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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	**ex tempore 16/04/2024**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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DIVISIONAL COURT
IN THE MATTER OF AN APPLICATION BY ANTHONY McINTYRE FOR JUDICIAL REVIEW

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Mr Lavery KC (instructed by Phoenix Law Solicitors) for the Applicant
Mr McGleenan KC with Mr Egan KC (instructed by Crown Solicitor's Office) for the PSNI
Mr Coll KC with Mr Sayers KC (instructed by the PPS) for the PPS

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Before: Keegan LCJ and McCloskey LJ

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McCLOSKEY LJ (*delivering the judgment of the court ex tempore*)

Introduction

[1] While it might seem remarkable these proceedings date from the middle of the year 2016 and this court gave judgment dismissing the judicial review in October 2018, they are still breathing, albeit on their last legs. The court is seized of an application on behalf of the applicant by a notice of motion, which itself is of considerable vintage, dated 31 October 2019, whereby the main relief sought is the following:

> "A declaration that notwithstanding the original designation the within proceedings do not constitute a criminal cause or matter for the purposes of section 41(a) of the Judicature (Northern Ireland) Act 1978."

[2] At the outset, we reiterate, out of an abundance of caution and for the avoidance of any doubt whatsoever, that this court is constituted as a Divisional Court today as it has been at all material times in the history of these proceedings with the exception, it would seem, of a perfunctory initial listing before the senior judicial

review judge. As a result, all parties and this court in its various constitutions, a three-judge court during the most important phase of the history and a two-judge court today, have been operating on this basis. The parties also proceeded on that basis following the delivery of the substantive judgment, in the shape of an application to the United Kingdom Supreme Court for certification of a point of law of general public importance coupled with the grant of leave to appeal. This continued through to the hearing which the Supreme Court convened and the outcome thereof, the Supreme Court ruling that this being a criminal cause or matter it had no jurisdiction to entertain the application.

[3] To describe the course of action which the applicant is inviting this Divisional Court to take at this stage as unusual is perhaps an understatement. It would, indeed, appear to be unprecedented in the correct sense of that word. The applicant, in common with the other parties, has not been able to bring to the attention of this court any previous case in which the course of action urged in para [1] of the notice of motion has been pursued, much less granted.

[4] Mr Lavery KC has addressed the court's first and fundamental question, namely wherein lies the power of this court to accede to the application in para [1] of the notice of motion, in the following way. He contends that the court has inherent jurisdiction to grant the declaration sought.

[5] At the broadest level of procedural practice and principle (and this is a question purely of procedure) the High Court does indeed exercise an inherent jurisdiction: but it does so in accordance with principle and precedent and not as some freewheeling palm tree. That has been addressed in a number of cases including, for example, *Ewing v Times Newspapers* [2010] NIQB 65 and before that in one of the most illustrative examples, *Braithwaite v Anley Maritime Agencies* [1990] NI 63, together with *Jose Ignacio de Juana v Kingdom of Spain* [2010] NIQB 68.

[6] No considered argument by reference to practice, principle, text or any decided case has been developed before this court that its inherent jurisdiction extends to taking the course which is pursued on behalf of the applicant. On behalf of the respondents, we have from Mr McGleenan KC a written submission which resolves to the following contention, at para [12]:

> "These proceedings have concluded. The court does not have jurisdiction to hear or determine the issues the applicant now raises in the notice of motion which is, itself, of no effect."

[7] Our conclusion is encapsulated in that para. In short, we prefer the respondents' submission. The lack of specificity and particularisation in the applicant's central contention, coupled with the shortcomings already highlighted, are its incurable frailties. It is unnecessary to delve any further into any of the written submissions on behalf of the applicant, with the exception of two human rights issues.

[8] One question which was in the mind of the court was whether the applicant is contending that this court is required as a matter of duty as a public authority under section 6 of the Human Rights Act to grant the relief sought as to refuse it would infringe one of the applicants' protected Convention rights, Article 8, specifically the right to respect for private life; or, alternatively, the procedural dimension of Article 8. In response to our question, Mr Lavery clarified that the applicant is not making that case.

[9] Furthermore, the court did not receive any submission that to refuse to grant the relief sought would entail a breach of section 6 of the Human Rights Act by the court on the ground of an infringement of the applicant's Convention right under Article 6. Mr Lavery was correct not to advance that submission having regard to the very clear Convention jurisprudence that Article 6 does not guarantee a right of appeal. That has been decided in the case of *Delcourt v Belgium* [1979] 1 EHRR 355, para [25] and *Miloslavsky v United Kingdom* [1995] 20 EHRR 442, para [59].

[10] In a nutshell we have not been persuaded that we have a power to make the order sought. In the alternative, if and insofar as this court does have a power to take the course pursued reposing somewhere in its inherent jurisdiction, we are in no doubt that no grounds for exercising that power have been demonstrated on behalf of the applicant. The values of certainty, finality in litigation and the overriding objective, together with the absence of any discernible merit, all combine to support this alternative conclusion.

[11] All of this impels, therefore, to an order which will dismiss the notice of motion. We shall address separately the disposal required for the last of the orders of this court preserving the status quo regarding the tapes.