct against the appellant in the performance of his duties acting as a solicitor for the second and third named respondents (the Bingham). The essential issue before the Court concerned whether or not it was open to the appellant, in the course of the statutory appeal, to argue that the matter, the subject of the misconduct allegation, was *res judicata*, and a further issue was raised as to whether or not the provisions of s.7(1) of the Solicitors (Amendment) Act, 1960, (as amended), precluded the Tribunal from hearing the complaint of the Bingham.

Background

2. It is not necessary to set out the background to these proceedings, as that was done in the earlier judgment of this Court. The Court in that judgment concluded that the appellant was entitled to raise the issue of *res judicata* before the SDT, and likewise was entitled to raise the issue as to s.7(1) or “the gateway provision” as that section was described in the previous judgment. Having found for the appellant on the question of whether those matters could have been properly dealt with in the course of the statutory appeal, and thus allowed the appeal of the appellant on that issue, this Court was of the view that it would be appropriate to deal with the issues of *res judicata* and the effect of the gateway provision on the complaint of the Bingham against the appellant, and whether, in fact, the complaint of the Bingham should have been dealt with by the SDT. No objection was taken to proceeding in this way. At the conclusion of the previous judgment, the following was stated, at para. 103:

“I am very conscious of the long history between the appellant in these proceedings and the Bingham, arising out of the tragic death of the Bingham’s son, Mirek, who died on the 31st December, 1999. Counsel for the Bingham has invited the Court to conclude these proceedings at this stage and I am satisfied that this Court has jurisdiction to do so in the circumstances of this case. Mindful as I am of the lengthy

history of this matter, and with a view to concluding these proceedings once and for all, it seems to me that it is appropriate for this Court to consider the issue of res judicata and the s. 7(1) issue now and whether or not, having regard to the circumstances, the contentions of the appellant in this regard are correct. These issues were part of the proceedings before the High Court originally and there is no reason why they cannot be dealt with by this Court at this stage. The Court will hear the parties further as to the orders to be made and the resolution of the remaining issues.”

3. By way of reference to the above it should be borne in mind that all of the material necessary to deal with these issues was before the High Court and, in particular, to note that the appellant herein had sworn a detailed and lengthy affidavit grounding his application seeking to rescind the order of the SDT. In addition to that lengthy affidavit, the Court also had the benefit of a large volume of documentation which was provided by the appellant by way of exhibits to that affidavit, together with transcripts of the hearing before the SDT, and correspondence between the parties.

4. In addition to the large volume of documentation provided to this Court in the course of the proceedings, the parties furnished detailed written submissions in relation to the law on *res judicata*, and the provisions of s. 7(1) of the Act of 1960. Therefore, this Court was in a position to deal with the matter comprehensively notwithstanding that, while these issues had been before the High Court, and indeed the Court of Appeal, these issues were not considered by those courts.

The Complaints

5. The complaints actually before the SDT and considered by them were as follows: firstly, that the appellant abused his position by threatening to destroy the entire file unless the Bingham settle his alleged Bill of Costs, despite a Circuit Court order dismissing his claim. That complaint arose out of an email of the 19th June, 2014, to which reference will be made later. The second complaint concerned a refusal by the respondent to return the file of the Bingham or grant access to the file for the purpose of a Supreme Court appeal in relation to the events surrounding the death of their son.

6. Following a hearing before the SDT a finding of misconduct was made against the appellant in respect of the first complaint. The SDT found in favour of the appellant in respect of the second complaint.

7. The focus of the finding of misconduct against the appellant was on the contents of an email of the 19th June, 2014 which had been sent by the appellant to the Bingham. It would be helpful to set it out in full at this stage:

“Dear Mr and Mrs Bingham

Thank you for your email dated 15 June 2014.

As you know, your last complaint against the writer was, finally, dismissed by the Complaints and Client Relations Committee of the Law Society of Ireland on 10 June 2014.

As indicated in my email to the [sic] Cathy O’Brien, Solicitor, Complaints and Client Relations Section dated 9 June 2014, I will shortly be arranging for your voluminous files to be destroyed so as to free up much needed storage space.

In the circumstances, I am prepared to afford you one final opportunity to make an offer to the writer in respect of my outstanding bill of costs dated 6 May 2008.

I look forward to hearing from you by return.”

8. As can be seen from that email, the Bingham had made previous complaints in respect of the appellant, although it should be noted that these proceedings concern the only complaint made to the SDT. Previous complaints had been made to other entities within the Law Society or established by the Law Society, namely the Complaints & Client Relations Section, and the Independent Adjudicator for the Law Society. Details of the earlier complaints can be found in the previous judgment of this Court, at paras. 4 to 6 inclusive. Further, proceedings had taken place between the appellant and the Bingham in the Circuit Court, which are also described in the said paragraphs. It should be noted that the third complaint made by the Bingham against the appellant, and which was dated the 15th September, 2014, alleged twenty-seven grounds of misconduct, but at the end of the day the SDT declined to consider a large number of those complaints, but concluded that there was a *prima facie* case of misconduct in relation to the two complaints referred to previously, ultimately leading to the conclusions of the SDT in relation to those two complaints which are central to these proceedings.

9. It cannot be gainsaid that at the heart of the dispute between the Bingham and the appellant is the retention of their file by the appellant and the demands by the appellant for the payment of fees. Thus, as pointed out in the earlier judgment of this Court, the first complaint

was made by the Bingham on the 13th January, 2009 to the Complaints & Client Relations Section of the Law Society in respect, *inter alia*, of the exercise of a lien over their files. Following the rejection of that complaint, the matter was then dealt with before the Independent Adjudicator, also in 2009. Thereafter, proceedings took place in the Circuit Court, which were initiated by the appellant and were the subject of a counterclaim by the Bingham. The appellant sought fees on a *quantum meruit* basis from the Bingham, following the breakdown of the professional relationship between the appellant and the Bingham. The Bingham counterclaimed seeking the recovery of their files. As can be seen from the previous judgment, the appellant's claim for fees was dismissed, and the counterclaim was dismissed. Following that there was a further complaint to the Complaints and Client Relations Committee ("the CCRC" herein) by the Bingham. That Committee made no finding on the complaint of the Bingham. Nevertheless, correspondence continued between the CRCC, the appellant and the Bingham in relation to the files, culminating in the complaint to the SDT.

Submissions

10. The Court had the benefit of detailed written submissions from all of the parties on the principles of law in relation to the concept of *res judicata*, and further on the effect of provisions of s. 7(1) of the Act of 1960. The essence of the argument made on behalf of the appellant can be seen in para. 23 of the written submissions of the appellant, where it is stated that:

"...by virtue of either cause of action estoppel or issue estoppel, the complaint made by the Bingham to the Tribunal on the 23rd September 2014 (and subsequently heard again in the High Court and Court of Appeal) was res judicata. In respect of the former, the Bingham's cause before the Tribunal was to secure the return of their file. This is the exact same cause that was litigated in the Circuit Court. The cause was litigated unsuccessfully and an absolute bar therefore applies in respect of it. The Appellant further submits that, in seeking to re-open the issue of their entitlement to have the file returned, the Bingham engaged in a collateral attack on the Circuit Court order before the Tribunal, as was defined by Whelan J. in Flanagan. ..."

The submissions continued, at para. 25:

"Insofar as a different cause of action can be identified before the Tribunal on grounds of proving misconduct on the part of the Appellant, it is submitted that the point was also barred by issue estoppel. The Appellant's entitlement to retain the file was a central proof of the Bingham's claims before the CCRC, the Circuit Court and the"

Tribunal. They failed in meeting that proof twice before the complaints bodies of the Law Society and also before the Circuit Court. It is submitted that they were therefore issue estopped from having the point re-determined for a fourth time before the Tribunal. As for the special circumstances identified by Whelan J. in Small, it is submitted that there was no injustice arising on the facts before the Tribunal that would allow the doctrine of issue estoppel to be dis-applied. On the contrary, it is submitted that the Appellant's entitlement to retain the file was conclusively determined by the Circuit Court and it was unjust to allow the Bingham's to go behind the Circuit Court order. Thus, it is submitted that, under the heading of issue estoppel, the findings made by the Tribunal, High Court and Court of Appeal were reached in breach of the doctrine of res judicata."

11. Insofar as s.7(1) was concerned, the argument was to the effect that having made a complaint to the Independent Adjudicator in 2009, it was then contended that that complaint was of a kind that comes within the terms of s. 15 of the Solicitors (Amendment) Act, 1994. It was argued that as the Bingham's had made such a complaint previously to the Independent Adjudicator, the complaint came within the terms of the gateway provision contained in s. 7(1) of the Act of 1960, and that there was no statutory jurisdiction under s. 7 of the Act to entertain the complaint.

Discussion

12. There is no doubt that there is a lengthy history between the appellant and the Bingham's in relation to the efforts of the Bingham's to recover their files, and on the part of the appellant to claim fees from the Bingham's in relation to his work done on their behalf. However, the grounds of the complaint against the appellant in respect of the email of the 19th June, 2014 are of a somewhat different character. The complaint centred on the threat to destroy the files absent an offer being made to the appellant in respect of his "outstanding Bill of Costs".

13. Whilst it is apparent that the written submissions focus very much on the issue of *res judicata*, and on the effect of the gateway provision contained in s. 7(1) of the Act of 1960, following discussions in the course of argument before the Court, counsel on behalf of the appellant could not dispute the fact that the email of the 19th June, 2014 had not been the subject of a previous complaint by the Bingham's, and thus could not be subject to the principles of *res judicata*, and likewise could not be the subject of the previous complaint made to the Independent Adjudicator in 2009, some five years earlier than the email. Thus, a somewhat

more nuanced argument was made on behalf of the appellant to the effect that, in circumstances where the second complaint before the Disciplinary Tribunal concerned a complaint in respect of the failure to return the files, and that that failure was the subject of previous complaints, that the hearing before the SDT was, to use a phrase that was used in the course of argument, tainted by the hearing of the two complaints together.

14. It ought to be borne in mind that leave was originally granted to appeal to this Court on the issue of the nature of the statutory appeal under the Solicitors Act, and whether the High Court, or an appeal arising from the decision of the High Court, could consider a challenge to the jurisdiction of the Tribunal. The issue as to whether or not the decision of the SDT was in some way tainted by virtue of the fact that it heard two complaints at the same time was not an issue on which leave to appeal to this Court was granted. Nevertheless, and in deference to the argument made in this regard, I propose to deal with the argument made in this respect. In doing so, it is necessary to consider the findings of the SDT in respect of the two complaints made before it.

The Decision of the SDT

15. The Tribunal in its decision noted that, when the matter first came before the Solicitors Disciplinary Tribunal in respect of twenty-seven allegations, an earlier division of the Tribunal found that there was only a *prima facie* case of misconduct in respect of two allegations, namely, “*The respondent solicitor abusing his position by threatening to destroy the entire file unless the applicants settled his bill of costs, despite a Circuit Court order dismissing his claim, and (b) the respondent solicitor’s refusal to return the file or grant access to the file for the purposes of the Supreme Court appeal.*” As the decision of the SDT notes, there was a hearing before the Tribunal on the 15th July, 6th October and 16th December, 2015. Following the hearing, the parties also provided written submissions. Having referred to the relevant facts, and to the legal issues before the SDT, the SDT went on to deal with the two complaints. Having referred at length to the circumstances surrounding the Circuit Court proceedings between the appellant and the Bingham, the SDT stated, at para. 56, as follows:

“The Tribunal is of the view that the effective outcome of the Circuit Court is that while the respondent solicitor lost his claim for costs, and therefore the basis of his lien, but equally the applicants also failed to obtain a right to have the documents returned. As such the respondent solicitor was within his rights to decline to return the documents to the applicants.”

57. *The next issue to be considered is the threat to destroy the entire file.*
58. *The Tribunal turns to the email of 19 June 2014 from the respondent solicitor to the applicants. Because of its importance it is worth repeating:*

[The tribunal then set out in full the contents of the email which have been referred to and set out above].

59. *The respondent solicitor submits that he is “entitled by law and/or rules of professional conduct to destroy the applicants’ files ...”*

60. *In support to this submission the respondent solicitor cites Section 9.12 of the Law Society’s Guide to Good Professional Conduct for Solicitors 3rd Edition where it is stated:*

RETENTION OR DESTRUCTION OF FILES

In order to protect the interests of clients who may be sued by third parties and also to protect the interests of a solicitors’ firm which may be sued by former clients or by third parties, a solicitor should ensure that all files, documents and other records are retained for appropriate periods.

Anti-Money Laundering legislation now requires firms to keep records showing compliance with money laundering procedures applied, and information gathered, by the firm in relation to each client, for a period of five years. This includes keeping copies of relevant deeds.

However, solicitors should also be aware that under the provisions of Data Protection legislation, once the appropriate period has elapsed, personal data relating to clients or others should not be retained longer than necessary. When a solicitor drafts a will for a client he should consider whether the handwritten instructions taken should be retained with the original will which is being retained.

61. *The Tribunal can find nothing in this extract that supports the respondent solicitor’s entitlement to destroy the applicants’ file.*

62. *It is well settled law that, other than the solicitor’s working papers, the file retained by the solicitor is the property of that solicitor’s client. The file remains the property of the client even after the solicitor ceases to act for that client or [sic]*

transaction has been completed. Indeed the fact that the respondent solicitor claimed a lien over the file meant, in his mind, the file was the property of the applicants.

63. *On 9 June 2014 the respondent solicitor wrote to the Law Society advising it of his intention to destroy the applicants' files. On 15 June 2014 the applicants emailed the respondent solicitor stating "For the avoidance of any misunderstanding, please note that under no circumstances do we permit you to destroy our file. This applies to both legal and medical content of the file". By email of 19 June 2014 the respondent solicitor repeated his intention to destroy the files and went on to say in his letter "In the circumstances, I am prepared to afford you one final opportunity to make an offer to the writer in respect of my outstanding bill of costs dated 6 May 2008."*

64. *In the Tribunal's view the email of 19 June 2014 was a clear and unambiguous threat that if the applicants did not make an offer to pay his costs that he would destroy the files.*

65. *The next issue to consider is whether this threat amounted to misconduct.*

66. *In the Tribunal's view the respondent solicitor, having been frustrated by his claim for costs being dismissed by the Circuit Court, being reported on two occasions to the Law Society and knowing that the threat to destroy the files would cause the applicants considerable anguish, wrongly threaten the applicants with the destruction of their files. This was a deliberate act to try to force the applicants to give him some money for the work he did on their behalf even though the Circuit Court had dismissed his claim for costs. The Tribunal also infers from the fact that the respondent solicitor, despite his threat to destroy the file, did not actually do so because he knew perfectly well that the file, other than the working papers, belonged to the applicants. As such the respondent solicitor's conduct was morally culpable or otherwise of a disgraceful kind which tended to bring the solicitors' profession into disrepute and therefore he was guilty of professional misconduct."*

16. The SDT then went on to deal with the second allegation which, as we know, concerned the file and its return to the Bingham. This was dealt with at para. 67 onwards, in the following terms:

"67. The legal issues to be considered include:

A. Was the solicitor entitled to withhold the file from the applicants?

B. *If the answer to A is in the negative, did his conduct amount to misconduct?*

68. *When the applicants initially lodged their appeal on 26 January 2009 the respondent solicitor maintained that he was entitled to withhold the file on the basis of a lien on unpaid fees and was supported in this contention by the CCR. Subsequently the respondent solicitor issued unsuccessful proceedings for the recovery of the fees but, as already stated, the Tribunal is of the view that, because the applicants were unsuccessful in their counterclaim seeking the return of the file, the respondent solicitor was not obliged to return the file.*

69. *Consequently, the Tribunal finds the respondent solicitor not guilty of misconduct in respect of this allegation.”*

17. In essence, therefore, the complaint now being made is that the decision of the SDT in respect of the finding of misconduct, on foot of the first complaint made by the Bingham, was “tainted” by the inclusion of the second complaint, albeit that that complaint was dismissed, in circumstances where that complaint had been the subject of a number of previous considerations, including the proceedings that took place before the Circuit Court, and the subsequent consideration of that issue by the CCRC following the Circuit Court proceedings.

Submissions of the Other Parties

18. Counsel on behalf of the SDT noted that the issue as to whether evidence heard on the second complaint tainted the evidence on the first complaint was now a significant shift in relation to the way in which the matter had been pursued to date. She observed that the appellant now appeared to be relying on a constitutional right to fair procedures. In that context, she referred at length to what had been argued before the Tribunal, and further referred to the findings of the Tribunal at some length. She pointed out that, as appears from the findings before the Tribunal, that the Tribunal found in favour of the appellant in respect of the second complaint. Counsel addressed the Court briefly on the issue of *res judicata*, and made the observation that, although there had been hearings previously before the CCRC, and there were proceedings before the Circuit Court, as has been outlined previously, neither the CCRC or the Circuit Court would have had jurisdiction to make a finding of misconduct. Accordingly, the only body with the jurisdiction to make a finding of misconduct was the SDT.

19. In relation to the question of whether or not the hearing of the second complaint at the same time as the first complaint could have tainted the decision of the SDT, she referred to comments that had been made by Fennelly J. in the case of *Kennedy v. Law Society of Ireland (No. 3)* [2002] 2 I.R. 458, in respect of the scope of any exclusionary rule of evidence in disciplinary matters, where it was said, at page 490, that the scope for any exclusionary rule of evidence “... *must necessarily be extremely limited*”, and must turn on the “*basic proposition ... that there has been a knowing and deliberate breach of the constitutional rights of the person against whom the impugned evidence is to be tendered*” (page 489). Finally, she referred to the observations of Fennelly J. at page 490, as follows:

“The courts should be slow to adopt any mechanical exclusionary rule which makes it easy to prevent disciplinary tribunals from receiving and hearing relevant and probative material. The balance should be struck between the rights of individuals and those professional bodies assigned the task of supervising their behaviour so as to give careful weight to two competing considerations: firstly, the test adopted should not unduly impede the latter type of body from performing their duty of protecting the public from professional misbehaviour; secondly, members of a professional body should be protected from such clear abuse of power as would render it unfair that the evidence gathered as a result be received”.

20. Ultimately, counsel on behalf of the SDT made the point that, even if there had been an issue before the CCRC or the Circuit Court as to the status of the appellant’s lien, neither of those bodies had the jurisdiction to deal with any allegation of misconduct in relation to the question of whether or not there had been misconduct on the part of the appellant in refusing to return the file or grant access to the file for the purpose of the Supreme Court appeal, and thus, bearing in mind the high threshold for any allegation of interference with constitutional rights, she rejected the argument that there had been any lack of fair procedures before the SDT.

21. Counsel on behalf of the Bingham adopted the submissions made on behalf of the SDT, and likewise noted that the SDT in the course of its decision carefully distinguished between the complaint in respect of the lien and that in respect of the threat to destroy the files. It was clear that the Tribunal treated both complaints separately. The point was made that, if the appellant now wished to make a complaint, that the hearing before the Tribunal had been tainted by the decision to have both complaints heard together, evidence should have been

produced by the appellant to the effect that the decision of the Tribunal was somehow tainted by that. He reiterated the point that there was a very big difference between the jurisdiction of the CCRC and the Circuit Court, as opposed to that of the SDT, in that neither of the former bodies could adjudicate on any question of misconduct. Finally, he agreed with counsel for the SDT that in the light of the approach being taken on behalf of the appellant at this stage, any issue in relation to s. 7(1) of the Act of 1960 fell away, and it was not necessary to resolve any question in relation to the status of the Independent Adjudicator.

22. Finally, counsel on behalf of the Law Society reiterated the points that had already been made by counsel on behalf of the SDT. She made the point that, whilst the CCRC is a body of the Law Society, the SDT is an independent statutory body. She also referred in some detail to the position of the Independent Adjudicator, but, in view of the approach being taken by the appellant at the hearing, she expressed the view that any issue in relation to the position of the Independent Adjudicator simply did not arise at this stage.

Decision

23. This Court granted leave to the appellant to appeal from the judgment and order of the Court of Appeal in these proceedings, in relation to the scope of the statutory appeal, pursuant to s. 7(11) of the Act of 1960, and further to consider whether or not the appellant could rely on a plea of *res judicata* in the course of the statutory appeal. In the judgment of this Court, referred to previously, it was concluded that the appellant should have been entitled to raise the question of *res judicata*, and the issue of the gateway provision, s. 7(1), which was an argument as to the jurisdiction of the SDT to hear the complaint in the first instance.

24. Following the delivery of the judgment, this Court determined that it was appropriate in light of the fact that the issue of *res judicata*, and the issue in respect of s. 7(1), were always part of the statutory appeal before the High Court, and bearing in mind the request of the Bingham that the proceedings should be brought to a conclusion in this Court, and further, given that it was not disputed by the appellant that this Court had jurisdiction to proceed in that way, the Court held a further hearing to deal with these issues. As mentioned previously, all of the parties furnished lengthy and detailed written submissions to the Court focused on the issues of *res judicata* and s. 7(1).

25. It is undoubtedly the case that there has been a long-running and unfortunate dispute between the appellant and the Bingham, flowing from when the appellant was their solicitor in respect of proceedings brought by them arising from the tragic death of their son. The

professional relationship between them broke down irretrievably and led to a series of complaints initiated by the Bingham to the CCRC and the Independent Adjudicator of the Law Society over fees and the retention of files. These complaints have been referred to above, and were described in the earlier judgment of this Court, and it is not necessary to reiterate them here. There were also Circuit Court proceedings in which the appellant sued the Bingham for fees, and they counterclaimed for the return of their files. One might have thought that matters could have ended at that point, but as we know, a further complaint was made to the CCRC after the Circuit Court proceedings had concluded (including the Circuit appeal). Ultimately, that complaint to the CCRC having been considered, the Bingham made a series of complaints to the SDT of which it was found that there was a *prima facie* case made out in respect of the two complaints at issue in these proceedings.

26. Whatever about the lengthy submissions in relation to *res judicata* and s 7(1), one thing is clear. The complaint in relation to the email of the 19th June, 2014, of which the appellant was found guilty of misconduct, could never have been the subject of *res judicata*. It contained, as has been seen previously, a threat to destroy the files, coupled with “*one final opportunity to make an offer*” in respect of fees. This was the behaviour found to constitute misconduct by the SDT, and was separate and distinct from anything that had occurred previously. It could never have come within the doctrine of *res judicata*, whatever the parameters of that doctrine might be. Equally, it is impossible to see how that complaint could in any way be precluded from being made by reason of the review conducted by the Independent Adjudicator as to the circumstances that pertained between the appellant and the Bingham in 2009. Thus, it is clear, that the doctrine of *res judicata* and the reliance on the gateway provision could not have availed the appellant in respect of the email of the 19th June, 2014.

27. It is, therefore, to some extent, understandable that a somewhat different argument was made at the hearing in relation to these issues, to the effect that the finding of the SDT in relation to the first complaint was “tainted” by the consideration of the second complaint by the SDT, namely, the refusal to return the file or to grant access to the file for the purpose of the Supreme Court hearing.

28. There are a number of problems with this argument. First and foremost, this is an argument that was never made in these proceedings before. The appellant, in the affidavit grounding the statutory appeal, made no reference whatsoever to the argument that the hearing of both complaints at the same time by the SDT could have contaminated the hearing in some

way or interfered with the entitlement of the appellant to fair procedures before the SDT. The appellant has pointed to nothing in the hearing before the SDT or in its decision to support this argument. On the contrary, it is clear from the decision of the SDT that they carefully considered each of the complaints against the appellant and found for him in respect of the second complaint and found him guilty of misconduct in respect of the first complaint.

29. It should be observed that there is nothing strange or unusual in a decision-maker having to deal with more than one complaint at a time. For example, in criminal cases before a jury, there may be more than one count on an indictment, and a jury will be directed to deal with one count at a time, and to do so having regard to the evidence in relation to that count separately from the evidence in respect of other counts. That is the way in which multiple counts on an indictment are considered. Therefore, coming back to the situation in this case, even though both of the complaints were dealt with together, there is nothing to suggest that the evidence in relation to one of the complaints “tainted” the hearing in respect of the other complaint, and, as I have said, it is apparent from the decision of the SDT that they carefully considered the evidence in respect of each of the complaints before coming to a decision.

30. Leaving aside the fact that leave was not granted by this Court to raise this issue, but having regard to the way in which this issue was raised at this stage, in the absence of any prior suggestion that the hearing before the SDT would be contaminated by the hearing of the two complaints together, for my part, I am satisfied that this complaint has no basis, and that there is nothing to suggest that the appellant was denied fair procedures in any way by the SDT by the hearing of both complaints together.

31. In the circumstances, I would dismiss the appeal.