**THE HIGH COURT**

[2022] IEHC 152

**[2020 No. 79 S.A.]**

**IN THE MATTER OF THE SOLICITORS ACTS 1954 – 2015**
**AND IN THE MATTER OF JOHN O'LEARY, BRIDGET O'LEARY, SEAMUS TURNER, PETER REDMOND, CORMAC MULLEN, CATHERINE O'CONNOR, SEAN NOLAN, GERAINE O'LOUGHLIN AND WENDY SMITH, SOLICITORS**

**BETWEEN**

**BRENDAN KIRWAN**

**APPELLANT**

**AND**

**JOHN O'LEARY AND BRIDGET O'LEARY, SEAMUS TURNER, PETER REDMOND, CORMAC MCMULLEN, CATHERINE O'CONNOR, SEAN NOLAN, GERAINE O'LOUGHLIN AND WENDY SMITH**

**RESPONDENTS**

**AND**

**SOLICITORS DISCIPLINARY TRIBUNAL**

**NOTICE PARTY**

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**JUDGMENT of Ms. Justice Irvine, President of the High Court delivered the 9th day of March 2022**

1. This judgment is delivered in respect of the relief sought in two notices of motion issued by the respondents to the above entitled proceedings each dated 9th June, 2021. Simply put, the respondents ask the Court to conclude that the within proceedings are time barred as they were not commenced within the mandatory time limit provided for in s. 7(12B) of the Solicitors (Amendment) Act 1960 as substituted by s. 17 of the Solicitors (Amendment) Act 1994, as amended by s. 9(g) of the Solicitors (Amendment) Act 2002.

2. The respondents' applications were heard by this Court on 11th October and 15th November, 2021. The reason for the interval between the hearing dates was to allow the appellant time to consider the respondents' submissions in circumstances where he was unrepresented and hadn't been given copies of the authorities upon which the respondents had relied in the course of their oral submissions.

3. It should be stated that in the intervening period the appellant sought to issue what is described on the face of the document as a "Notice for Article 40 Motion" grounded upon an affidavit dated 28th October, 2021. The Central Office had refused to issue that Motion and when it was handed in to the court on the day of the hearing, I refused the appellant

the right to issue the Motion or to pursue the relief set forth therein, having first indicated that the intended application was misguided and irregular. However, having ascertained from the appellant that the reason he wished to issue the aforementioned Motion was to allow him to rely upon his right of access to justice as provided for in the Constitution to counter the respondents' Motions, I informed him that he was fully entitled to advance such an argument without any need to issue his proposed Article 40 Motion.

**Background**

4. In 2019, the appellant made a complaint concerning the respondents to the Solicitors Disciplinary Tribunal. He made 2 separate complaints. The first was made against Mr. John O'Leary and Ms. Bridget O'Leary and the 2nd was made against all of the members of the firm in which those solicitors were partners. The complaints were essentially the same. The details of misconduct alleged against the respondents can be gleaned from the decision of the Solicitors Disciplinary Tribunal dated 8th October, 2020, which is exhibited at exhibit "JOL2" to the affidavit sworn by the first named respondent, Mr. John O'Leary, Solicitor, on 8th June, 2021.

5. The main, but by no means the entire focus of the appellant's complaint, was that a member of the staff of M.J. O'Connor Solicitors, who according to the complainant had "no practising certificate and no ability in law", had "no professional indemnity insurance" and who had allegedly given legal advice and charged fees as if they were a qualified solicitor, had been held out to him as a solicitor. In addition, it was alleged that the respondents withheld and suppressed facts concerning the price agreed to be paid by a third party for the purchase of certain lands as a result of which the appellant had sustained very significant financial loss. It was alleged, *inter alia*, that the respondents had acted dishonestly and furthered the interest of a third party to his loss and detriment.

6. In its decision dated 8th October, 2020, the Solicitors Disciplinary Tribunal concluded that the appellant had not established a *prima facie* case of misconduct on the part of the respondents. It is not necessary to engage with the substance of the Tribunal's decision as the issue which I have to determine is a net one, namely whether the appellant's appeals are time barred. However, the issue is clearly of significant importance to the appellant insofar as he maintains that an appeal to the High Court against the decision of the Solicitors Disciplinary Tribunal is "the only way in which he can stop the respondents seeking to whitewash their misconduct".

**Chronology**

7. The first named respondent, Mr. John O'Leary, in his affidavit sworn in support of his Motions relies upon the following undisputed chronology of key events:

| | |
|---|---|
| 8th October, 2020 | The Solicitors Disciplinary Tribunal makes its determination. |
| 8th October, | Notification of the determination is sent to the appellant by registered post. |

| | |
|---|---|
| 2020 | |
| 9th October, 2020 | Notification of the decision is received by the appellant. |
| 29th October, 2020 | The appellant's son, Mr. Barry Kirwan swears an affidavit grounding the appeal. |
| 29th October, 2020 | The originating notices of motion in these proceedings are stamped. |
| 21st December, 2020 | The appellant issues his originating notice of motion and is given a return date of 25th January, 2021. |
| 21st December, 2021 | The affidavit of Mr. Barry Kirwan, is filed. |
| 31st December, 2021 | The appellant writes to the respondents and encloses the appeal papers. |

Regarding the aforementioned chronology, it is important to state that it is not disputed that Mr. Kirwan sent a letter by registered post on 29th October, 2020 addressed to Ms. Angela Brennan, who at that time was the registrar to the Solicitor's List, which stated as follows:

> "Dear Angela and High Court Central office,
>
> Please see enclosed original stamped 2 motions and 2 affidavits for filing 2 appeals of the solicitors Disciplinary DT56 and DT62.
>
> Also a copy of each for you to insert date for motions on and return envelope to address above are enclosed.
>
> Kind regards
>
> Brendan Kirwan"

8. Neither is it disputed that the tracking report from An Post shows that the aforementioned letter was delivered on 30th October, 2020 at 9:12 am.

9. Accordingly, the only issue I am required to decide on the respondents' applications is whether or not the appellant's appeals, which were commenced by notices of motion issued out of the Central Office on 21st December, 2020, are time barred.

**The Parties' Submissions**

10. After hearing oral submissions from the parties and thereafter reserving my judgment, I considered it necessary to invite the parties to make further written submissions to the court in relation to a number of authorities which had not been opened to the Court in the course of the respondents' applications. The additional submissions received from the parties as a result of that intervention are included in the summary below.

11. Counsel for the respondents submits that the time limit for an appeal against a finding of the Solicitors Disciplinary Tribunal (that there is no *prima facie* case for an inquiry into the conduct of the respondent solicitors) is that provided for in s. 7(12B) of the Solicitors (Amendment) Act 1960 as substituted by s. 17 of the Solicitors (Amendment) Act 1994, as amended by s. 9(g) of the Solicitors (Amendment) Act 2002 (hereinafter "s. 7(12B)"). The section provides that such an appeal "shall" be made within 21 days of the receipt by the appellant of notification in writing of the finding. Reliance was placed upon O. 53, r. 12(a) of the Rules of the Superior Courts which requires that every appeal to the High Court under the aforementioned section "shall be brought within the period of 21 days of the receipt by the appellant of written notification from the Tribunal Registrar of such finding and shall be by notice of motion returnable to the President on a date to be assigned by the proper officer in the Central Office". According to counsel, it was for the appellant to attend at the Central Office to issue his notices of motion but he did not do so within the statutory 21 day period. In circumstances where his notices of motion were only issued out of the Central Office on 21st December, 2020, counsel submits that the within appeals are time barred.

12. Counsel submits that the aforementioned 21 day statutory time limit is mandatory and cannot be extended by the Court. This was clear from the use of the word "shall" in section 7(12B). Counsel relies upon the decision of Eager J. in *Curran v. Solicitors Disciplinary Tribunal* [2017] IEHC 2, a case which he asserts is on all fours with the present one. In that case the appellant sought an extension of time within which to appeal to the High Court against the findings of the Solicitors' Disciplinary Tribunal that there was no prima facie case for inquiry into the conduct of the named solicitor.

13. Counsel distinguishes the decision of Eagar J. in *Curran,* from that of Finlay Geoghegan J. in the Court of Appeal in *Law Society of Ireland v. Tobin* [2016] IECA 26. That decision concerned an appeal from the High Court to the Court of Appeal under s. 12 of the Solicitors (Amendment) Act 1960 as inserted by s. 39 of the Solicitors (Amendment) Act 1994, and the Court held that it had jurisdiction to extend the 21 day time-limit provided for by the Act for that particular type of appeal. Given that the appeal under consideration in *Tobin* was one from the High Court to the Court of Appeal, a right guaranteed by Article 34.4.1 of the Constitution, Finlay Geoghegan J. stated that the words used in any statute intending to curtail the Court's rights to extend the time for such an appeal beyond a stated statutory time frame would have to be clear and

unambiguous to be effective and that the wording of the section did not satisfy that test. Counsel accordingly submits that as the appeal in the present case is not one guaranteed by the Constitution, but rather is entirely a creature of statute, the cases are distinguishable and the statutory time limit is binding.

14. In circumstances where the Court has no discretion to extend the time for appeal, the principles in *Éire Continental Trading Company Ltd v. Clonmel foods Ltd* [1955] I.R. 170, which routinely guide the Court concerning the manner in which it should exercise its discretion to extend the time within which an appeal might be pursued, simply do not apply.

15. Counsel for the respondents argues that *Murphy v. Law Society of Ireland* [2021] IEHC 148 and *Coleman v. Law Society of Ireland* [2020] IEHC 162 are authorities which do not impact upon the High Court's jurisdiction to extend the statutory time limit to appeal under s. 7(12B). Counsel distinguishes Murphy on the basis that the respondent, when faced with an application to extend the time within which the solicitor might appeal against an order made pursuant to s. 7(11) of the 1960 Act as substituted by s.17 of the Solicitors (Amendment) Act 1994 by its Disciplinary Tribunal, agreed that the Court might proceed on the basis that it enjoyed the jurisdiction to extend the time within which the appeal might be brought. That being so, it was submitted that the decision was not of assistance to the issue which this Court has to decide.

16. Whilst the decision in *Murphy* was appealed to the Court of Appeal, that Court did not offer any view as to whether or not the time provided for in s. 7(11) of the 1960 Act might be extended. In delivering the Court's judgment upholding the decision of the High Court, Noonan J. confined his consideration to the arguments which had been advanced in the High Court based upon the *Éire Continental* jurisprudence and stated that it would be inappropriate for the Court to engage with the effect of the statutory time limit insofar as that issue had not been canvased at first instance.

17. Regardless of the fact that the Court did not engage with the issue as to whether or not the statutory time limit in *Murphy* might be extended, counsel, in support of his contention that the wording of the time limit in section 7(12B) was mandatory, drew the Court's attention to the fact that the statutory time limit under s. 7(11) of the Act provided that a respondent solicitor "*may*", within a period of 21 days beginning on the date of the due service of the order, appeal to the High Court. Counsel emphasised the importance of the use of the word "shall" in the time limit provided for in section s. 7(12B) of the Act.

18. As with the decision of MacGrath J. in *Murphy*, counsel submits that the decision of Simons J. in Coleman is not an authority of relevance to the issue under consideration. That case concerned an application for an extension of time by a solicitor to appeal a finding made by the Disciplinary Tribunal of the Incorporated Law Society. The section under consideration in that case was s. 7(13) of the 1960 Act as substituted by s.17 of the Solicitors (Amendment) Act 1994. However, the time limit for that appeal is not provided for in the statute itself, rather it is provided for in O. 53, r. 12(b) of the Rules of

the Superior Courts. In those circumstances, Simons J. found that the Court had jurisdiction to consider an extension of the 21 day time limit. According to counsel, those circumstances are entirely distinguishable from those in the present case where the court is being asked to interpret the statutory time limit provided for in section s. 7(12B).

19. Finally, counsel for the respondents compared the provision under consideration to the limitation period provided for in s. 117(6) of the Succession Act 1965 and urged the Court to conclude that the section relied upon by the appellant to pursue his appeal provided for a true limitation period intended to exclude a right of appeal after the 21 day time limit therein provided for. In this regard he relied upon the decision of Carroll J. in *MPD and Ors v. MD* [1981] I.L.R.M.179.

**Appellant's Main Submissions**

20. Before I detail the appellant's submissions I should state that in light of the appellant's contention that his dyslexia made it unjust for the Court to expect him to make submissions on his own behalf, I agreed that his son, Mr. Barry Kirwan, would be permitted to make the legal submissions on his behalf. My decision was, in part, based upon a medical report furnished in support the appellant's request.

21. On behalf of the appellant it was argued that his appeals had been lodged within the 21 day time limit provided for by the Act. The notices of motion and grounding affidavits had been sent to Ms. Angela Brennan by email on 29th October, 2020 and by post on 30th October, 2020. Regardless of the fact that the notices of motion and grounding affidavits were only issued on 21st December, 2020, the appellant maintains that as the relevant appeal papers were "with the Court" within the 21 day statutory time limit, the appeals were valid.

22. The appellant relied upon his affidavit sworn on 15th June, 2021, in support of his contention that the justice of the case requires the Court to extend the time to permit him appeal, even if his appeals were issued outside the statutory time period. The following is what he stated at para 7.

> "…with the lockdown and inability to file in person and delays in post there was some confusion in the central office resulting in two intended actions 2020 112IA and 2020 113IA, both coming before the President at the earliest opportunity on the 21st December 2020, wherein the President directed her registrar Angela Brennan to accompany us to the Central Office to ensure the two appeal motions and affidavits were issued two case numbers being [2020 78SA] and [2020 79SA]. Both motions and affidavits were then served on all parties."

23. It was argued on behalf of the appellant that in circumstances where he enjoyed a constitutional right of access to the Court, even if his appeals were out of time, his right of appeal could not be taken away by any statutory provision. Whilst not stated in so many words, the thrust of this argument was to the effect that the Court retained jurisdiction to extend the time within which the appeals might be brought, if that was what was required to do justice between the parties. To deny his right of appeal in

circumstances where it was not disputed that his notices of motion and grounding affidavits were with Ms. Brennan within the 21 day time limit, would result in a grave injustice.

24. The appellant also relied upon the affidavit of Mr. Barry Kirwan dated 15th June, 2021 in which, at para. 8, he stated that the respondents' motions are:

> "…an attempt to deflect and conceal his (Mr. John O'Leary's) many instances of misconduct missed by the Solicitors Disciplinary Tribunal and the interests of justice would be deeply damaged should he succeed with his misguided motion claiming delay when no delay exists and all appeals were in the court office hands within the 21 days. Further I say John O'Leary should not benefit from taking advantage of the difficulties of the central office staff due to Covid-19 lockdowns."

25. The appellant submits that the authorities of Murphy and *Coleman*, upon which he was invited to make submissions, are not relevant to the issue under consideration as their subject matter deals with delay and there was no delay in this case. He argues that any request for an enlargement of time is neither needed nor requested because Ms. Brennan was in possession of the appeal papers within the statutory 21 day time limit.

26. The appellant contends that the Court is being misled into wrongfully placing blame on him for failing to comply with the statutory time limit when the liability for any failure to have his motions issued properly rests upon state actors including the court registrar and or the office staff who were in possession of his documents.

27. The appellant further relies on his constitutional guarantee of access to justice, particularly in circumstances where he maintains he has complied with the relevant statutory provisions. He submits that the Attorney General has been or should be joined as a notice party to the proceedings, the reason being that "the state is wholly responsible for its agent's actions, particularly their non-statutory inactions, defeating superior national constitutional policy". While not expressly stated, this submission is understood to be a confirmation of the appellant's contention that his rights to justice are constitutionally enshrined and therefore cannot be limited by the actions of state agents, in this instance Court Service staff, who the appellant blames for the fact that his notices of motion were not issued despite the fact that they had been sent to the relevant registrar within the time limit provided for in the statute.

28. The appellant further submits that constitutional national policy, as guaranteed by the state in relation to access to justice, is superior to any judges' opinion or other authorities.

29. The appellant relies upon the fact that an Article 40 application grounded upon his affidavit, dated 28th October, 2021, was filed and was before the Court at the time of the respondents' application but was not heard. As a result, the appellant argues that serious constitutional matters have not been addressed. He relies on the recent Supreme Court judgment in *Clare County Council v. McDonagh* [2022] IESC 2, delivered by Hogan J. and

which the appellant contends is authority for the proposition that constitutional rights are superior to all else and that statutory acts are inferior to national authorities.

30. The appellant asserts that this application should be transferred to the Supreme Court and that the Irish Human Rights and Equality Commission should be appointed to act as *amicus curiae* given that the intention of the respondents' application is to deny him his right of access to justice.

31. Without prejudice to his other submissions, the appellant contends that if he was guilty of delay in filing his appeals, that the interests of justice must trump that delay. He submits that the Court owes him a duty of care given the "sheer scale of misconduct and deceit before the court engaged in by the respondents to date and the respondents' attempts to cover up their deceitful actions and prevent them from being investigated by the court".

32. The appellant submits that the Court is being asked to condone the actions of the registrar as well as the unlawful acts of the respondents. In doing so, the Court would be acting unconstitutionally, *ultra vires* and contrary to the interests of the citizens of this country, whom the constitution is meant to protect.

33. The appellant further contends that a finding in favour of the respondents would send a message to the public that the legal profession protects its own and that an unqualified person can give legal advice under the pretence of being qualified.

34. Finally, the appellant submits that it is in the public interest that people can rely on and trust the legal profession, that laws are upheld and that no one body is treated above the law. It is submitted that a finding in favour of the respondent would not be in the public interest.

**The Digital Audio Recording: 21st December, 2020**

35. Before embarking upon a consideration of the issue to be determined, it is important to state that I have listened back carefully to the Digital Audio Recording of what took place before me on 21st December, 2020 when the appellant and Mr. Barry Kirwan appeared in Court 4 unannounced to complain that the Central Office was refusing to issue the notices of motion (appeals) intended to be relied upon for the purpose of appealing against the decisions of the Solicitors Disciplinary Tribunal. The appellant complained that the Central Office had frustrated his efforts to advance the claims made in the notices of motion which had been sent to Ms. Brennan by email on 29th October 2020.

36. It was clear to me on perusing the proposed notices of motion why the Central Office had likely refused to accept and issue these. I say this because the relief claimed in the notices of motion is extensive and goes well beyond that which can procedurally be advanced by originating notice of motion. The relief sought includes several declaratory orders and other reliefs more commonly seen in judicial review proceedings which can only be advanced with the Court's approval following an application for liberty to apply for the relief claimed.

37. However, having probed with the appellant's son, the reason why his father was intent on commencing legal proceedings against the respondents, it seemed to me that his principal cause for complaint related to the report of the Solicitors Disciplinary Tribunal which had concluded that he had not made out a *prima facie* case of misconduct against any of the respondents. Thus, regardless of the multiplicity and irregularity of the claims included in the proposed notices of motion, and because an appeal against a decision of that Tribunal is brought by originating notice of motion, I made an order giving the appellant leave to issue his Motions in the format in which they were presented, regardless of the inclusion of all of the irregular ancillary claims. In so doing, I made clear that my order was made without prejudice to any arguments that the respondents might later raise as to his entitlement to advance the claims contained in the notices of motion or as to the time within which he had commenced such claims. Thus it was that the notices of motion were issued on the 21st December, 2021.

**The Law Relating to Time Limits**

38. The appellant's intended appeals are governed by s. 7(12A) and s.7(12 B) of the Act. The sections provide as follows:

> "(12A) The Society or 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, or
>
> (b) against a finding of the Disciplinary Tribunal that there has been no misconduct on the part of the respondent solicitor in relation to an allegation of misconduct (whether or not there has been a finding by the Disciplinary Tribunal of misconduct in relation to any other such allegation), …
>
> (12B) An appeal against a finding of the Disciplinary Tribunal under subsection (12A) of this section shall be made within 21 days of the receipt by the appellant of notification in writing of the finding."

39. Mr. Kirwan is a person who under s. 7(12A) wishes to appeal the finding of the Disciplinary Tribunal that there was no *prima facie* case for an inquiry into the conduct of the respondents and as such he was required to bring his appeal within the time limit provided for in s. 7(12B).

40. As I have mentioned, the net issue for determination is whether the 21 day time limit in s. 7(12B) can be extended by the Court under its inherent jurisdiction. If the time limit is extendable, then the line of jurisprudence which commences with the decision of Lavery J. in *Éire Continental Trading Company Limited v. Clonmel Foods Limited [*1955] I.R. 170, is applicable. If, on the other hand, the statutory time limit is not extendable, then any engagement with the *Éire Continental* principles is unnecessary. It is important in this context to state that even if this Court was to conclude that the time limit could be extended by reference to *Éire Continental* principles, it would not be possible for the Court on this application to indicate how that issue might be determined. This is because the

present application has been brought by the respondents seeking the discrete determination of the issue as to whether or not Mr. Kirwan's appeals are time-barred. In many of the cases already mentioned the time limits under consideration arose in the context of applications made by appellants to extend the time within which they might appeal various decisions made by the Solicitors Disciplinary Tribunal. Given that such applications sought to invoke the Court's jurisdiction under the *Éire Continental* principles, all of the circumstances relevant to those principles were put before the Court even if the respondents in defence to such applications sought to contend that no such jurisdiction existed by reason of certain statutory time limits. Thus, the Court was well placed to consider the *Éire Continental* principles if the statutory argument was determined against the respondent or fell away by agreement. However, having regard to the fact that the issue which I have to decide arises from an application brought by the respondents to strike out Mr Kirwan's appeals on the basis that they are time-barred, the Court does not have before it all of the details and information that it would require if it was to determine an extension of time application based upon *Éire Continental* principles.

41. The authority most relevant to the present application is that of Eager J. in *Curran v. Solicitors Disciplinary Tribunal* [2017] IEHC 2. In that case, the appellant sought an extension of time within which to appeal to the High Court against the findings of the Solicitors' Disciplinary Tribunal that there was no *prima facie* case for inquiry into the conduct of the named solicitor. The issue requiring determination was as to whether the Court could, exercising its inherent jurisdiction, extend the 21 day time limit provided for in s.7 (12B) in respect of such an appeal.

42. Concerning the wording of the section earlier set out at para. 39 above, what follows is how Eager J. construed that section at para. 31 of his judgment.

> "This court finds that the wording of the provision is clear. It allows for a period of 21 days beginning on the date of notification of the decision in writing. It does not provide for the extension of a 21 day period of time to appeal. Counsel for the respondent submitted that prior to the enactment of the 2002 Act it was not possible to appeal a decision against a finding of no prima facia case. [sic] When the legislature chose to extend the availability of an appeal against the decision of no finding of prima facia[sic] case, it expressly chose to limit this wider right of appeal to a strict time frame, without discretion to extend time."

43. Interestingly, the Court in *Curran* went on to consider whether or not, if the court did have the jurisdiction to extend the time for such an appeal, it would have done so having regard to the jurisprudence in decisions such *Éire Continental Trading Co. Ltd. v. Clonmel Foods Ltd., Brewer v. the Commissioner of Public Works* [2003] IESC 51, [2003] 3 I.R. 539 and *Goode Concrete v. CRH Plc*. [2013] IESC 39. Ultimately Eagar J. concluded that even if he did have the jurisdiction to extend the time provided for in the section, he would not have acceded to the appellant's application, having regard to all of the relevant circumstances. However, I expect the reason why the trial judge proceeded to consider the application based on the *Éire Continental* jurisprudence was probably to ensure that in

the event that Mr. Curran successfully appealed his decision on his interpretation of the statute, that all potential issues arising from the application could be determined on the appeal.

44. Importantly, in his decision in *Curran,* Eager J. distinguished the nature of the appeal enjoyed by the appellant solicitor from that enjoyed by the solicitor appellants in *The Law Society v. Tobin* and *The Law Society v. Callanan.* The following is what he stated at 35 of his judgment:

> "It appears to this court that the circumstances set out in the case of *The Law Society v. Tobin* and *The Law Society v. Callinan* [sic] is a different and distinguishable principle. In that case the High Court had made an order under the Solicitor's Acts striking the names of the respondents' solicitors from the roll of solicitors. The Court of Appeal having reviewed a large number of authorities held that the 21 day period in the 1994 Act was the relevant time period under O. 58 of the Rules of the Superior Courts for appeals to the Supreme Court, which also had a well established jurisdiction to extend such time period of time, and in this case provided for an extension of time. The Court distinguishes the decision in *The Law Society v. Tobin* and *The Law Society v. Callinan* [sic] having regard to the fact that this was a decision of the High Court as opposed to a decision of the Solicitors Disciplinary Tribunal."

45. In the aforementioned paragraph, Eager J. was referring to the fact that the extension of time sought was to permit the solicitor appellants appeal to the Court of Appeal against a decision of the High Court upholding a finding of the Solicitors Disciplinary Tribunal, a right of appeal which whilst provided for by statute was also guaranteed by the Constitution under article 34.4.1. As I have mentioned, Finlay Geoghegan J. also held in Tobin that in relation to an appeal from the High Court to the Court of Appeal under s. 12 of the Solicitors (Amendment) Act 1960 as inserted by s. 39 of the Solicitors (Amendment) Act 1994, the Court had jurisdiction to extend the 21 day time limit provided for by the Act for that particular type of appeal. In so doing, she stated that unless the wording of the statute limiting the time for that appeal clearly and unequivocally ruled out the possibility of the court extending the time for appeal, it could not be stated that the Court's jurisdiction could not be invoked. Eagar J. explained by reference to the judgment of Finlay Geoghegan J. that as Mr. Curran's appeal was to the High Court from the decision of the Solicitors Disciplinary Tribunal, his statutory appeal was not supported by a co-existing constitutional right to appeal. That being so, it was clear from the mandatory wording of section that the Court could not exercise its inherent jurisdiction for the purposes of extending the time to appeal. In so concluding he stated that he was following the authorities of *Walsh v. Garda Síochána Complaints Board* [2010] IESC 2, [2010] 1 I.R. 400 and *Browne v. Kerry County Council* [2009] IEHC 552, [2011] 3 I.R. 514.

46. The conclusions of Eagar J are succinctly set out at para. 37 of his judgment where he states:

> "This Court therefore finds that this Court has no permission to extend the time limit within which to appeal against the finding of the Disciplinary Tribunal that there is no *prima facie* case for enquiring into the conduct of a solicitor having regard to the provision of s. 7(12)(B) of the Solicitors (Amendment) Act 1960."

47. The decision of the Court of appeal in *Tobin* and *Callanan* are deserving of further mention. In both cases the solicitor applicants sought to pursue appeals against orders of the High Court upholding findings of misconduct made by the Solicitors Disciplinary Tribunal. Neither appellant lodged their notice of appeal within 21 days of the date of either of the making or the perfection of the High Court order. The respondent relied upon s. 12 of the 1960 Act, as inserted by s. 39 of the Solicitors (Amendment) Act 1994. The section provides as follows:

> "The Society or the solicitor concerned may appeal to the Supreme Court against an order of the High Court made under section 8 (1) (as substituted by the Solicitors (Amendment) Act, 1994) or section 9 or 10 (as amended by the Solicitors (Amendment) Act, 1994) of this Act within a period of 21 days beginning on the date of the order, and unless the High Court or the Supreme Court otherwise orders, the order of the High Court shall have effect pending the determination of such appeal."

48. Having considered the precise wording of the above section, which is different to the wording in s. 7(12B) insofar as it uses the word "shall" instead of the word "may", Finlay Geoghegan J. concluded that the Court had jurisdiction to consider an application to extend the time within which the solicitors might appeal the High Court decision to the Court of Appeal beyond the 21 days specified in the section.

49. In so deciding, Finlay Geoghegan J. observed that the provision in the section was unusual insofar as it expressly provided for an appeal already provided for by the Constitution albeit within a specified time. Regarding the submissions as to the effect of the time limit provided specified in the section, the following is what she said at para. 21 of her judgment:

> "The submission is that the Oireachtas in expressly providing for a right to appeal within 21 days must by implication have intended to exclude any appeal outside that time. *Were it not for the pre-existing constitutional right to appeal such a construction might be correct*. However the constitutional right, and consequent necessity for "clear and unambiguous" words to limit or exclude it require a different conclusion." (my emphasis).

50. In emphasising the importance of the Court's inherent jurisdiction to extend the time within which an appeal might be pursued where the appeal was of a type that was one guaranteed by the constitution and in voicing her concern that such a fundamental right might be excluded by a non-extendable statutory time limit, Finlay Geoghegan J. made the following observations about s.12 at para. 24 of her judgement.

> "Unless excluded by s.12 the Court has an inherent jurisdiction to consider an application to extend time to pursue an appeal to which s.12 of the 1960 Act applies. Such jurisdiction derives from the implied constitutional principles of basic fairness of procedures which underlie the well known decisions in relation to the court's inherent jurisdiction to dismiss for delay. In this instance, the jurisdiction exists in order that a party who by mistake or other justifiable reason misses the 21 day period, may not be unfairly precluded from *pursuing a constitutional right of appeal against an order of the High Court of the type to which s. 12 of the 1960 Act applies*. Such orders may interfere with the right of persons to earn a livelihood or viewed from the perspective of the Society, the discharge of its obligations to protect members of the public." (my emphasis)

51. As is apparent from the aforementioned passages, there is a clear distinction in the type of appeal that was at issue in *Tobin* and that which is subject to the Court scrutiny on the present application. Mr Kirwan's appeal is on all fours with that considered in Curran, and those appeals are not appeals guaranteed by the Constitution. They are appeals which only exist because they are provided for in primary legislation. In *Tobin*, on the other hand, the appellant had a constitutional right of appeal from the High Court to the Court of Appeal and it was that right which s.12 of the Act proposed should be subjected to a 21 day time limit. Hence the conclusion of Finlay Geoghegan J. that any statutory time limit which would trench upon the Court's inherent jurisdiction to extend the time within which somebody might appeal an order in respect of which they had a constitutional right of appeal, had to be clear and unambiguous. And, it seems to me that her *obiter* comments concerning the time limits for appeals not guaranteed by the Constitution are consistent with the decision of Eager J. in *Curran*, that the Court did not have the discretion to extend what appears to be a mandatory statutory time limit.

52. I am satisfied from my consideration of the various statutory provisions the subject matter of the decisions already referred to herein that the Oireachtas, in deciding to provide a complainant with a right of appeal to the High Court against a finding by the Solicitors Disciplinary Tribunal that no *prima facie* case had been made out, intended that any challenge to that determination would have to be made within the strict 21 day time limit provided. The wording of s. 7(12B) of the Act could not be clearer. There are no words which permit of any equivocation. The word "shall" used in connection with the right of appeal provided for in the section could not be more definitive. Had it been the intention of the Oireachtas to permit the Court to extend that time limit in any circumstances, it could have so provided by adding words to the section such as "or such further period as the High Court considers just and equitable in the circumstances" after the reference to the period of 21 days.

53. I am also satisfied that the submissions made by the respondents concerning the relevance of the decision of Simons J. in *Coleman v The Law Society of Ireland* [2020] IEHC 162, are correct. In that case, the matter before Simons J. was of an application for an extension of time to appeal brought by a solicitor against whom findings of professional misconduct had been made by the Solicitors Disciplinary Tribunal. The

solicitor wished to appeal those findings to the High Court even though the time limit prescribed for the bringing of an appeal had long since expired.

54. Simons J. found that the High Court had a discretion to extend the time for such an appeal having regard to the fact that the time prescribed for the bringing of the type of appeal pursued by the solicitor was not provided for in the Solicitors Acts, rather the time limit was to be found in the Rules of the Superior Courts. In highlighting the two ways in which a solicitor aggrieved about a finding of misconduct could bring the matter before the High Court, Simons J. said at para. 4:

> "In brief outline, there are two options open to a solicitor against whom findings of misconduct have been made, and in respect of whom the Law Society is seeking a "strike off" order. First, the solicitor may choose simply to make submissions in response to the formal application which the Law Society must make to the High Court seeking an order striking the solicitor's name off the Roll of Solicitors. Such submissions will, generally, be confined to the question of whether a "strike off" order is an appropriate and proportionate sanction, but, as will be explained presently, can also be directed to the question of whether the findings of misconduct are legally sustainable. Secondly, the solicitor may choose, instead, to invoke their statutory right of appeal against the decision of the Disciplinary Tribunal. Such an appeal will be by way of a full rehearing (unless the parties otherwise agree, and the High Court so directs)."

55. The proceedings in *Coleman* dealt with the second type of appeal and relevant to the discussion of time limits is section 7(13) of the Solicitors (Amendment) Act 1960 which provides as follows:

> "A respondent solicitor may appeal to the High Court against a finding of misconduct on his part by the Disciplinary Tribunal pursuant to subsection (3) of this section, and the Court shall determine such appeal when it considers the report of the Disciplinary Tribunal in accordance with the provisions of section 8 (as substituted by the Solicitors (Amendment) Act, 1994) of this Act, or as part of its determination of any appeal under subsection (11) of this section, as the case may be."

56. Importantly, the 21 day time limit for this type of appeal is not set out under s. 7(13) of the Solicitors (Amendment) Act 1960, but rather is prescribed under O. 53, r. 12(b) of the Rules of the Superior Courts which provides:

> "(b) Every appeal to the Court other than an appeal referred to in paragraph (a) of this rule from a finding or order of the Disciplinary Tribunal, whether the appeal is by the respondent solicitor or by the Society or (if applicable) by any person other than the Society who made the application in relation to the respondent solicitor to the Disciplinary Tribunal (or any one or more of them), as the case may be, brought under section 7 (as substituted by section 17 of the Act of 1994 and as amended by section 9 of the Act of 2002) of the Act of 1960 shall be brought by the

appellant within the period of 21 days beginning on the date of the service by the Tribunal Registrar on the appellant of a copy of the order or of the report, whichever date is the later, and shall be by notice of motion returnable to the President on a date to be assigned by the proper officer in the Central Office and shall be entitled in the matter of the respondent solicitor and in the matter of the Acts."

57. In these circumstances Simons J. was satisfied that the Court had jurisdiction to consider the extension of time application and accordingly dealt with the application by reference to the *Éire Continental* jurisprudence as further explored by the Supreme Court in *Seniors Money Mortgages (Ireland) DAC v. Gately* [2020] IESC 3.

58. On the facts of the case, the extension of time was not granted, with Simons J. concluding that having regard to the appellants' delay and the fact that the statutory appeal would amount to a collateral attack on the s. 8 proceedings in the matter, the balance of justice would not favour such an extension.

59. The decision in *Coleman* is accordingly of no application to the present case insofar as the time limit under consideration was not provided for by statute, but by the Rules of the Superior Courts.

60. As for the decision of MacGrath J. in *Murphy v Law Society of Ireland* [2021] IEHC 148, the same is of little or no consequence to the present appeal. Murphy involved an application by a solicitor for an extension of time within which to file a notice of appeal in order to set aside a finding of the Solicitors Disciplinary Tribunal made against him on 28th September, 1999 for failure to file an accountant's report.

61. The relevant section involved is S.7(11) of the Act of 1960, as amended by s. 17 of the Act of 1994, which makes provision for an appeal from a decision of the Tribunal made under s. 7(9):

"(11) A respondent solicitor in respect of whom an order has been made by the Disciplinary Tribunal under subsection (9) of this section may, within the period of 21 days beginning on the date of the due service of the order, appeal to the High Court to rescind or vary the order in whole or in part, and the Court on hearing such an appeal may—

(i) rescind or vary the order, or
(ii) confirm that it was proper for the Disciplinary Tribunal to make the order."

62. The respondent raised an issue as to whether the time limited for bringing the appeal was capable of being extended and initially would appear to have contended that because the time limit for the appeal was provided for in primary legislation an extension to that time limit could not be considered under O. 84C RSC and that it followed that the applicant was precluded from appealing. From the judgement of MacGrath J. the Court appears to have been referred to the decisions in *Curran v. Solicitors Disciplinary Tribunal* [2017] IEHC 2 and *Law Society of Ireland v. Tobin* [2016] IECA 26.

63. However, it is also clear from the judgment that in circumstances where the respondent contended that even if the Court had a discretion to extend the time for appeal, it would not have been appropriate to exercise it on the facts of the case. It conceded for the purposes of the application, that in principle the Court enjoyed such a jurisdiction. That being so, without determining whether the Court enjoyed the jurisdiction to extend the time provided for by statute, the Court heard the application on the basis that it enjoyed such a jurisdiction and applied the *Éire Continental* principles. Having done so the Court refused the extension of time in the exercise of its discretion.

64. In the rather unusual circumstances in which the Court decided the extension of time application, it is clear that the Court's application of the *Éire Continental* principles cannot be taken as confirmatory that the Court enjoyed the jurisdiction to extend the 21 day time limit provided for in Section 7(11) of the Act.

65. Finally, I will offer some observations in relation to the decision of Noonan J. *in Noone v. Residential Tenancies Board* [2017] IEHC 556, a decision referred to by the respondents in their supplemental submissions.

66. In *Noone,* Noonan J. considered the question of whether the High Court had jurisdiction to enlarge the time for the bringing of an appeal against a determination order made by the Residential Tenancy Board. Section 123 of the Residential Tenancies Act, 2004 provides that such an appeal may be brought within 21 days. However, on the facts of the case, the relevant appeal was brought more than 21 days from the date that the determination order issued.

67. The appellant sought an extension of time pursuant to O. 84C r. 2(5)(b) of the Rules of the Superior Courts, on the basis that O. 84C applied to the appeal in circumstances where Baker J. had applied that section in her decision on a similar issue raised for her consideration in *Keon v. Gibbs* [2015] IEHC 812. Accordingly, the appellant in *Noone* argued that the Court was bound to apply O. 84C when determining the extension of time application.

68. Order 84C of the Rules of the Superior Courts provides as follows:

> "1. (2) Where any enactment provides for an appeal to be made to the High Court or to a judge of the High Court from a decision or determination made or direction given by a person or body, other than a court, which person or body is authorised by any enactment to make such decision or determination or give such direction (in this Order referred to as "the deciding body"), and provision for the procedure applicable is not made either by the enactment concerned or by another Order of these Rules, the procedure set out in the following rules of this Order shall apply, subject to any requirement of the relevant enactment....
>
> 2.(5) Subject to any provision to the contrary in the relevant enactment, the notice of motion shall be issued –

(a) not later than twenty-one days following the giving by the deciding body to the intending appellant of notice of the deciding body's decision, or

(b) within such further period as the Court, on application made to it by the intending appellant, may allow where the Court is satisfied that there is good and sufficient reason for extending that period and that the extension of the period would not result in an injustice being done to any other person concerned in the matter."

69. The RTB on the other hand submitted that the 21 day time limit in s. 123 was an absolute one which was clear in its terms and accordingly O. 84C has no application insofar as extension of time is concerned. At para. 9 of his judgment Noonan J. stated that counsel submitted that insofar as *Koen* appeared to decide that the extension of time provision contained in order 84 of the Rules of the Superior Courts was applicable to appeals under s. 123, Keon was wrongly decided. Furthermore, counsel submitted that Keon proceeded on the basis that both the parties and the Court assumed that O. 84C applied and no argument was ever addressed to the court to the contrary.

70. Concerning the decision in *Keon* at para. 15 of his judgement in Noone, Noonan J. said:

> "In Keon, it is evident from a reading of the judgment of Baker J. that from the outset, both parties proceeded on the assumption that the court enjoyed jurisdiction under O. 84C to extend the time to bring an appeal from a decision of the Board. The controversy in that case was concerned only with whether or not the appellant had brought himself within the terms of the order. This is clear from the first paragraph of the judgment:
>
> '[1.] This judgment concerns the approach of the court to an application to extend time to appeal a decision of the Private Residential Tenancies Board (hereinafter 'the Board') under the provisions of Order 84C of the Rules of the Superior Courts.'"

71. At paras. 16 and 17 of his judgment, Noonan J. further clarified what had occurred in *Keon:*

> "16. Neither party addressed in any way the terms of s. 123(3). Indeed, the section is not even mentioned in the judgment save in a quotation from a 'standard note' from the tribunal referenced by the court at para. 15.
>
> 17. It is clear therefore that the issue with which I am concerned is one which was neither raised by the parties nor considered by the court in Keon. The court was not invited to carry out any analysis of s. 123(3) nor did it do so. In such circumstances, I do not think that the judgment of Baker J. can be regarded as authority for the proposition that s. 123(3) does not contain an absolute time limit. True it is that the underlying premise of the judgment is that it does but I do not think that can be determinative of the issue I have to decide."

72. In conclusion, Noonan J. said at paras. 28 and 29 that:

"28. Having regard to the fact that the issue now before the court was not the subject matter of any consideration by Baker J. in *Keon*, in my view it may be said that the first and/or second of the *Worldport* principles arise. The fact that the court was not invited to, and did not in fact, consider this issue in arriving at its conclusion seems to me to provide a strong reason why I should not follow the implicit underlying rationale that the court possesses jurisdiction to extend the 21 day period limited by s. 123 of the 2004 Act.

29. For these reasons therefore, I am satisfied that the time limit stipulated in s. 123 of the 2004 Act is an absolute one and the court does not enjoy any jurisdiction to extend it. Thus, as this appeal was not brought within the time limited in that behalf by s. 123 it must accordingly fail *in limine."*

73. In the circumstances, I do not consider *Keon* to be authority for the proposition that the Court has jurisdiction to extend an absolute time limit provided for in primary legislation particularly where the appeal under consideration is not one guaranteed by the Constitution. Indeed, the decision of Noonan J. in *Noone* would appear to consistent with the approach of Eagar J. in *Curran.*

**The Appellant's Submissions**

74. I will now deal briefly with a number of the appellant's submissions.

75. The appellant's submission that his appeals were issued within the 21 day time limit provided for the Act is simply not correct as a matter of fact. His appeals cannot be deemed to have issued merely because the documentation he intended to rely upon for the purposes of his appeal had been delivered into the possession of an officer of the Courts Service by email and by post. It was for the Appellant to arrange to issue his Originating Notice of Motion in the Central Office of the High Court and he did not do this until after such time as he attended before me on 21st December, 2020, in the unusual circumstances set out earlier in this judgement. And, as I observed on 21st December, 2020, the appellant's documentation as sent to Ms. Brennan was highly irregular both as to form and content and could not have been issued by any official in the Central Office without the Court's permission.

76. It is probably appropriate to observe that if the Court had the jurisdiction to extend the time within which the appellant might appeal, the fact that he had sent his notices of motion and grounding affidavits, albeit that they were irregular, to Ms. Angela Brennan within the 21 days provided for in s 7(12) those facts would likely have satisfied the first and second legs of what is commonly described as the *Éire Continental* test. However, in circumstances where that jurisprudence is not available to the appellant, these facts cannot assist him on the present application.

77. Whilst the appellant argues that he enjoys a constitutional right of access to the Court, and for this reason the Court must extend the time to permit his appeal if it is out of time, that right is not one which is unfettered. In the present case the appellant's right of access to the Court is one provided for by statute and is subject to his compliance with a

specified mandatory time limit. There is nothing unconstitutional about statutes which provide time limits for the bringing of differing types of claims or appeals from decisions of a wide range of adjudicative bodies. In circumstances where the Court is satisfied that the appellant has not complied with a clear statutory mandatory time limit, the Court must, if asked to do so, strike out his appeal.

78. Again, insofar as the appellant contends that in order to do justice to his complaint the Court must extend the time for his appeal, that argument is unsustainable in circumstances where the Court has decided that it does not have the jurisdiction to extend the statutory 21 day time limit. The Court cannot engage with the principles which would apply if it had that jurisdiction to extend that time limit.

79. The appellant's reliance upon an assertion that he has been shut out from his appeal through a default on the part of state actors, court registrars and/or at office staff who are in possession of the documents is misplaced. Once again, these are not facts which can come to the appellant's rescue in circumstances where the Court does not have the discretion to extend the time for appeal regardless of whatever view it might take of the facts and circumstances which caused the appellant to miss the statutory 21 day time limit.

80. In my view, the applicant's stated need to join the Attorney General to these proceedings is misconceived. Mr. Kirwan, in seeking to join the Attorney General, appears to be of the belief that the Attorney General is legally responsible for the acts or omissions of Courts Service staff and other State actors who he holds responsible for the fact that his appeals were not issued when sent to Ms. Brennan. That is not the case as a matter of law. The Attorney General is not legally responsible for the acts or omissions of the officials employed by the Courts Service apart from the fact that this is not a negligence claim. The net issue before the Court is the question of whether the Court enjoys jurisdiction to extend a statutory time limit provided for in s. 7(12B). Naturally, if the Court does not enjoy such a jurisdiction, that is the end of the matter and the Court cannot engage with a consideration of whether any such extension would be appropriate on the facts. It is unclear what the purpose of joining the Attorney General at this stage of the proceedings would be.

81. Mr. Kirwan has also asserted that the Irish Human Rights and Equality Commission should be joined as *amicus curiae.* The issues raised by Mr. Kirwan do not concern human rights issues or equality issues such as would engage the Irish Human Rights and Equality Commission apart altogether from the fact that the Commission has not applied to be joined as a party to the proceedings. The Court does not require and would not benefit from the Commission's engagement as a friend of the Court given that what is under consideration is a straightforward issue of statutory interpretation.

82. Mr. Kirwan also made submissions that constitutional rights are superior to legislative provisions or the "rulings of judges". In that regard, while the importance of constitutional rights and freedoms is recognised by every Court, it is not true to say that constitutional rights cannot be legitimately curtailed by statute or jurisprudence. It is not

an option for Mr. Kirwan to unilaterally decide that a statute or judgment is incompatible with the Constitution and that he can therefore disregard it. Constitutional rights are not absolutely unfettered and the imposition of time limits by statute is one such example. It is simply incorrect as a matter of law to say that insofar as statute or jurisprudence fetters a constitutional right, that statute or jurisprudence is inferior and should be disregarded.

83. Mr. Kirwan made submissions based upon the judgment of Hogan J. in *Clare County Council v. McDonagh* [2022] IESC 2 and contends that it is authority for the proposition that constitutional rights are superior to all else and that statutory acts are inferior to national authorities. However, the judgment is not authority for that proposition. The *Clare County Council* case dealt with an appeal to the Supreme Court regarding the illegal occupation of certain lands by members of the travelling community and the finding by the Court of Appeal that their placing of the caravans and mobile homes on Council lands constituted an unauthorised use for the purposes of s. 3 of the Planning and Development Act 2000, such that the Council was entitled to mandatory interlocutory relief requiring the applicants to vacate the site.

84. In delivering judgment, Hogan J. allowed the appeal and discharged the mandatory interlocutory orders granted by the High Court and affirmed by the Court of Appeal and ordered that the matter proceed to full hearing. The judgment is not, in my view, any directly relevant authority for the proposition that this Court is permitted to ignore a mandatory statutory time limit. It involved the balancing of rights and interests which occur when a Court is considering an application for relief by way of interlocutory injunction and this is an entirely different exercise to that involved in interpreting a statutory time limit, as is the case in the within proceedings.

85. In relation to Mr. Kirwan's assertion that this matter should be transferred to the Supreme Court, his submission is misconceived. The present application is properly before the High Court and if Mr. Kirwan is dissatisfied with the outcome of the Court's decision, he will have every opportunity to appeal.

86. Insofar as the appellant seeks to rely upon what he describes as the sheer scale of the misconduct and deceit alleged against the respondents, that is not a matter relevant to the Court's consideration in circumstances where it has concluded that it does not enjoy the jurisdiction to extend the time within which the appellant might appeal by reference to the principles enunciated in *Éire Continental* and more recent decisions such as *Start Mortgages.*

87. Finally, I reject the appellant's submission that to conclude that the Court does not have jurisdiction to extend the statutory time limit to allow him appeal the decision of the Disciplinary Tribunal will send a message to the public that the legal profession protects its own. Judges in reaching their decisions must faithfully apply the law without fear of what anyone will think about them or their judgment. To allow concerns as to what the public might think influence their decision would be to act contrary to their oath of office. What emerges from this judgment is no more and no less than that the appellant failed to

bring his appeal within the timeframe which would have allowed the Court engage with his complaint against the respondents. And even if any message, or adverse inference might arise in rejecting the appellant's appeal as time-barred, that provides no basis upon which the Court would be entitled to reverse its decision.

**Obligation to follow prior decisions of a court of equal jurisdiction.**

88. It is clear from decisions such as that of Clarke J. in *In Re Worldport Ireland Ltd* [2005] IEHC 189, that a judge of first instance, such as myself, is obliged to follow a decision of another judge of equivalent rank concerning the same issue unless there are substantial reasons not to do so. Concerning this principle, at para. 14 of his judgment Clarke J. stated as follows:

> "[…] It is well established that, as a matter of judicial comity, a judge of first instance ought usually follow the decision of another judge of the same court unless there are substantial reasons for believing that the initial judgment was wrong. *Huddersfield Police Authority v Watson* [1947] K.B. 842 at 848, *Re Howard's Will Trusts, Leven & Bradley* [1961] Ch. 507 at 523. Amongst the circumstances where it may be appropriate for a court to come to a different view would be where it was clear that the initial decision was not based upon a review of significant relevant authority, where there is a clear error in the judgment, or where the judgment sought to be revisited was delivered a sufficiently lengthy period in the past so that the jurisprudence of the court in the relevant area might be said to have advanced in the intervening period. In the absence of such additional circumstances it seems to me that the virtue of consistency requires that a judge of this court should not seek to second guess a recent determination of the court which was clearly arrived at after a thorough review of all of the relevant authorities and which was […] based on forming a judgment between evenly balanced argument. If each time such a point were to arise again a judge were free to form his or her own view without proper regard to the fact that the point had already been determined, the level of uncertainty that would be introduced would be disproportionate to any perceived advantage in the matter being reconsidered. […]."

89. Concerning the requirement that judges of first instance follow such an approach, at para. 55 of his recent judgment in *Right to Know Clg v. An Taoiseach* [2021] IEHC 233, Simons J. stated as follows:

> "This approach has most recently been reaffirmed by the Supreme Court in *A. v. Minister for Justice and Equality* [2020] IESC 70. The Supreme Court emphasised the requirement for certainty in the law. Different decisions on the same issue by different members of the same court can only give rise to a situation where judges and practitioners alike would be unable to say with clarity what the state of the law is in any given area. The Supreme Court emphasised that where one judge of the High Court feels it is necessary to depart from a decision of a colleague of that court, it is incumbent on that judge to explain the reasons for doing so. This is not just a matter of comity, but is a matter of importance in order to ensure that the law does not descend into uncertainty."

90. In the present case I am urged to follow the decision of my colleague Eagar J. in *Curran v. The Solicitors Disciplinary Tribunal,* a case which it is submitted deals with the same issue as that which I must decide and in which it was concluded that the 21 day statutory time provided within which an aggrieved party may appeal against a decision of the Solicitors Disciplinary Tribunal to the effect that they had not made out a *prima facie* case could not be extended by the Court.

91. Having regard to the principle enunciated in *Worldport,* the decision of Eagar J. in Curran is one which I ought to follow unless there are substantial reasons not to do so. And, having considered all of the circumstances which might warrant such a departure, I can find no good reason to so depart.

92. First, the legal issue under consideration in *Curran* was precisely the same as that which I have been asked to decide on the present application i.e. the proper interpretation of s. 7(12B) of the Solicitors (Amendment) Act 1960 as substituted by s. 17 of the Solicitors (Amendment) Act 1994, as amended by s. 9(g) of the Solicitors (Amendment) Act 2002.

93. Second, there are no facts or circumstances concerning the present applications which would justify treating them any differently to those which arose for consideration in *Curran*. In *Curran* the intended appellant had made several complaints against his solicitor to the Solicitors Disciplinary Tribunal concerning the sale of a nine acre plot of land. And, not unlike in the present case, the client's complaints concerning his solicitor extended to allegations of fraud and breach of trust. The client was informed that the Tribunal decided there was no *prima facie* case for an inquiry into his two main complaints on 10th December, 2015 and whilst the affidavits intended to support his intended appeals were sworn on 28th December, 2015, his two notices of motion only issued on 17th April, 2016 and 31 May, 2016. Accordingly, there are no facts in this case what would warrant the court treating it any differently to the way Eagar J. applied the law in *Curran.*

94. Third, the judgment of Eagar J. was clearly arrived at after a thorough review of all of the authorities relevant to the point of law under consideration. In particular, Eager J. considered the decision of the Court of Appeal in *Tobin*, that being the judgment principally relied upon by the appellant in *Curran* to argue in favour of the High Court having an inherent jurisdiction to extend the 21 day statutory time limit within which a person might appeal a decision of the Solicitors Disciplinary Tribunal to the effect that a *prima facie* case had not been established.

95. Fourth, the decision of Eagar J. is a recent one and that being so there is no reason to suspect that the jurisprudence of the Court relevant to the principal area of law under consideration on the present application i.e. statutory interpretation, might be said to have advanced in the intervening period. I have considered all of the more recent relevant authorities and distinguished them earlier in this judgment.

96. Clearly, if I thought that Eagar J. had decided *Curran* incorrectly because he had omitted to address some particular factor or authority I would say so, but I am content that his

analysis of s. 7(12B) of the Solicitors (Amendment) Act 1960 as substituted by s. 17 of the Solicitors (Amendment) Act 1994, as amended by s. 9(g) of the Solicitors (Amendment) Act 2002 is entirely correct.

97. As was argued on behalf of the respondents in this case, the wording of the statute is clear. The use of the word "shall" in the section is mandatory and makes clear that any person aggrieved by a finding that they had not established a *prima facie* case must initiate their appeal within 21 days of receipt of the decision of the Solicitors Disciplinary Tribunal. Importantly, there is no provision which confers on the Court a right to extend this time limit as might have been included had that been the intention of the Oireachtas. And we know in this case the notices of motion were not issued until 21st December, 2020.

98. The fact that the appellant's notices of motion and proposed grounding affidavits were stamped and sent to the High Court registrar within the 21 day time limit provided for in the Act does not avail the appellant with his argument that his appeals were brought within the statutory time limit. As is clear from O. 53 of the Rules of the Superior Courts, the type of appeal being pursued is one which is required to be commenced by an originating notice of motion issued out of the Central Office of the High Court. Such notices of motion cannot be issued by intended litigants simply by posting documents to a registrar or to the Central Office of the High Court. A pleading such as an originating notice of motion is issued when, having been presented and deemed to be in accordance with the Rules of Court, it is then stamped as "issued" on that date by an official attached to the Central Office.

99. Whilst it was clear from the affidavits filed on the present application that the appellant never attended at the Central Office to issue his notices of motion within the 21 day period required by Act, it did not emerge in the course of the hearing before me the date upon which he first tried to issue his notices of motion in the Central Office. All I can be sure of is that the applicant presented his documentation to the Central Office on the 21st December, 2020 when, due to the fact that his documentation was not in accordance with the Rules of Court, the Central Office quite correctly refused to issue the notices of motion until such time as I made my order later that same day.

100. In circumstances where the appellant only issued his Motions on the 21st December, 2020, his appeals are out of time having regard to the decision of Eagar J. in *Curran.* And, the court has no inherent jurisdiction to extend that time limit regardless of the prejudice that this may cause the appellant.

**Conclusion**

101. I am satisfied that the respondent's interpretation of s. 7(12B) is correct.

102. Not having issued his appeals out of the Central office within 21 days of receiving the decision of the Solicitors Disciplinary Tribunal to the effect that he had not made out a *prima facie* case of misconduct against the respondents, the appellant's appeal is out of time. In so concluding I am following the decision of Eagar J. in *Curran* as I can find no

flaw in his reasoning and I believe his interpretation of s. 7(12B) receives some support from the obiter observations of Finlay Geoghegan J. in *Tobin* and the decision of Noonan J. in *Noone.*

103. For all of the aforementioned reasons I will grant the relief claimed by the respondents in their notices of motion.