**EXTRA DIVISION, INNER HOUSE, COURT OF SESSION**

**[2020] CSIH 19**
XA86/19

Lord Menzies
Lord Drummond Young
Lord Pentland

OPINION OF THE COURT

delivered by LORD PENTLAND

in the appeal by

ANDREW SMITH QC

Appellant

against

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

Respondents

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**Appellant: Lord Davidson of Glen Cova QC; CMS Cameron McKenna Nabarro Olswang LLP**
**Respondents: E Campbell; Harper MacLeod LLP**
**Interested Party: Steven Elliot (party)**

29 April 2020

**Introduction**

[1] In this appeal under section 21 of the Legal Profession and Legal Aid (Scotland) Act 2007 ("the 2007 Act"), the appellant invites the court to quash a decision of the respondents, the Scottish Legal Complaints Commission ("the Commission") insofar as it determined that four out of 14 complaints made against the appellant by the interested party to this appeal, were eligible for investigation by the Faculty of Advocates ("the Faculty") as "conduct

complaints". The appellant is a senior counsel and a practising member of the Faculty. The interested party is Mr Steven Elliot.

**Background**

***Circumstances leading to the complaint***

[2] The appellant's connection to the interested party arose out of the latter's relationship with two individuals, namely Messrs Steven Worbey and Kevin Stuart Farrell, and the involvement of those three parties in the development of a location-based dating app. The nature and extent of the relationship between the three individuals has been the subject of extensive litigation in this court and it is unnecessary for the purposes of this appeal to set it out in any detail. Suffice it to say that the parties became friendly in 2007, with the idea of the app developing in the course of 2009 and relations ultimately breaking down in around May 2011.

[3] Following the breakdown of the relationship in 2011, a number of litigations were commenced relating to disputes between the interested party on the one hand and Messrs Worbey and Farrell on the other. The appellant was instructed by solicitors on behalf of Mr Worbey and Mr Farrell in commercial actions relating to two network applications ("the Apps") called Wapo and Wapa. (Relevant court references for the purposes of the present appeal include CA109/13 and CA200/15.) The position advanced to the Commission was that the Apps had previously been operated by Bender Social Networking Limited ("BSNL"), which in turn was operated by the interested party. BSNL were put into members' voluntary liquidation in January 2015. The interested party was declared bankrupt in January 2015, at Brighton County Court.

[4] Following a preliminary proof in the commercial court, in which the appellant had acted on behalf of Messrs Worbey and Farrell, the Lord Ordinary held that whatever the relationship between the parties had been in connection with the development of the location based dating app, it had not been a partnership. That decision was subsequently upheld on appeal (see *Worbey & Anr* v *Campbell & Ors* 2016 CSOH 148 and [2017] CSIH 49).

***The complaint***

[5] The interested party submitted his complaint against the appellant to the Commission in October 2018. The Commission divided the complaint into 14 separate issues. Of those 14 issues, four were held by the Commission to be eligible for investigation by the Faculty.

[6] The four issues accepted by the Commission as eligible for investigation and the reasons therefor were set out in the Decision of 28 June 2019 ("the Decision") as follows:-

(i) Issue 5: "[the appellant], from 31 January 2015 to May 2018, continued to accept instructions from the solicitors [*sic*] to represent [Messrs Worbey and Farrell] in Case 200/15, despite his close personal involvement in their business affairs that made it inappropriate for him to do so.

DECISION: Issue is accepted for Investigation

- It is not disputed that [the appellant] accepted instructions between the dates stated in this issue of complaint.
- The [interested party] has provided the [Commission] with a variety of documents that show, among other things, that [the appellant] has a brother and sister-in-law that own a company that attempted to purchase Apps formerly owned by [the interested party] and intricately linked to the proceedings in which [the appellant] was instructed.
- The [interested party] also provided the [Commission] with an email, dated 3l January 2015, in which [the appellant] directly emails the liquidator, arguing that it was a potential contradiction of the Guide to Professional Conduct for Advocates, and a further email, dated 31 May 2018 in which the current liquidator confirms that they have 'had communications' with [the appellant].

- [The appellant] disputes the allegation and states that he does not, and has at no time, had any indirect or direct personal interests in the business affairs of his clients.
- [The appellant] notes that no specifics have been provided for the alleged close personal involvement and considers the suggestion to be vexatious.
- [The appellant] states that his appearance for his clients outside of the Court of Session, where he assisted in with [*sic*] other legal proceedings, is in keeping with his duties as an Advocate.
- [The Commission] considers it is necessary for the evidence to be considered fully in order for the facts to be established and in order to determine whether there was indeed involvement between [the appellant] and [Messrs Worbey and Farrell] which meant it was not appropriate for him to represent them."

(ii) Issue 7: "[the appellant] was complicit in allowing a dishonest statement that [the interested party] had been involved in a fraudulent scheme with the first defender to deprive the alleged partnership of profits, which was never proven in Case 200/15, to be repeated in the course of discussions about additional fees, in both the Outer and Inner Houses of the Court of Session, on, respectively 17 November 2017 and 1 September 2017.

DECISION: Issue is accepted for Investigation

- It is not disputed that it was alleged that [the interested party] was involved in a fraudulent scheme as described in the issue of complaint.
- [The interested party] provided [the Commission] with a letter, dated 29 September 2017, in which the opposition solicitors request that [the appellant's] instructing solicitors cease asserting that a fraudulent conspiracy existed to "deprive the partnership of profits".
- [The interested party's] position, taken from the letter, is that as the Court had determined no partnership existed no conspiracy to defraud such a partnership could have existed either.
- [The appellant] states that [the interested party] accepted, in his public examination, that he declared himself bankrupt to avoid paying [the appellant's] clients any sums they might be due. [The appellant] also states that [the interested party] transferred almost all of the business of his limited company to his cousin and then provided her with funds via an Isle of Man bank account to affect [sic] the purchase.
- [The appellant] states that the transfer of funds, referred to above, was considered unlawful by his Trustee in bankruptcy and it was repaid by [the interested party's] cousin.
- [The appellant] states that the Court did not have to decide whether [the interested party] was involved in a fraudulent scheme, but maintains that there was ample evidence to support the contention.

- [The Commission] considers it is necessary for the evidence to be considered fully in order for the facts to be established as it is disputed whether [the appellant] made a statement in Court which he knew, or ought to have known, was dishonest or misleading."

(iii) Issue 10: "[the appellant], on 18 May 2018, inappropriately accepted an instruction to appear in court for [Messrs Worbey and Farrell] despite having such a close personal involvement with [them] and their intended business dealings that it would have created a conflict of interest and affected his ability to remain impartial and independent.

DECISION: Issue is accepted for Investigation

- It is not disputed that [the appellant] accepted instructions on 18 May 2018.
- The [interested party] has provided [the Commission] with a variety of documents that show, among other things, that [the appellant] has a brother and sister-in-law that own a company that attempted to purchase Apps formerly owned by the complainer and intricately linked to the proceedings in which [the appellant] was instructed.
- [The interested party] also provided [the Commission] with an email, dated 31 January 2015, in which [the appellant] directly emails the liquidator, and argues that it was a potential contradiction of the Guide to Professional Conduct for Advocates, and a further email, dated 31 May 2018 in which the current liquidator confirms that they have "had communications" with [the appellant].
- [The appellant] disputes the allegation and states that he does not, and has at no time, had any indirect or direct personal interests in the business affairs of his clients.
- [The appellant] notes that no specifics have been provided for the alleged close personal involvement and considers the suggestion to be vexatious.
- [The appellant] states that his appearance for his clients, outside of the Court of Session, where he assisted with other legal proceedings, is in keeping with his duties as an Advocate.
- [The Commission] considers it is necessary for the evidence to be considered fully in order for the facts to be established and in order to determine whether there was indeed involvement between [the appellant] and [Messrs Worbey and Farrell] which meant it was not appropriate for him to represent them."

(iv) Issue 14: "[the appellant] was improperly in direct contact with [the interested party's] Trustee in bankruptcy Ms Z in, or around, May 2018 as confirmed by her email to [the interested party] dated 31 May 2018.

DECISION: Issue is accepted for Investigation

- [The interested party] has provided an email from Ms Z, dated 31 May 2018, confirming that [the appellant] has been in communication with her.

- [The appellant] states that it cannot, in and of itself, be inappropriate for a QC to contact a person's trustee in bankruptcy and to assert that it shows a misunderstanding of the Advocate's duty of independence.
- [The appellant] also states that no consequence is said to flow from the alleged contact.
- The [Commission] is of the view that in the context of this issue of complaint it is not clear whether [the appellant] contacting the trustee in bankruptcy was a breach of the Guide to Professional Conduct for Advocates. An investigation is required in order to establish this.
- [The Commission] considers that section 1.2.3 is laid out if [*sic*] very strong terms and therefore it is necessary for the evidence to be considered fully in order for the facts to be established."

[7] In its Decision, the Commission also set out the documentation upon which it relied in accepting these four issues for investigation.

**Grounds of Appeal**

[8] The appellant sought to appeal against the decision of the Commission in relation to each of the four issues set out above. In so doing, he founded upon subsections (a), (c) and (d) of section 21(4) of the 2007 Act, presenting grounds which can be broadly summarised as follows:-

(i) Issue 5: No facts were found either demonstrating a breach of an advocate's duty of independence, nor a breach of the obligations of honour, honesty and integrity. The family relations referred to were not clients of the appellant. The Commission had failed to identify the content of the duty of independence. The Commission had failed to identify a basis for a breach of the obligation of honour, honesty and integrity. To allow the investigation of such serious allegations, the Commission required some facts beyond those limited matters identified in the Decision.

(ii) Issue 7: The Commission had identified no relevant facts upon which to decide there was a basis for investigation. The reference to "6.2(b)? 6.3.3?" in the Decision was procedurally inept where the Commission was enjoined to make determinations and not to leave questions unanswered. A serious decision to the effect that the appellant may have been dishonest in his conduct before the court required some basis in fact, but no such basis was identifiable in the Commission's decision.

(iii) Issue 10: The Commission had merely repeated its reasoning in relation to issue 5. The Commission was subject to the overriding obligation to act fairly (*R* v *SSHD ex p Doody* [1994] 1 AC 531). The decision was procedurally unfair, oppressive and contained an error of law. Further the decision in respect of issue 5 was wrong.

(iv) Issue 14: The Commission had failed to determine the issue. It had been unable to assess whether the complaint was a breach of the Guide to Professional Conduct of Advocates ("the Guide") and accordingly, it was not entitled to accept there was an issue for investigation. It was required to make a determination pursuant to section 5(1) of the 2007 Act.

**Submissions**

***Appellant***

[9] The appellant invited the court to quash the decision of the Commission and pronounce an order to the effect that issues 5, 7, 10 and 14 of the complaint were without merit and, further, that the complaint, as a whole, was vexatious. That was on the basis that in each case, the Commission's decision fell foul of three of the grounds set out in

section 21(4) of the 2007 Act, namely grounds (a), (c) and (d); in summary that the Commission's decision was based on an error of law, that it had acted irrationally in the exercise of its discretion, and that its decision was not supported by the facts found to be established by the Commission.

[10] Although the Commission's role was not to judge complaints in a final sense, their decisions were always subject to section 21(4). The Commission was expected to sift out cases where it was "entirely clear that the available evidence cannot provide sufficient support for the complaint" (*Benson* v *SLCC* 2019 SLT 1007 at [8]). The fact that the Commission had, in relation to each issue, stated that evidence was required "for the facts to be established" demonstrated that it had not established facts to support its decision. Accepting complaints for investigation implied that they were not without merit. These were among the most serious allegations that could be levelled at an advocate. Accordingly, they ought to be supported by findings in fact (*Mazur* v *SLCC* [2018] CSIH 45 at [21]).

[11] So far as each issue related to the appellant's duty of independence, the Commission had misunderstood that duty. It was as described by the Lord President (Inglis) in *Batchelor* v *Pattison & Mackersy* ((1876) 3 R 914 at 918). It involved the advocate setting aside any influences to which he may be subject while acting for his client. Advocates were frequently instructed in cases where such influences were involved but had been trained to set them aside. In regarding the appellant's family connection as evidence upon which a breach of the duty could be founded, the Commission had erred in law.

[12] With particular reference to issue 5, there had been no finding in fact that the appellant had acted contrary to his duties. The duty of honour, honesty and integrity did not preclude an advocate from acting in a case, subsequent to which his family members (who were not involved in the case) had attempted to purchase property formerly owned by the

interested party. The liquidator referred to had been appointed to a company which was neither a client of the appellant nor a party to the proceedings in which the appellant had been instructed. The matters complained of would not, if put before the Faculty, constitute a breach of paragraphs 2.1 or 2.1.1 of the Guide. Further, the inconsistency of the Commission's approach in relation to issues 5 and 10 demonstrated that the decision had been reached on the basis of an irrational exercise of the Commission's discretion. There was no basis for the allegation that the appellant had a close personal involvement in the business affairs of his clients.

[13] In relation to issue 7, the appellant had provided the Commission with the basis of the evidence behind the assertion made in court. The appellant had been doing no more than exercising his right as advocate to conduct the cause *bona fide* according to his judgement. There was no evidence before the Commission to support any criticism of the *bona fide* nature of the appellant's statement to the court. The inclusion in this part of the Decision of reference to certain sections of the Guide by means of the formula "6.2(b)? 6.3.3?" could not be a valid determination in terms of section 5(1) of the 2007 Act, was an error of law *et separatim* an irrational act by the Commission in the exercise of its discretion. There was no convincing evidence that the appellant was complicit in the making of a dishonest statement to the court. There was merely a bare assertion of dishonesty made by the interested party.

[14] The treatment by the Commission of issue 10 was inconsistent with its treatment of issue 5 and therefore disclosed irrationality on the Commission's part. The allegation concerning a conflict of interest had not been treated by the Commission as requiring any additional or separate consideration.

[15] As regards issue 14, the Commission had expressly stated that it was "not clear" whether the appellant had acted in breach of paragraph 1.2.3 of the Guide. Where the Commission accepted a complaint for investigation as a conduct complaint pursuant to section 6(1) of the 2007 Act, it was making a determination. By accepting issue 14, the Commission had determined that there had been a conduct complaint notwithstanding that it did not know whether the alleged conduct could properly found such a complaint. Accordingly, the Commission had erred in law and acted irrationally in the exercise of its discretion. In any event contact between the appellant and the trustee in bankruptcy was not evidence of an advocate acting as agent of a client. The sifting of complaints required an assessment of whether there was adequate material to allege a breach of relevant professional duty. The absence of such an assessment disclosed an error of law. A reasonable appraisal body in the position of the Commission would have informed itself of the relevant facts prior to making a determination. To fail to do so, and then to proceed to determine that there had been a conduct complaint, was irrational on the part of the Commission.

[16] In addition to considering each of the foregoing issues as without merit, it was submitted that the Commission ought then to have considered the complaint as a whole and determined it to be vexatious. The Commission ought to have determined that the complainer had been using the complaint procedure to harass a legal representative.

***The Commission***

[17] The Commission invited the Court to refuse the appeal for the reasons that are broadly summarised in the paragraphs that follow.

[18] It was submitted that a timeously made conduct complaint by a relevant person must be accepted as eligible for investigation unless the Commission determines, in terms of section 2(4) of the 2007 Act, that it is "frivolous, vexatious or totally without merit". The Commission need not make findings in fact to accept a complaint as eligible for investigation.

[19] The well-established function of the Commission was not to determine complaints, but to perform a sifting function (*McSparran McCormick* v *Scottish Legal Complaints Commission* [2016] CSIH 7 at [46] and [58]). Parliament had delegated the adjudication function in such complaints to the Faculty, who were best placed to evaluate whether an advocate had been guilty of misconduct. Only when it was "clear that a reference would be a waste of time" should the Commission rule that a complaint is ineligible (*McSparran McCormick*, *supra* at [58]). The test for eligibility is very low; the test for interference very high (*Law Society of Scotland* v *SLCC* 2011 SC 94 at [49]; *X LLP v SLCC* 2017 CSIH 73 at [2]).

[20] It was for the Commission, not the court, to carry out the sifting process (*Y* v *SLCC* 2016 SLT 249 at para 12). The court should not substitute its view for that of the Commission. Where irrationality on the part of the Commission is cited as a ground of appeal, then the court must be satisfied that the decision was one which no such body, properly directed in law, might have reasonably made (*Savile-Smith* v *SLCC* [2012] CSIH 99 at [17]). The nature and extent of any investigation is a matter for the Commission (*Law Society of Scotland*, *supra* at [34] and [35]) and matters of specification can be dealt with once a complaint is being investigated (*X LLP*, *supra* at [8]).

[21] It was not for the Commission at the eligibility stage to resolve material factual disputes or investigate the veracity of the information provided. The Commission had not established any facts in relation to the issues challenged. Only two grounds of appeal were

relevant at the eligibility stage: error of law (s 21(4)(a)) and irrationality (s 21(4)(c)) (*X LLP*, *supra* at [3]). Any challenge based upon section 21(4)(d) should therefore be refused.

[22] The Commission had sought to identify the rules of conduct within the Guide which might be relevant to the issues alleged in the complaint. However, as was clear from the Guide itself, it was not a comprehensive tool that the Commission could use to determine either the precise content of an advocate's duty in every circumstance, or whether an issue of conduct had occurred. The clearest of circumstances would be required before it could be held that the Commission had acted irrationally in failing to hold that a complaint was totally without merit, frivolous or vexatious. The Faculty were not constrained, in terms of the 2007 Act, by the Commission's identification of particular sections of the Guide. Any criticism of the Commission in that regard was unfounded. Further, the appellant had given no notice of any error of law on the part of the Commission in respect of issues 5, 7 and 10.

[23] In relation to issue 5, the circumstances were unusual, complex and subject to material factual disputes. The complainer had provided information and vouching supporting parts of the factual background upon which he relied. Only a partial response had been provided by the appellant, leaving certain specific matters unexplained. It was open to the Commission to form the view that the appellant's email of 31 January 2015 was the type of correspondence more commonly entered into by an agent as opposed to by an advocate. Acting as an agent would be in breach of the duty of independence incumbent on the appellant. If the Faculty held the allegations to be well-founded, they could amount to a breach of the Guide. The Commission rationally identified that paragraphs 2.1.1 and 2.2 of the Guide may be relevant. The content of those standards was not, however, for the Commission to determine. Whether or not it was appropriate for the appellant to accept instructions in such circumstances was not a straightforward question for the Commission

to answer; the Faculty was best placed to do so. The circumstances alleged were not so obviously false, or in any event appropriate, that the only rational answer was that it was clear that the appellant could accept the instructions. Accordingly, the Commission was entitled, acting rationally and within their margin of discretion, to accept the complaint as eligible for investigation.

[24] As regards the more narrow complaint set out within issue 7, it was not irrational to consider that had the appellant stated to the court as a matter of fact that the interested party was involved in a fraudulent scheme on a partnership, which partnership the appellant knew had been held not to exist, that a conduct issue could arise.

[25] As for issue 10, this was similar to, but more focused than, issue 5, relating to a particular date. It was possible that different considerations could arise, and a different outcome could ensue. There was no unfairness to the appellant in its inclusion as a distinct issue. Equally, it was not unreasonable to have regard to the material relevant to issue 5 in considering issue 10.

[26] Finally, in relation to issue 14, contact with the trustee of an opposing party to a litigation involving an advocate's clients was not necessarily something which arose in the ordinary course of an advocate's role. No explanation was provided by the appellant for the contact, and the purpose or circumstances of the communication had not been explained to the Commission. The wording of paragraph 1.2.3 of the Guide was strong, albeit the Faculty would not be constrained by the Commission's identification of that rule. It had not been irrational for the Commission to consider that the issue was not totally without merit, frivolous or vexatious.

***Interested Party – the Complainer***

[27] The interested party submitted answers and a note of argument. He added some short oral submissions. In his note of argument, the interested party indicated that he fully supported the decision of the Commission in relation to the four issues forming the subject of the appeal (although not in relation to the remainder of his complaint) but accepted it was for the Commission to defend its position.

[28] In addition, the interested party sought to draw the court's attention to certain other matters which had come to light subsequent to his complaint. These are not, however, issues that can be addressed in the present appeal.

**Analysis and decision**

[29] In considering the grounds of appeal, it will assist if we first set out some basic principles which emerge from the case law. These apply to the Commission's statutory functions in handling conduct complaints, such as those that were made against the appellant by the interested party.

[30] First, the Commission's function is to sift complaints, not to determine them. The professional body, the Faculty or the Law Society of Scotland is best placed to evaluate whether an advocate or a solicitor has been guilty of professional misconduct (*McSparran McCormick supra* at [46]).

[31] Second, it follows from the first principle that it is only where referring a complaint to the professional body would be a waste of time because the complaint is totally without merit that the Commission should dismiss it as ineligible. The policy of the 2007 Act is that the question of what amounts to professional misconduct or unsatisfactory professional

conduct are matters to be determined by the professional body and not by the Commission (*McSparran McCormick supra* at [58]).

[32] Third, the test of "totally without merit" contained in section 6(1)(b) of the 2007 Act is a high one. It permits the Commission to sift out complaints which, on their face, are obviously unworthy of any consideration or investigation by the professional body; that means hopeless complaints in which it is clear that further investigation by the professional body could make no difference. In other words, the threshold that a complaint requires to cross before the Commission should refer it for investigation by the professional body is a very low one (*Law Society of Scotland* v *Scottish Legal Complaints Commission* 2011 SC 94 at [49]).

[33] Finally, in an appeal brought under section 21 of the 2007 Act the court should not substitute its own view on eligibility for that of the Commission. An appeal based on irrationality can only succeed where the decision was one that no such body properly directing itself could reasonably have made (*Saville-Smith* v *Scottish Legal Complaints Commission* [2012] CSIH 99).

[34] Applying these principles to the facts and circumstances of the present case, we are satisfied that the Commission's decisions to refer issues 5, 10 and 14 to the Faculty for investigation are not open to successful challenge in the present appeal. Each of these issues raised questions, which we consider that the Commission was entitled to regard as legitimate ones, concerning the nature of the appellant's relationship with his clients and whether he had acted in a manner that was independent of them in line with his professional responsibilities as an advocate. It would not be appropriate for us to express any substantive view on these questions since it is for the Faculty to make its own evaluation of them. We simply note that there was evidence before the Commission which was open to

the interpretation that the appellant was personally involved in the business affairs of his clients in a manner and to a degree that would not be usual or perhaps appropriate for an advocate. For example, he contacted the liquidator of BSNL with a view to his clients purchasing the apps and a new company being set up to launch them. His correspondence with the liquidator was expressed in terms that were capable of inferring that he had a personal interest or involvement in the issues he sought to raise with the liquidator. He proposed that the liquidator should be appointed as the interested party's trustee in bankruptcy. Thereafter Mr David Grier of Duff & Phelps also contacted the liquidator in terms that could be read as suggesting that he was doing so on behalf of the appellant personally. At a later stage in 2018 a company owned by members of the appellant's family became involved in efforts to acquire and register trademarks owned by BSNL. We note also the evidence that in 2018 the appellant made personal contact with the trustee in bankruptcy appointed to the interested party. The appellant has not explained why he did so.

[35] In our view, the issues raised by the evidence in relation to these matters were such that the Commission was entitled to refuse to dismiss them at the sifting stage. We consider that factual and legal issues of some complexity were raised by these complaints and that the Commission was entitled to refer them to the Faculty for full investigation. It was not appropriate for the Commission itself to come to any concluded view on them. We are not persuaded that the Decision can be properly characterised as erroneous in law or as irrational. The complaints were not based merely on assertions made by the interested party; there was evidence that could be interpreted as lending support to the complaints. In the whole circumstances, we are satisfied that the appellant's challenge to the Commission's decision to refer issues 5, 10 and 14 to the Faculty for investigation fails and must be refused.

[36] We take a different view, however, in respect of issue 7. Here the allegation focussed by the complaint was one of dishonesty (or complicity in dishonesty) on the part of the appellant. We do not consider that there was any material before the Commission to justify such a serious allegation. We can find nothing in the evidence to support the view that the appellant acted dishonestly or that he was complicit in dishonesty. There is no evidence that the appellant made a dishonest statement to the court or to anyone; nor is there any evidence that he was complicit in the making of a dishonest statement. Whilst it is true that in the preliminary proof the commercial court held that no partnership existed, it does not follow that it was dishonest to rely on the averments of fraud in the context of opposing the motions for an additional fee or to submit that there was evidence of fraud available to the pursuers on the hypothesis that a partnership was held to exist as a matter of law. In our opinion, there was no evidence before the Commission to justify the view that in regard to the motions for an additional fee the appellant was not acting *bona fide* in the best interests of his clients.

[37] In the absence of any evidence capable of supporting an inference of dishonesty (or complicity in dishonesty) on the part of the appellant, we conclude that the Commission's decision to refer issue 7 to the Faculty for investigation is irrational and cannot be allowed to stand.

[38] We shall accordingly allow the appeal to the limited extent of quashing the decision of the Commission dated 28 June 2019 to accept issue 7 for investigation. *Quoad ultra* we shall refuse the appeal.