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Judgment: approved by the Court for handing down | *Delivered:* **30/11/2015**
*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM

THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

WILLIAM JOHN MORROW

Appellant;

-and-

ATTORNEY GENERAL FOR NORTHERN IRELAND

Respondent.

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Before: Morgan LCJ, Weatherup LJ and Weir LJ

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WEIR LJ (delivering the judgment of the court)

[1] Mr Morrow, ("the appellant"), appeals from an order ("the order") of Stephens J made on 5 June 2014 whereby upon the application of the Attorney General for Northern Ireland ("the AG") it was ordered pursuant to Section 32(1) of the Judicature (Northern Ireland) Act 1978 ("the Act"):

> "(i) That no legal proceedings shall without the leave of the High Court be instituted by the appellant in any court or tribunal;
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> (ii) That any legal proceedings instituted by the appellant in any court or tribunal before the

making of the order shall not be continued by him without such leave;

(iii) That such leave shall not be given unless the court is satisfied that the proceedings are not an abuse of the process of the court and that there is a prima facie ground for the proceedings;

and it was further ordered pursuant to Section 32(3) of the Act:

(iv) That notice of the making of an order under this section shall be published in the Belfast Gazette."

[2] That order followed an application by the AG for an order in the above terms following the institution by the appellant between the years 2007 to 2012 of four separate High Court actions ("the actions") in this jurisdiction whose nature may be briefly described as follows:

(a) In the first action, 2007 No. 92787, Morrow v Strathclyde Police ("the Strathclyde Police case"), Mr Morrow issued proceedings against the defendants therein named, claiming damages of £40 million together with a further £1 billion, arising out of alleged acts of malicious prosecution and false imprisonment in or about 1997/98. The action was struck out. Mr Morrow was ordered to pay some of the defendant's costs.

(b) In the second action, 2011 No. 36766, Morrow v Law Society of Scotland ("the Scottish Law Society case"), Mr Morrow issued proceedings against the defendant therein named, claiming damages of over £500,000 arising out of matters concerning Mr Morrow's divorce proceedings in Scotland in or about 1993. The action was struck out. Mr Morrow was ordered to pay some of the defendant's costs.

(c) In the third action, 2012 No. 22199, Morrow v Northern Ireland Housing Executive ("the NIHE case"), Mr Morrow issued proceedings against the defendants therein named, claiming damages of £80m arising out of the alleged allocation of unsuitable housing to him. The action was struck out. Mr Morrow was ordered to pay the defendant's costs.

(d) In the fourth action, 2012 No. 136189, Morrow v Police Service of Northern Ireland ("the PSNI case"), Mr Morrow issued proceedings against the defendants therein named, claiming damages of £40 million

> together with a further £1 billion arising out of alleged recruitment by the PSNI of "criminals" who had formerly been police officers within Strathclyde Police. The action was struck out. Mr Morrow was ordered to pay some of the defendants' costs.

[3] Before making the order the judge heard at length from the appellant as to the background to and his prosecution of each of the four actions as again did this court. The action described at para [2](a) above apparently had its origin in the events surrounding prosecutions brought against the appellant in Scotland in or about 1998 which have caused him to consider that he was wrongfully arrested and falsely imprisoned by officers of the Strathclyde Police. That at para [2](d) arose from a belief that certain of the Strathclyde officers whom he blamed for the matters alleged in para [2](a) had subsequently and wrongfully in his view obtained employment in the PSNI. That at para [2](b) appears to derive from a contention that certain matrimonial proceedings in which he had been involved in Scotland had not been well conducted by his then Scottish solicitors whilst that at para [2](c) derives from a contention that in 2010 the NIHE had allocated him an unsuitable dwelling in the form of a fourth floor flat with the result, he contends, of causing him to contract or suffer exacerbation of asthma and COPD.

[4] At the hearing before the judge and again before this court the appellant was advised that if he chose he could be assisted by a McKenzie Friend or otherwise represented and the judge had drawn the appellant's attention to the judge's discretionary power under Section 32(2) of the Act to assign a solicitor or counsel to him at public expense. However, the appellant declined to adopt any of these suggestions, preferring to represent himself.

The judgment of the court below

[5] The judge gave a detailed extempore judgment in which he defined the legal framework by firstly referring to passages from the judgment of Lord Bingham CJ in A.G. v Paul Barker [2000] 2 FCR 1 which deals with the similar terms of the English Supreme Court Act 1981 Section 42.

> "1. The Attorney General seeks a civil proceedings order under Section 42 of the Supreme Court Act 1981 against Mr Paul Barker. It is unnecessary for present purposes to recite the familiar terms of Section 42(1)(a) and (b), save to point out that before the court can made an order under the section it must be satisfied that the statutory pre-condition of an order is fulfilled, namely that the person against whom the order is sought has habitually and persistently and without any reasonable ground instituted vexatious civil proceedings or made vexatious applications whether in the High Court or any inferior court and

whether against the same person or against different persons.

2. If that condition is not satisfied the court has no discretion to make a civil proceedings order. If the condition is satisfied the court has a discretion to make such an order, but it is not obligated to do so. Whether, where the condition is satisfied, the court will exercise its discretion to make an order, will depend on the court's assessment of where the balance of justice lies, taking account on the one hand of a citizen's prima facie right to invoke the jurisdiction of the civil courts and on the other the need to provide members of the public with a measure of protection against abusive and ill-founded claims. It is clear from Section 42(3) that the making of an order operates not as an absolute bar to the bringing of further proceedings but as a filter.

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19. I am satisfied on the facts adduced in evidence before us that Mr Barker has introduced vexatious civil proceedings. 'Vexatious' is a familiar term in legal parlance. The hallmark of a vexatious proceeding is in my judgment that it has little or no basis in law (or at least no discernible basis); that whatever the intention of the proceeding may be, its effect is to subject the defendant to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to the claimant; and that it involves an abuse of the process of the court, meaning by that a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process…….

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22. From extensive experience of dealing with applications under Section 42 the court has become familiar with the hallmark of persistent and habitual litigious activity. The hallmark usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, thereby imposing on defendants the burden of resisting claim

> after claim; that the claimant relies on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, in actions against successive parties who if they were to be sued at all should have been joined in the same action; that the claimant automatically challenges every adverse decision on appeal; and that the claimant refuses to take any notice of or give effect to orders of the court. The essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop."

[6] Certain observations of Lord Phillips MR in Bhamjee v Forsdick and Others [2004] 1 WLR 88 upon the Strasbourg jurisprudence were also adverted to by the judge, including paragraphs [16], [17] and [18] in which Lord Phillips recorded:

> "[16] It is now well settled both at common law and under Strasbourg jurisprudence that a court has power to regulate its affairs in such a way that its processes are not abused. …. the right tof access to the courts may be subject to limitations in the form of regulation by the state, so long as two conditions are satisfied:
>
> (i) the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired;
>
> (ii) a restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.
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> [17] In H v United Kingdom (1985) 45 DR 281 the European Commission of Human Rights applied these principles when it decided that an order refusing the applicant leave to bring an action by virtue of an earlier order made against him under the Vexatious Actions (Scotland) Act 1898 did not constitute an arguable violation of his Convention rights. Indeed, it said, at p. 285, that 'some form of regulation of access to court is necessary in the

> interests of the proper administration of justice and must therefore be regarded as a legitimate aim'.
>
> [18] In Ebert v Venvil [2000] Ch 484 Lord Woolf MR said, at p 497:
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> > 'Article 6 ….does no more than reflect the approach of the common law indicated by Laws J in R v Lord Chancellor, Ex p Witham [1998] QB 575. As long as the inherent power is exercised only when it is appropriate for it to be exercised, no contravention of article 6 or common law principle is involved'."

[7] Before turning to consider the detail of the proceedings brought by the appellant described at para [2](a) to (d) above, the judge first summarised his understanding of the legal position as follows:

> "So in summary terms, there are pre-conditions that have to be met before the discretion is brought into play. If the discretion is brought into play it has to be exercised in a proportionate way and in exercising the discretion a number of factors have to be taken into account and that is the citizen's prima facie right to invoke the jurisdiction of the civil courts; secondly, the need to provide members of the public with a measure of protection against ill-founded claims; and three, there is the need to ensure that scarce and valuable judicial resources are not extravagantly wasted on barren and misconceived litigation to the detriment of other litigants with real cases to try.
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> I would add that the costs incurred and the time taken up by individuals or organisations in defending vexatious litigation is not to be underestimated. The deleterious effect and the adverse effects on public bodies and on individuals is not to be underestimated. Vexatious litigation can and indeed does have very serious consequences for private individuals. In emphasising that of course I do not change the balance in any way whatsoever. I will, in exercising any discretion that I may have in this case, fully take into account all the rights involved."

[8] The judge then examined the nature and the course of each of the four actions in detail and we summarise here his conclusions concerning each of them:

> [2](a) The Strathclyde Police Case
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> That action failed because Master Bell held that the Writ of Summons did not disclose a cause of action and, importantly, because the action ought not have been brought in this jurisdiction at all. It related to some complaint that the appellant has against the Strathclyde Police in Scotland relating to events that allegedly happened in Scotland and therefore the Master concluded that the courts of Northern Ireland had no jurisdiction to hear the matter. The appellant appealed and Treacy J upheld the decision of the Master. The appellant then sought to appeal to this court having been refused leave to appeal by Treacy J. This court too refused leave.
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> [2](b) The Scottish Law Society Case
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> This action was commenced against the Chief Executive of the Law Society of Scotland. Again it disclosed no cause of action and again it was an impermissible attempt to bring in this jurisdiction an action against a defendant domiciled in Scotland in relation to matters that allegedly occurred there. The appellant appealed against the order of Master McGivern striking out the action to Coghlin LJ who affirmed the Master's order and refused leave to appeal to this court. The appellant then applied to this court for leave but was refused.
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> [2](c) The NIHE Case
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> The appellant launched a third action alleging that ill-health had been caused to him or made worse by the inappropriate allocation to him by NIHE of a flat on an upper floor. In this case there was no objection on grounds of jurisdiction to an action against NIHE in relation to a dwelling situated here. However the difficulty was that the appellant did not produce medical evidence to connect his medical condition with his complaint about the housing provided and nor did he identify his cause of action. Master Bell ordered the appellant to remedy both omissions but

> he did not and so in due course his action was struck out. The appellant appealed and Gillen J dismissed that appeal. Subsequently he applied to this court for leave to appeal against the decision of Gillen J but that application was refused.
>
> [2](d) The PSNI Case
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> The appellant then issued proceedings against the PSNI, apparently based upon a contention that some of the police officers whom he had wished to criticise in the Strathclyde Police case had been recruited by the PSNI. Master Bell ordered that the Writ be struck out on the grounds that it disclosed no reasonable cause of action and was otherwise scandalous, frivolous or vexatious. The appellant appealed that same day and his appeal was heard by Horner J who dismissed it and thereafter he applied to this court for leave to appeal which was refused. In the course of his ruling on that application for leave the Lord Chief Justice explained that 'this court can only act on the basis of causes of action that are recognised in law' and 'in order to maintain a cause of action the party has to have standing in the sense that they have an entitlement to pursue the cause of action.' Nothing daunted, the appellant proceeded to make a further application to this court for leave to appeal against the decision of Horner J but it was pointed out to him in correspondence directed by the Lord Chief Justice that his application for leave to appeal had already been decided.

[9] Stephens J then applied the test provided for by Section 32(1) of the Act, finding that the applicant had been habitually and persistently engaged in litigation, that there had been no reasonable grounds for doing so and that the proceedings had been vexatious. He then proceeded to consider whether in the exercise of discretion the order sought ought to be made and expressed his approach to the balancing exercise in the following terms:

> "I then turn to the exercise of discretion. I bear in mind and weigh carefully in the balance Mr Morrow's prima facie right to invoke the jurisdiction of the civil courts. I have also given careful consideration to providing members of the public with a measure of protection against ill-founded claims and I have considered the amount of court

> time that has been taken up in relation to these pieces of litigation.
>
> I consider that the balance firmly comes down in favour of exercising discretion to make an order in the terms sought."

The judge added that he was making the order without limit of time because he "could not foresee any present change of personal circumstances that would lead to a different outcome".

The appeal to this court

[10] Predictably, the appellant did not accept the decision of Stephens J but appealed to this court. The terms of his Notice of Appeal are:

> "(1) The order disclosed no reasonable cause of action.
>
> (2) The order is scandalous, frivolous or vexatious.
>
> (3) Contrary to Order 18 Rule 19(1) of the Rules of the Court of Judicature (Northern Ireland) 1980."

The relief he seeks is stated as:

> "(1) Of the Rules of the Supreme Court, Northern Ireland.
>
> (2) The findings of the Honourable Mr Justice Stephens be overturned, and the plaintiff be awarded all legal costs.
>
> (3) The plaintiff's appeal be granted by HM Court of Appeal."

A handwritten document entitled "Plaintiff's Skeleton Argument" provides no indication as to why the appellant considers that the order of Stephens J was wrong or the basis upon which it should be reversed or varied. Much of the document refers to the background to and history of his four actions. This court also heard oral submissions from the appellant at some length, many of which betrayed that he either still does not understand or does not want to understand that in order to validly commence proceedings in Northern Ireland it is necessary:

(1) To have an identified cause of action which is known to the law.

(2) To be able to show that any claimed loss or damage is of a legally recognised nature and can be legally attributed to that cause of action.

(3) That the cause of action arose in Northern Ireland or is otherwise justiciable here.

The submissions on behalf of the Attorney General

[11] Mr Colmer provided helpful submissions in support of both the factual conclusions of Stephens J and of the exercise by him of his discretion as to whether to make the order sought. As to the judge's factual conclusions he submitted on the authority of the Court of Appeal in Murray v Royal County Down Golf Club [2005] NICA 52 as recently reiterated in Young v Hamilton and Others [2014] NICA 14 that the burden of showing that the judge was wrong in his decision as to the facts lies on the appellant and if the Court of Appeal is not satisfied that he was wrong the appeal will be dismissed. The Court of Appeal must consider the material that was before the trial judge and, while not shrinking from overruling the judge's findings where it concludes that he was wrong, it ought not (per Lofthouse v Leicester Corporation (1948) 64 TLR 604) to interfere where the question is a pure question of fact and where the only matter for decision is whether the judge has come to the right conclusion on the facts, unless it can be shown clearly that he did not take all the circumstances in evidence into account, or that he has misapprehended certain of the evidence, or that he has drawn an inference which there is no evidence to support. In Mr Colmer's submission the judge's factual conclusions were fully open to him and were not susceptible of criticism.

[12] In relation to the exercise by the judge of his discretion to make the order, Mr Colmer submitted that an appellate court will not normally interfere with the exercise of discretion by a judge although it may do so either on grounds of law or if it sees that the decision will on other grounds result in a reasonable danger of injustice. (per Evans v Bartlam [1937] AC 473 and Charles Osenton and Co v Johnston [1942] AC 130 cited with approval by Carswell LJ in Millar (A Minor) v Peeples and Others [1995] NI 6). In Mr Colmer's submission Stephens J had carefully weighed all the relevant considerations bearing upon the exercise of his discretion and had arrived at a conclusion justified both on the applicable law and the particular facts.

Consideration

[13] It is clear that both under domestic and Strasbourg jurisprudence the court has power to regulate its own affairs to ensure that its processes are not abused provided that:

(a) The limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (Stubbings v UK (1997) 23 EHRR 213 at para 48);

(b) A restriction must pursue a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aims sought to be achieved (Bhamjee v Forsdick No. 2).

These requirements are comprehended by Section 32(1) of the Act which requires that any application to restrict the institution of vexatious litigation firstly must only be brought by the AG and, once that has been done, the High Court must be satisfied that the person who is the subject of the application:

(a) has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings.

(b) whether against the same or against a different person.

and, if so satisfied, may, after hearing the person or giving him an opportunity to be heard, make the order. In this case the judge found himself satisfied of (a) and (b) and this court is equally satisfied of those matters. The appellant had sequentially commenced four separate sets of proceedings, none of which has been shown by him to have any basis so far as the courts of Northern Ireland are concerned. This court endorses the findings of fact made by the judge, the appellant having failed to articulate, much less establish, any comprehensible legal or factual basis for challenging any of those findings.

[14] Turning to the exercise of discretion, the authorities suggest that the following factors ought to be considered by the decision-maker:

(a) The citizen begins with a prima facie right to invoke the jurisdiction of the civil courts. See Barker at para. [2].

(b) There is a countervailing need to provide members of the public with a measure of protection against abusive and ill-founded claims. Again see Barker at paragraph [2].

(c) The need to prevent scarce and valuable judicial resources being extravagantly wasted on barren and misconceived litigation to the detriment of other litigants with real cases to try. (AG v Ebert [2002] 2 All ER 789 DC at 793f).

The judge expressly adverted to all these factors and this court considers that his conclusion from them in the exercise of discretion that an order ought to be made in the terms sought cannot be faulted. The appellant has doggedly pursued each one of this series of hopeless cases with tiresome persistence to every judicial tier, advancing the same baseless contentions repetitively until each case had been advanced as far as he could possibly make it go. He seems impervious to the

considered explanations of Masters, High Court judges and of this court as to why his claims are manifestly ill-founded and that same inflexible approach was again plainly in evidence at the hearing before us. His apparent lack of any insight might be thought unfortunate were it not for the harm which it has done and would, we are satisfied, if uncontrolled be likely to continue to do, both to those who are made defendants to his misguided and promiscuous litigation and to the orderly administration of justice.

[15] For these reasons we consider that the order made by the judge has not been and cannot be faulted and this appeal is accordingly dismissed.