

Legal Practitioners (Amendment) Bill

Clause 5 regarding appeal from the Solicitors Disciplinary Tribunal

The Administration was asked to advise on the general powers of the Court of Appeal in dealing with an appeal against an order of a Solicitors Disciplinary Tribunal (SDT) (particularly in relation to its power to remit a case to a SDT for a re-hearing and the circumstances under which it might exercise such power). It was also queried whether a solicitor being the appellant can apply for re-hearing by the SDT.

General powers of the Court of Appeal (the “Court”)

2. Order 59 of the Rules of the High Court (Cap. 4 sub. leg.) governs appeals to the Court.

3. Order 59 Rule 11(1) provides that on the hearing of any appeal the Court may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial, that is, the court below will try the matter again, or to set aside a verdict, finding or judgment of the court below. In the present context, the court below would be the SDT.

4. The Court may make a decision based on the material submitted at the time of application of appeal, that is, there will be no new submission or admission of new evidence. The Court may decide that the appeal should be by way of rehearing, this would be applicable where new evidence is allowed to be submitted. The Court may also decide that there should be a new trial. The other party to the application may contest application to submit new evidence or an application for a new trial.

Circumstances in which the Court may order a new trial

5. A new trial may be ordered where-

- (a) the court below has been misdirected and has caused a miscarriage of justice. The miscarriage of justice must be substantial;
- (b) where some substantial wrong or miscarriage has been occasioned by improperly admitting or rejecting evidence;
- (c) evidence, not available at the time of the trial, has since been discovered;

(d) there has been a slip or mistake in the proceedings.

Whether a solicitor can apply for a new trial

6. An applicant should state, in the application for leave to appeal or appeal, the grounds and the order sought. It is therefore possible for an applicant, be it the Law Society Council, or the solicitor, to state what is prayed for. However, the grant of an order for a new trial is discretionary - though the discretion must be based on sound principles and cannot be arbitrarily exercised - and the Court may impose such conditions as may be necessary to avoid an injustice.

Department of Justice
May 2000