

Neutral Citation No: [2017] NIQB 134

Ref: McC10438

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 23/10/17

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

[No 2017/39555/01 plus eight others, ending with 2017/101711/01]

**IN THE MATTER OF NINE APPLICATIONS BY MICHAEL SHERRIE
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

MCCLOSKEY J

Overview

[1] Between April and October 2017 the Applicant, Michael Sherrie, who represents himself, lodged nine separate applications seeking leave to apply for judicial review, challenging a broad range of agencies. All were listed together at a single sitting of the Court on 13 October 2017. They shall be addressed chronologically and seriatim.

[2] Mr Sherrie, when invited to address the court, had nothing of substance or relevance to say and did not enlarge or illuminate the written incarnation of his nine challenges in any material way. Some of the proposed Respondents were represented. Details are included in a schedule to this judgment. It was not necessary for the Court to invite submissions from any of the representatives attending. Some of the other proposed Respondents (such as HHD solicitors) provided a courtesy notification that they would not be attending and would not be represented.

First Challenge: 2017/039526/1

[3] The only formal document filed by the Applicant is an ex parte docket. This pro-forma makes provision for specifying the following:

- (a) The decision under challenge.
- (b) The date of such decision.
- (c) The identity of the proposed Respondent.

(d) The relief claimed.

[4] None of the foregoing is contained in the Applicant's ex parte document. Nor has the Applicant filed an Order 53 Statement, or anything equivalent or kindred, which would (in principle) contain all of the foregoing, together with the legal grounds of challenge. Furthermore, there is no affidavit evidence or anything comparable or kindred.

[5] The Applicant, simultaneously, lodged a completed Form ER1 requesting remission of the Court fee of £220. In this he represented that his monthly income is £740. This application was granted administratively.

[6] The other papers lodged by the Applicant consist of a document purporting to be an affidavit accompanied by a collection of documents. The deponent is a public representative (now retired). The affidavit lacks several of the formalities required by rules of court and, on its face, was sworn before a solicitor empowered to administer oaths on 04 December (2016?).

[7] The aforementioned documents consist of a series of letters, faxes and emails, many sent by or to the public representative concerned. The other principal correspondents are the Northern Ireland Housing Executive ("NIHE") and BIH Housing Association Limited ("BIH"). These documents span the period 2004 to 2010. Their subject matter is attempts by the Applicant to purchase a flat under the House Sales Scheme published by the Department for Social Development in October 2004. By letter dated 03 March 2005 BIH informed the Applicant of its willingness to sell the property concerned to him at a specified cost, requiring a response within six weeks. There is no evidence that the Applicant responded, timeously or at all.

[8] Other letters, generated some six months later (circa September 2005), indicate that the Applicant's attentions had switched to being rehoused by NIHE at a specified address which was not in a habitable condition. The outcome of this discrete exercise is not clear from the papers.

[9] In the papers this is followed by a five year gap, punctuated only by a letter dated 10 November 2010 from the aforementioned public representative apparently addressed to BIH. No reply thereto or any subsequent or related correspondence is provided.

[10] Next, following another five year gap, there is a letter dated 08 September 2015 from the Applicant to no identified addressee. Its contents suggest that there were then extant proceedings in an unspecified division of the High Court. From this communication one can deduce the following:

- (a) The Applicant was apparently litigating by reason of his dissatisfaction with the processing and/or handling of his 2004/2005 “right to buy” quest.
- (b) He had been represented by a firm of solicitors (“HHD”).
- (c) He was alleging collusion between HHD and the entity Helm Housing (evidently the successors of BIH).
- (d) A central issue seems to have been the date upon which the Applicant notified BIH of his wish to purchase the property in question.
- (e) The Applicant brought two successive actions around this time and also attempted resort to the Court of Appeal.
- (f) It is evident from the papers that the Applicant was litigating with the benefit of the remission of court fees facility.

[11] As appears from the foregoing:

- (i) There is no identified, or identifiable, proposed respondent.
- (ii) There is no identified, or identifiable, decision, measure or omission under challenge.
- (iii) No grounds of challenge have been formulated and none are discernible from the papers.

These are not formal or technical defects. They are, rather, fundamental in nature. They impel irresistibly to the conclusion that this application for leave to apply for judicial review is manifestly ill founded and must be dismissed in consequence.

[12] While this application for leave may also be unsustainable on limitation (RSC Order 53 Rule 4) and lack of candour grounds, I rely on neither of these factors for my decision.

[13] Thus the Order of the Court is:

- (i) Leave to apply for judicial review is refused.
- (ii) Any legal costs, expenses and outlays incurred by the Applicant will be borne by him.

Second Challenge: 2017 No 39555/01

[14] What is stated in [2] – [4] above applies fully to this leave application, with the modification that in addition to the *ex parte docket* the Applicant has also filed an Order 53 statement which is a replica of the *ex parte docket* with the exception that it identifies “Ombudsman for NI” as the proposed Respondent.

[15] As regards the documents lodged:

- (a) Paragraphs [5]–[10] above apply fully with the modification that they do not contain any affidavit.
- (b) There is a new document purporting to be the “license and identification card” of the Applicant emanating from the “New Jersey Department of Banking and Insurance”, undated.
- (c) There is an Order of the High Court dated 28 June 2012 refusing the Applicant leave to apply for judicial review against an unspecified act or omission of “Northern Ireland Ombudsman”.
- (d) There are two further Orders of the Court of Appeal dismissing the Applicant’s ensuing appeal and his application for leave to apply to the Supreme Court.

[16] The analysis in [10] above applies fully to this application. It follows that an Order of dismiss in the terms of [13] is appropriate.

[17] The incidental comment in [11] also applies.

Third Challenge: 2017 No 56107/01

[18] The analysis in [2] – [4] above applies fully, with the modification that the Ex Parte Docket is accompanied by a “Order 53 Statement” which identifies the proposed Respondent as “Judge McBride” and dates the impugned decision as 23 May 2017. The Applicant has also filed a document which is an “Affidavit” in name only. This document contains allegations that “Judge McBride” and “Judge Keegan” knowingly received and accepted perjured evidence from an identified solicitor and “false” evidence from BHSCT and acted in some unspecified unlawful manner vis-à-vis the Official Solicitor.

[19] This further, discrete challenge appears to have been stimulated by the Order of McBride J dated 23 May 2017 which, having recorded that Counsel for the Plaintiff (the Official Solicitor) and the Defendant in person (the Applicant) had been heard, declares as follows:

- (i) The patient is no longer exercising the right of residence conferred by the will of the deceased.
- (ii) On the proper construction of the will, all duties, responsibilities, obligations and other burdens placed on the patient in respect of an identified property apply only when the patient is exercising the right of residence conferred by the will.

[20] The papers lodged by the Applicant include also some manuscript materials which I have read.

[21] In his judgment delivered on 31 May 2017 in 2016/117385/01 in a challenge by this Applicant to a decision of Keegan J, Maguire J dismissed the leave application on the ground that a decision of a High Court Judge is not justiciable by judicial review: I refer to and endorse fully [4] and [6] – [8] of this judgment. This impels inexorably to the conclusion that this leave application must fail. The analysis in [10] above applies also.

[22] The incidental comment in [11] also applies.

[23] The Order will mirror that specified in [12] above.

Fourth Challenge: 2017 No 59048/01

[24] The analysis in [2] – [4] above applies fully, with the modification that in the ex parte document and the accompanying “Order 53 Statement”, the proposed Respondents are identified as “Master Wells and NICTS”. The papers also include an “Affidavit” in name only.

[25] The papers include the following:

- (a) An Order of the Family Judge (O’Hara J) dated 12 June 2017 that “.... the authority of the Official Solicitor as Controller ad Interim to terminate the patient’s tenancy of her flat is stayed and shall remain stayed pending the determination of the Supreme Court or until further Order.”
- (b) The underlying Order of the Family Master refusing the application of the “Objector” (the Applicant) for a stay.

The Order of the Family Judge is based upon the fact that the Applicant’s application for permission to appeal to the Supreme Court against the Order of the High Court dated 10 February 2017 is undetermined.

[26] The analysis in [10] above, with the modifications noted, applies fully. It follows that an Order in the terms of [12] is appropriate.

[27] The incidental comment in [11] also applies.

Fifth Challenge: 2017 No 39558/01

[28] The analysis in [2] – [4] above applies fully, with the modification that the Applicant has purported to identify the proposed Respondent as “Helm Housing”. It appears from the papers that this entity is the predecessor of Radius Housing Association (“RHA”). Paragraphs [5]–[10] above also apply to this further discrete challenge.

[29] The analysis in [10] above applies fully. It follows that an Order in the terms of [12] is appropriate.

[30] The incidental observation in [11] is also applicable.

Sixth Challenge: 2017 No 78980/01

[31] The analysis in [2] – [4] above applies fully, with the exception that:

- (a) The *ex parte docket* identifies “Judge McBride” as the proposed Respondent.
- (b) The “Affidavit” refers to a decision of BHSCT and a named individual; and
- (c) *Ditto* the “Order 53 Statement”.

[32] The sole supporting evidence lodged is a single page letter dated 25 May 2017 addressed by the Applicant to the aforementioned named individual.

[33] With the modifications noted above, the analysis in [10] above applies fully. It follows that the Order in [12] above is appropriate.

[34] The incidental comment in [11] also applies.

Seventh Challenge: 2017 No 101701/01

[35] The analysis in [2] – [4] above applies fully, with the modification that the Applicant has lodged an *ex parte docket* and a “Order 53 Statement” which identifies the Northern Ireland Public Prosecution Service (the “PPS”) as the proposed Respondent and contains references to alleged perjury on the part of a named person. The sparse documents filed consist of two relatively

formulaic PPS letters, dated 04 July and 22 August 2017 respectively and a rejoinder letter from the Applicant dated 18 September 2017.

[36] The analysis in [10] above applies fully. It follows that an Order in the terms of [12] is appropriate.

[37] The incidental comment in [11] is also applicable.

Eighth Challenge: 2017 No 101711/01

[38] The analysis in [2] – [4] above applies in substance. Within the formal documents filed is identifiable a complaint by the Applicant that an unidentified person or agency [sic]:

“... entered into a contract and broke the law and force my mother into a nursing home which the invoice to you is still outstanding.”

[Verbatim]

Within the papers lodged is a manuscript document apparently compiled and signed by the Applicant claiming payment of some £9 million from the “Belfast Trust”. The particulars appear to be that compensation at the rate of £24,000 *per diem* from 23 June 2016 to 29 June 2017 is recoverable.

[39] The analysis in [10] above applies fully, subject to any modifications noted. It follows that an Order in the terms of [12] is appropriate.

[40] The incidental comment in [11] above is also applicable.

Ninth Challenge: 2017 No 101706/01

[41] The analysis in [2] – [4] above applies fully, with the modification that in the three formal documents lodged the proposed Respondent is identified as “Health Care Ireland Group/Bradley M” (or, possibly, “Mandy Mitchell”). The further documents lodged indicate that the Applicant is seeking monetary redress and disclosure of documents from the proposed Respondent.

[42] The analysis in [10] above applies fully. It follows that an Order in the terms of [12] is appropriate.

[43] The incidental comment in [11] is also applicable.

OMNIBUS CONCLUSION

[44] On the grounds and for the reasons elaborated above, each of the Applicant's nine applications for permission to apply for judicial review is dismissed.

Some Reflections

[45] Various epithets may properly be applied to each of the nine leave applications: all were uniformly hopeless, fundamentally misconceived and utterly speculative. They were so singularly devoid of merit and substance that each merits the condemnation of a misuse of the process of the High Court.

[46] This assessment is not displaced or diluted by the common law right of access to the courts, which has been acknowledged as a right of constitutional stature: R v Lord Chancellor, ex parte Witham [1998] QB 575, which recognised the "*special weight*" accorded by the common law to the citizen's right of access to the Courts. This was described in A v B (Investigatory Powers Tribunal) [2008] EWHC 1512 (Admin) as "*a right of the highest constitutional importance*", belonging to a plane so elevated that legislation purporting to remove it would be *prima facie* contrary to the rule of law. It must be stated emphatically, however, that this right is simply not engaged in any form of litigation which is hopeless, frivolous, vexatious or otherwise a misuse of the Court's process.

[47] The substantial investment of increasingly scarce judicial and administrative resources which each of these applications has generated can be readily appreciated from this judgment. The multiple public authorities involved have also been obliged to divert resources from investment in areas of real need. Three observations are appropriate. First, there is within our legal system no gateway, or threshold, preventing the initiating of proceedings of this kind, apart from the rarely invoked mechanism of an order under section 32 of the Judicature (NI) Act 1978 declaring a litigant vexatious thereby requiring the prior leave of the court to institute any further proceedings. Readier resort to the exercise by the Attorney General of the power to apply for such orders may be appropriate. Second, the entirely laudable mechanism of court fees remission may require review. It should not have been available to this litigant as it is not designed to facilitate proceedings of this kind. Third, by reason of the availability of court fees remission, this litigant effectively enjoyed *carte blanche* to bring about a substantial waste of public resources, human and financial.

[48] These observations will hopefully be of interest to those upon whom the duty of making decisions falls in the wake of the publication of the recent Review of Civil and Family Justice in Northern Ireland report. I highlight in

particular the illuminating analysis and commentary in Chapter 12 (“Personal Litigants”). The section recommending enlarged and modernised civil restraint mechanisms is of particular note. The other recommendations in Chapter 12 illustrate the obvious potential for imaginative, fair and proportionate improvements and solutions. In addition, the outcome of the research project currently undertaken jointly by the Northern Ireland Human Rights Commission and Ulster University is awaited with interest. The need for measured and proportionate deterrents to hopeless and misconceived litigation, particularly (but not exclusively) in the public law sphere, has been long evident. Legal challenges such as those with which this judgment is concerned are an affront to the rule of law. Proportionate action to counter this mischief is required. The policy of passive and purely reactive toleration of the intolerable has not worked.

Schedule of Appearances

Proposed Respondent	Counsel	Instructed by	Challenge No
Ombudsman for Northern Ireland	Tony McGleenan QC	Elliott Duffy Garrett Solicitors	1
Higgins Hollywood Deazley Solicitors	No appearance	Higgins Hollywood Deazley Solicitors	2
Northern Ireland Courts & Tribunal Service (McBride J)	Philip McAteer BL	Departmental Solicitors Office	3
Northern Ireland Courts & Tribunal Service (Master Wells)	Philip McAteer BL	Departmental Solicitors Office	4
Radius Housing Association	Matthew Corkey BL	Wilson Nesbitt Solicitors	5
Belfast Health & Social Care Trust	Michael Potter BL	Directorate of Legal Services	6
Public Prosecution Service	No appearance	Public Prosecution Service	7
Business Service Organisation	Michael Potter BL	Directorate of Legal Services	8
Health & Care Ireland Group	No appearance	No one on record	9