Neutral Citation No. [2013] NIQB 18 | *Ref:* McCL8768

Ex Tempore Judgment**: approved by the Court for handing down* | ***Delivered:07/01/13

(subject to editorial corrections)*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

QUEEN'S BENCH DIVISION

McCann's (Colin) Application [2013] NIQB 18

_____

AN APPLICATION BY COLIN McCANN FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

_____

McCLOSKEY J

[1] This is an application for permission to apply for judicial review. The application is brought by Colin McCann. The application has been presented on Mr McCann's behalf by a family relative. Being an application for permission to apply for judicial review the normal procedure has been observed. This means that the proposed respondent and an interested party have been notified of today's hearing and have attended. The proposed respondent is the Tribunal itself. The interested party is the respondent to the Tribunal proceedings. In the event the court has not considered it necessary or appropriate to invite any argument from the representatives of either of those two parties.

[2] I shall deal firstly with the function of the High Court in litigation of this kind. The High Court exercises a supervisory jurisdiction over the acts of public authorities and those of inferior courts and tribunals. These include Industrial Tribunals and Fair Employment Tribunals. The jurisdiction of the High Court is supervisory and not appellate. One aspect of this principle is that the High Court is a forum of last resort in cases of its kind. Another well-established general principle is that the High Court does not micromanage the proceedings of inferior courts and tribunals, nor does the High Court, other than exceptionally, review the merits of procedural rulings or decisions of inferior courts and tribunals. The High Court, furthermore, does not entertain challenges which are properly described as satellite in nature.

[3] As a strong general rule the fairness of any court or tribunal procedure or hearing is to be reviewed retrospectively and not prospectively. See Re Officers C and Others [2013] NICA 47 and compare Ali v BCH Trust [2008] NIQB 14,

paragraphs [64] – [65]. Exceptions to this rule are limited in nature. For example, if it were demonstrated in advance that an inferior court or tribunal by virtue of its constitution would inevitably contravene the rule against actual bias viz the prohibition on having an interest in the outcome, then the High Court would be expected to intervene. Similarly, if it were demonstrated in advance that the rule against apparent bias, which is a different kind of contamination, would be offended if the proceedings were to continue without some alteration in the constitution of the inferior court or tribunal then in that circumstance also the High Court would also be expected to intervene. Those are two clear exceptions to the firm general rule which I have articulated. While there may be others it is idle to reflect on them at present. For the avoidance of any doubt I conclude that neither of those exceptions has been canvassed or applies in the present case.

[4] The Applicant's challenge is diffuse and requires to be interpreted and dismantled to the best of the court's ability. It seems to have two basic limbs. The first is of a structural, or constitutional, character. Insofar as there is a challenge to what will or may be the constitution of the Tribunal scheduled to hear these conjoined cases beginning on 7th January 2013 I find that there is no semblance of an arguable case. This limb of the challenge is conspicuously empty, infused with bare assertion and pure speculation.

[5] The second dimension of the Applicant's challenge is one which focuses exclusively on issues of fairness. In this context, this is fairness of the procedural and not the substantive variety. In developing this challenge a series of issues has been canvassed or highlighted on the Applicant's behalf. These, mainly though inexhaustively, relate to unsuccessful attempts to have case management discussions convened and similarly frustrated efforts to secure a pre-hearing review. Such efforts have entailed written representations to the Tribunal canvassing, *inter alia*, questions concerning who might chair the hearing; whether the Chairman will or will not have certain qualifications or expertise; previous descriptions of the Applicant choosing not to attend to give evidence; addresses to which correspondence has been directed; a disagreement with a description of written representations as unfocused; the content of an interim ruling; the length and depth of the same ruling; the service of bundles for the hearing; the composition of bundles; a history of unsuccessful strike out applications by the Tribunal proceedings respondent; issues bearing on who are the parties to the Tribunal proceedings and who is or are the remaining parties; what evidence will be adduced by the Respondent; who the Respondent's witnesses will be; what will be the issues to be determined by the Tribunal; the adequacy of discovery of documents; the adequacy of the remedy of case stated at the end of the Tribunal proceedings; and the extent to which the adversarial process will impact on the hearing. The majority of these issues which have been canvassed on the applicant's behalf relate to the procedural fairness of a hearing which has not yet taken place, while the others concern the first limb of which I have disposed already. None of them gives rise to any arguable case of illegality or procedural unfairness or impropriety. Rather they are all embraced by the prohibition against inappropriate satellite litigation and the

potent general principle that the High Court does not exercise its supervisory jurisdiction so as to micromanage the proceedings of inferior courts or tribunals or to superintend purely procedural and interlocutory rulings. It is worth repeating: advance intervention by the High Court in the proceedings of an inferior court or tribunal will very rarely be appropriate.

[6] The misconceived nature of this challenge is exposed and reinforced by the description given by the Applicant's representative to the remedy which is sought in this court. This description was twofold. Firstly, it was suggested that the Tribunal proceedings should be transferred to the High Court and heard here. This is constitutionally impermissible because the Tribunal is the only forum empowered by statute to determine these cases. Secondly, it was suggested in terms that this court should make an order - presumably an order of mandamus - directing the Tribunal to constitute itself in a particular way. There are no grounds upon which it is arguable that an order of this kind should be made.

[7] For these reasons the application is misconceived and only one outcome is possible, namely a refusal of permission to apply for judicial review. It follows, of course, from the court's reasoning and conclusion that if the Applicant wishes to ventilate issues of the fairness of the proceedings before the Tribunal then, in the exercise of every litigant's right to a fair hearing, the Tribunal will doubtless grant this facility. It will also give careful consideration to the stage at which they should be considered - for example, before the hearing begins if there is an issue of an adjournment - and how they should be managed. These are all questions which lie within the exclusive competence and responsibility of the Tribunal itself.

[8] Permission to apply for judicial review is refused accordingly.