Legal Profession Disciplinary Tribunal

Law Society v S

On 12 April the Chief Justice, sitting with the Registrar of the Legal Profession Disciplinary Tribunal, presided over the first listing for mention of matters brought before the Tribunal. His interlocutory remarks are of general interest and importance to all concerned with the working of the Tribunal. It is anticipated that the Tribunal's formal rules of procedure to be made pursuant to Section 170 of the Legal Profession Act will lay down a simple uncomplicated procedure appropriate to carry into effect the terms of the Chief Justice's statement. The full text of the statement is as follows:

Preliminary Observations

The President: There are listed this afternoon the first three matters to come before this newly constituted Tribunal. The purpose of the hearing in each instance is to give directions for the interlocutory preparation of the matters with with a view to enabling them to be properly prepared for hearing by the Tribunal.

The Registrar, who sits with me this afternoon, will ordinarily be the officer who will discharge the responsibilities of the Tribunal in supervising the preparation of matters for hearing. I have thought it desirable to participate myself on this first occasion with the view to outlining the approach and the procedures which will be followed in subsequent matters at their interlocutory stages.

Litigation before the Tribunal is to be conducted with three basic considerations well in mind: they are the pursuit of efficiency; the pursuit of economy; and the pursuit of expedition. The pursuit of these will not, of course, have precedence over, or in the slightest degree inhibit, the overriding interests of justice and fairness in the discharge by the Tribunal of its statutory responsibilities — justice and fairness to the practitioners involved as well as justice and fairness to the public and to the profession. Indeed, the proper and responsible pursuit of these requirements will tend to enhance the overall quality of justice administered by the Tribunal.

The pursuit of efficiency requires that the final hearing before the Tribunal should be confined to the real matters in dispute between the parties. They may be matters of fact. They may be matters of law. In many cases, no doubt, there will be matters of both categories arising for decision. What must be achieved is a refinement at the interlocutory stage of all of the relevant facts and all of the relevant matters of law with a view to isolating those matters that are genuinely open to dispute and in fact in dispute. The pre-hearing conference will result in exchanges between the parties that may ultimately remove altogether some matters from the realm of relevance. Particular transactions included within a complaint may be adequately explained so as to result in their abandonment. Other particular transactions may be able to be established both in point of fact and in point of relevance so as to result in their being included in an agreed narrative without the necessity of adducing the associated primary evidence before the Tribunal at the final hearing.

The Tribunal expects to be provided prior to a hearing with a comprehensive statement of an agreed narrative. The Tribunal will not gladly suffer hearing time being taken up with disputation upon matters that cannot reasonably be regarded as open to dispute and which could have been resolved at a pre-hearing conference. Nor will it not gladly suffer hearing time being taken up with production and examination of documents which could have been attended to at a pre-conference hearing before the Registrar.

I recognise that these requirements will cast a significant burden upon the parties and their advisers in the pre-hearing conference stage of proceedings. In practical terms, however, it will really involve no more than a relocation of that burden from the final hearing to the interlocutory stage and I envisage an overall nett saving of both time and expense.

Closely allied to the pursuit of efficiency is the pursuit of economy. The legal practitioner against whom a complaint is made is at risk as to costs — his own, irrespective of the outcome, and the moving party's also in the event of the complaint being upheld (Section 163(6)). It is thus very much in the interests of the legal practitioner that unnecessary expenditure of costs be avoided.

Expedition, also, is plainly in the interests of all concerned. If a complaint is well-founded then the interests of the public and of the profession demand that this be exposed at the earliest possible time and that appropriate remedial action be taken. If the complaint is not well-founded then, conversely, it is in the interests of the legal practitioner, including his or her clients, that this be made clear at the earliest possible time.

I repeat, I see not the slightest reason to apprehend that principles of fairness and justice will be in any way compromised by the determined pursuit of efficiency, economy and expedition.

One of the purposes of my sitting this afternoon with the Registrar is to confirm that he will exercise a very substantial degree of authority when presiding at pre-hearing conferences and overseeing the preparation of matters for hearing. It is not the present intention that such conferences take place in formal surroundings. They will be conducted around a table and the Registrar will take a positive, active role in guiding the parties along the path to a distillation of the facts, a crystallization of the issues of law and the formulation of an agreed narrative. His role will be far more than that of presiding at a preliminary conference for the purpose of enabling documents to be produced or exchanged between the parties, fixing a hearing date and attending to mechanical matters. His role will involve active participation in the negotiation between the parties of the matters to which I have referred. He will exercise on behalf of the Tribunal an appropriate measure of authority.

In conclusion I should emphasise that I do not underrate the importance of a full oral hearing on matters that can only be fairly developed in the course of an oral hearing. What I am anxious to achieve is a confinement of the oral hearing in pursuit of the considerations I have mentioned earlier. □