

An Chúirt Uachtarach**The Supreme Court**

Supreme Court Record No. S:AP:IE:2022:000030
Court of Appeal Record No. 2021/56
High Court Record No. 2004/19212P
[2023] IESC 28

Charleton J
O'Malley J
Baker J
Woulfe J
Murray J

Between

John Colm Murphy
Appellant

- AND -

The Law Society of Ireland
Respondent

Judgment of Mr Justice Peter Charleton delivered on Wednesday 29 November 2023

1. In *Kirwan v O'Leary* [2023] IESC 27, delivered just before this judgment, the issue has been decided as to whether under s 7(12B) of the Solicitors (Amendment) Act 1960 as amended, time may be extended by the High Court where the Solicitors Disciplinary Tribunal (SDT) considers a complaint against a solicitor and no *prima facie* case of misconduct has been found to have been disclosed. Such an appeal, under the section, “shall be made” within 21 days of receipt by the complainant of that finding.

2. In this case, the Law Society of Ireland were content to assume that there was no issue as to the extension of that time. In *Kirwan v O'Leary*, Charleton and Woulfe JJ dissent for the reasons set out in the judgment of Woulfe J. The majority analysis in that case, however, is that the wording of the section is such that time may be extended, but for good reason and not simply on the basis that a late appellant may be able to put up a good case. There may be other factors involved, including the necessity to bring finality

to a complaint against a solicitor and a consideration of why no appeal, as in this case, was made within time when manifestly it could have been. The concurring judgment of Baker J in this case refers. That jurisdiction to extend time is guided by the decision of this Court in *Seniors Money Mortgages Ireland DAC v Gately and McGovern* [2020] IESC 3, [2020] 2 IR 441 and, usefully, in this case the standard principles to be applied, derived from *Éire Continental Trading Co v Clonmel Foods Ltd* [1955] IR 170, 173 are further considered. I agree fully with the judgment of Murray J in that respect both in *Kirwan v O'Leary* and as he elaborates upon the test in this appeal.

3. Where the dissent arose in *Kirwan v O'Leary* was as to the construction of s 7(12B). In the dissenting judgment in that case, Woulfe J takes the view that the wording of the section, taken into consideration in the context of the legislation, does not permit of an extension of time. In concurring in that dissent, his reasoning is accepted by me. Charleton and Woulfe JJ were, however, in the minority in that case. Hence, the judgment of the majority becomes the decision of the Court. Because of the similarity of wording and context between s 7(12B) and s 7(11), it follows that time may in an appropriate case be extended for the bringing of an appeal under both provisions, therefore, as a matter of the state of the law as it has been declared in *Kirwan v O'Leary*, where an appeal is brought late against a finding of the solicitors disciplinary tribunal that no *prima facie* case exists in respect of a complaint or where (as was the case in this appeal) a finding is made by the SDT under s 7(9). Whether time will be extended is to be decided on the principles which are stated in that judgment by Murray J, as elaborated upon in this judgment by Murray J.

4. My concurrence in this judgment with Woulfe J is on the basis that *Kirwan v O'Leary* now represents, as a matter of decided law, the true construction of the entitlement of a late appellant to have time extended. The principles on which such extension might be made are as set out by Woulfe J and Murray J, with which I agree.

5. It might simply be added that a *prima facie* case is one where a complainant has put forward enough potential evidence whereby a court or tribunal may make a finding, on that potential evidence alone, that an asserted wrong has occurred, such that the court or tribunal might act on that evidence, if proven, and where such evidence is not rebutted or qualified or explained in such a way as to undermine its status as sufficient to ground a finding that the wrong has occurred.