Neutral Citation No: [2020] NICA 34 ***Judgment: approved by the Court for handing down (subject to editorial corrections)****	***Ref:*** **DEE11282** ***Delivered:*** **24/06/2020**

2015/115714

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

JOHN CHRISTOPHER WALSH

Plaintiff/Appellant

-and-

DEPARTMENT OF JUSTICE

Defendant/Respondent

-and-

KEVIN R WINTERS, SOLICITOR

Defendant and Proposed Respondent

Before: Sir Donnell Deeny and Sir Richard McLaughlin

SIR DONNELL DEENY

[1] This ruling arises in the following way. The plaintiff/appellant issued proceedings against the then Minister of Justice, David Ford, by way of a Writ of Summons date stamped by the Central Office on 10 December 2015. At a hearing before this Court it was agreed that given the substance of Mr Walsh's claim, relating to compensation for wrongful conviction, the proper defendant was the Department of Justice. The Court amends the title of the action on appeal to the Department of Justice.

[2] The Writ also joined as defendants the then Senior Counsel for the Minister, Dr Tony McGleenan, Mr Walsh's own Senior Counsel and Junior Counsel, Ms Karen Quinlivan and Mr Sean Devine and the Solicitor instructed on his behalf, Mr Kevin Winters. By judgment dated 24 September 2018 Burgess J upheld a decision of Master McCorry to strike out the plaintiff's claim against all five defendants.

[3] Mr Walsh then served a Notice of Appeal which in time brought this matter to the Court of Appeal. However, his appeal was only against the finding in favour

of the Minister for Justice. He did not appeal against the findings of Burgess J in favour of the three Counsel and Mr Winters.

[4] On 19 December 2019 Mr Walsh emailed to the Court of Appeal Office an application for an out of time appeal to allow him to join Mr Winters as a respondent in the proceedings before the Court of Appeal. This was after the hearing before the Court of Appeal and while the judgment of this Court was in preparation. This application was brought to the attention of the members of this Court on 27 February 2020. This Court directed that Mr Walsh should serve a Skeleton Argument upon Mr Winters with his application and fixed a date for the hearing of the application. Service by Mr Walsh was after the directed date and so close to the time of the proposed hearing that Mr Winters was unable to respond. By this time the proper conduct of matters was being interfered with by the Covid-19 pandemic. The Court therefore adjourned the hearing and allowed Mr Winters until 1 April to make his response.

[5] On 7 April Mr Walsh served electronically something that he described as an application for summary judgment. By this he meant he should succeed in his application because Mr Winters had failed to submit his Skeleton Argument. The application does not conform to any Rules of the Court of Judicature and is in law a nullity. In the event Mr Winters did provide a Skeleton Argument signed by Mr Brian Fee QC and Mr Philip Henry which this Court has taken into account. Given the directions of the Lord Chief Justice as to the conduct of hearings, it was decided that this issue would be determined on the papers without a hearing.

[6] Reading the Notice of Application by Mr Walsh, I note his assertions at paragraphs 17 and 18 that on 22 June 2015 the Lord Chief Justice, Sir Declan Morgan, appointed me to conduct a judicial investigation. I have no recollection of such an appointment, unusual as it would be, and the Office of the Lord Chief Justice has no record of it. Mr Walsh goes on:

> "*On 29 July 2015, Mr Justice Deeny advised the appellant that he could initiate legal proceedings against his own lawyers in either the County Court or High Court.*"

[7] This is an incorrect statement as the Court record confirms my own private records that I did not sit on 29 July 2015, or indeed any day that week, during the Vacation. I have no memory of the matter and would not of course have given advice to Mr Walsh. It is not inconceivable that a judge who had seisin of the matter at some time, might point out that if Mr Walsh believed his legal advisers were negligent in their conduct of his proceedings he could sue them. Neither Sir Richard McLaughlin nor I consider that these assertions preclude me from continuing to participate in this Court.

[8] In a document entitled "Additional Fresh Evidence" Mr Walsh sought to support his application by a range of assertions based on a letter from the Chief Executive of the Bar of Northern Ireland, Dr David Mulholland, dated 30 January 2020. We can see nothing in that letter that can amount to fresh evidence. It deals with the issue of data protection of material put before the Professional Conduct Committee of the Bar in determining a complaint by Mr Walsh against Ms Quinlivan and Mr Devine.

[9] Counsel for the proposed respondent, Mr Winters, refer to the Rules of the Court of Judicature relevant to Mr Walsh's application at Order 59, Rule 4 and Rule 15. The appeal against the judgment of Burgess J should have been brought within six weeks of his judgment of 24 September 2018, on which date the Order of the court was also made. Mr Walsh's application is in fact dated 23 December 2019 and is fifteen months after the judgment and more than 13 months out of time.

[10] Rule 15 deals with extension of time.

> *"15. Without prejudice to the power of the Court of Appeal under Order 3 Rule 5, to extend the time prescribed by any provision of this Order, the period for serving Notice of Appeal under Rule 4 or for making application ex-parte under Rule 14(3) may be extended by the Court below on an application made before the expiration of that period."*

[11] No such application was made to the Court below here.

[12] Order 3, Rule 5(1) reads as follows:-

> "*The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules, or by any judgment, order or direction, to do any act in any proceedings."*

[13] This Court therefore does have the power "*on such terms as it thinks just*" to extend the time for the appeal. The leading authority on the topic of extension of time for appeals to the Court of Appeal continues to be *Davis* v *Northern Ireland Carriers* [1979] NI19. Sir Robert Lowry LCJ, as he then was, set out seven relevant principles which the Court should address in exercising its discretion in each case.

> *"(i) Whether the time is sped: a Court will, where the reason is a good one, look more favourably on an application made before the time is up;*
>
> *(ii) When the time limit has expired, the extent to which the party applying is in default;*

(iii) The effect on the opposite party of granting the application and, in particular, whether it can be compensated by costs;

(iv) Whether a hearing on the merits has taken place or would be denied by refusing an extension;

(v) Whether there is a point of substance (which in effect means a legal point of substance when dealing with cases stated) to be made which could not otherwise be put forward;

(vi) Whether the point is of general, and not merely particular, significance.

(vii) That the rules of court are there to be observed."

[14] One only has to set out these principles to see that Mr Walsh's application is doomed to fail. The time has already sped here, contrary to the first principle. Mr Walsh is gravely in default as to the expiration of the time limit *i.e.* he is not merely a few days or even weeks out of time but more than a year. If Mr Winters were now required to be a party to this appeal he would be burdened with the additional costs of instructing Counsel to defend himself. Mr Walsh has failed to comply with earlier orders for costs against him. He is living outside the jurisdiction in County Cork. A hearing on the merits regarding this case has taken place in the sense of being carefully considered both by Master McCorry and by Burgess J. If there is a point of substance here, which so far as the Minister for Justice is concerned we will deal with in our main judgment, it is not one of general significance. We do not see one on the papers against Mr Winters. Clearly the Rules of Court have not been observed. This application runs counter to all of the relevant principles laid down by this court as applicable to such applications. Furthermore, Mr Walsh should have been well aware of these principles as they were set out by Morgan LCJ in an *ex tempore* judgment of this Court on 3 April 2014 refusing Mr Walsh an extension of time to appeal from the decisions of Weatherup J of 18 June 2012 and 30 October 2012.

[15] On the facts of this case it is apparent that there is a further relevant criterion which militates against Mr Walsh's application, though not required, *i.e.* that the public would be put to trouble and expense if Mr Winters were now belatedly added as a defendant, as this Court would have to reconvene to hear the submissions on both sides. It is likely, as a precaution, that the Minister would consider it wise that his legal representatives be also present. Therefore, further costs would be incurred by several parties and Court time would be used, wastefully, because Mr Walsh could have appealed against the Order in favour of Mr Winters following the decision of Burgess J in 2018.

[16] In the light of these factors we dismiss the application to extend time to Mr Walsh to appeal the decision of Burgess J insofar as it relates to Kevin R Winters.