

**THE HIGH COURT**

**[2023] IEHC 520**

**Record No. 2016/4351P**

**BETWEEN**

**EAMONN J. O'NEILL**

**Plaintiff**

**and**

**IRELAND, ATTORNEY GENERAL, COMMISSIONER OF AN GARDA SÍOCHÁNA  
and THE DPP**

**Defendants**

**JUDGMENT of Mr. Justice Cian Ferriter delivered on the 14<sup>th</sup> day of September 2023**

**Introduction**

1. In these proceedings, the plaintiff claims various reliefs in respect of an alleged conspiracy amongst, *inter alia*, “Attorney Generals, Ministers for Justice, Directors of the DPP and Garda Commissioners” for failure to address alleged criminal behaviour of members of An Garda Síochána in connection with criminal proceedings which led to his conviction in the District Court of various offences in 2011 and 2012. The more serious of those convictions were upheld in the Circuit Court, after a full rehearing on appeal, in December 2013. The plaintiff claims, in essence, that he has been the victim of malicious prosecution (which included false arrests) and consequent unlawful incarcerations. He claims massive damages for these alleged wrongs.

**Pleadings and Trial**

2. At the two-day trial of this matter on 18 and 19 July last, I heard evidence from the plaintiff in addition to evidence from Sergeant Andrew Geary (“Sergeant Geary”), the Garda responsible for the criminal investigations and proceedings which form the basis of the malicious prosecution case.

3. The plaintiff lodged a “*pleadings*” book which was read and considered in full by the court notwithstanding that it did not conform to a conventional set of pleading documents. This bundle of documents consisted of a thirteen-page narrative/summary in which the alleged criminal conspiracy, including allegedly false arrests and malicious prosecutions, was set out. The summary document detailed what the plaintiff described in his oral submissions as his “*wish list*” of reliefs which included a series of reliefs which the court plainly had no jurisdiction to grant such as a “*High Court order instructing the DPP to make the appropriate application to the court to quash the plaintiff’s criminal convictions...*” and a “*High Court order instructing the Minister for Justice to offer a public apology in writing to the plaintiff for his unlawful incarceration in 2011 and 2012, false arrests, wrongful criminal convictions and the harassment, bullying and intimidation of the plaintiff by members of An Garda Síochána, over a period of more than ten years*”. The pleadings bundle then contained a 42-page “*statement and summary submission*”. It also included an affidavit of 16 May 2016 which contained further detailed narrative and a series of exhibits including complaints made to GSOC by the plaintiff in October 2012, a letter to the Taoiseach of 16 June 2013, a letter to the Minister for Justice and Equality of 2 October 2015 and various other correspondence including letters to the Attorney General, Chief Justice and the President of the High Court.

4. During the hearing, the plaintiff handed in some further individual documents relating to the various Garda investigations and a separate booklet of cross-examination materials which also related to the matters the subject of the criminal investigation and his complaints against members of An Garda Síochána. The court was also given, by agreement, a copy of the report of Assistant Commissioner Ó Cualáin of 23 October 2013 which contained a detailed background to the criminal investigations and prosecutions and findings in relation to the plaintiff’s complaints. Finally, the plaintiff delivered a typed version of his closing submission which was prepared in response to written submissions received from the defendants following the conclusion of the evidence.

5. The court has regard to all of that material and to the evidence of the plaintiff and of Sergeant Geary, in arriving at its decision on the plaintiff’s claims.

## **Background to the claims in these proceedings**

6. The claims in these proceedings have their roots in an investigation by the domestic violence unit of Waterford Garda Station (a unit headed at the time by Sergeant Geary who had specialist training in this area) into alleged breaches of a protection order granted by Lismore District Court in favour of the plaintiff's former wife against the plaintiff on 14 January 2011, following the break-up of their marriage in December 2010.

7. The plaintiff's former wife alleged that, on 2 February 2011, in contravention of the protection order made, the plaintiff approached her in a hotel in Dungarvan in a manner which threatened her and put her in fear. (The plaintiff's ex-wife's application for a full barring order against the plaintiff was listed in Dungarvan District Court for that date). She immediately reported this to An Garda Síochána. Sergeant Geary investigated the matter and took a statement from the plaintiff's ex-wife. He arrested the plaintiff and charged him with a breach of the protection order. The plaintiff was brought before Dungarvan District Court on that date and released on bail subject to the condition that he would avoid contact with his ex-wife.

8. Sergeant Geary gave evidence that the plaintiff almost immediately contravened that bail condition and proceeded to send numerous text messages to his ex-wife (and others). The plaintiff's ex-wife made a complaint about this alleged breach to Sergeant Geary who applied for a further arrest warrant before the District Court, based on the plaintiff's breach of his bail conditions and the fact that he continued to place his ex-wife in fear. The plaintiff was then arrested on 23 February 2011. He came before District Judge Finn who reiterated the obligation of the plaintiff to stay away from his ex-wife and who remanded him on continuing bail on that basis.

9. Sergeant Geary gave evidence that, shortly thereafter, the plaintiff acted in breach of the terms of the protection order and his bail again, engaging in multiple attempted contacts with his ex-wife. On St. Patrick's Day 2011, the plaintiff's ex-wife made a complaint of having been the subject of an approach and what she regarded as a very frightening and intimidating gesture from the plaintiff while she was parked in a car in Waterford city centre with her elderly mother and daughter. Sergeant Geary gave evidence, which I accept, that the plaintiff's ex-wife's level of fear and stress was extremely high at this point. This led to a further warrant

being issued for the arrest of the plaintiff for breach of his bail conditions. This warrant was issued by the District Court on 23 March 2011.

10. The plaintiff when informed of this warrant said that he would appear in Dungarvan District Court on 6 April 2011 to allow for the execution of the warrant. He did not show up on that date. He was arrested on 9 April 2011 in accordance with the arrest warrant. A special District Court was convened on that date and he was remanded in custody to Cork prison. He appeared before Dungarvan District Court on 13 April 2011 when he was remanded on bail with more onerous conditions including a condition that he was to remain away from Dungarvan town and not approach within 5 miles of Dungarvan except for court appearances.

11. Meanwhile, the plaintiff's ex-wife made further statements to Gardaí outlining that the plaintiff was contacting her place of work and putting her in fear. The plaintiff had not only contacted her workplace but also her doctor, her in-laws and her solicitor. The Gardaí took statements from those parties.

12. On 27 April 2011, Sergeant Geary applied for a further warrant to arrest the plaintiff for continued breaches of the protection order and his bail. The plaintiff did not turn up in court on that date, claiming he had a meeting in Dublin. The District Court issued a further warrant for the arrest of the plaintiff. This warrant was executed by Sergeant Geary on 11 May 2011. The plaintiff was arrested, brought to Dungarvan Garda station where he was detained overnight and then brought to Cashel District Court the following day when he was again admitted to bail on conditions.

13. In the months that followed his first arrest for breach of the protection order, Sergeant Geary says that the plaintiff escalated his campaign of contact with his former wife and those close to her. This led Sergeant Geary to instituting an investigation into harassment within the meaning of s.10 Non-Fatal Offences against the Person Act 1997 ("the 1997 Act"). At this point, the plaintiff was sending harassing texts and calls to his ex-wife's family law solicitor, the doctors in the GP practice that his wife attended, the principal of the school that one of his children was in and members of staff in the company in which his ex-wife worked. Sergeant Geary meticulously obtained statements from all of the relevant people in the course of investigating the harassment case. The plaintiff was charged with harassment contrary to s.10 of the 1997 Act ("s.10") on 25 May 2011.

14. Meanwhile, the plaintiff did not comply with the bail conditions imposed on him which required him to appear in Dungarvan District Court on 22 June 2011 and again on 13 July 2011. As a result, bench warrants were issued for his arrest on 22 of June 2011 and 13 July 2011. The warrants were based on his failure to appear in court on those dates in accordance with his recognisances.

15. The plaintiff was arrested on foot of the bench warrants and appeared before Cork District Court on 1 August 2011. He was remanded in custody on that date, being unable to obtain a surety. A full bail hearing took place in Clonmel District Court on 9 August 2011, with evidence of breach of bail being given by his ex-wife and Sergeant Geary. The District Judge refused bail and remanded the plaintiff in custody.

16. On 1 September 2011, the plaintiff applied to the High Court for a reduction in the terms of his bail. He was represented by solicitor and counsel at that hearing. The bail hearing was presided over by Birmingham J. (as he then was). Oral evidence was given by the plaintiff's former wife and her solicitor, Sergeant Geary and the plaintiff himself. Bail was reduced but subject to a number of conditions including an independent surety of €1,500, with €500 to be lodged, and a series of other conditions including that the plaintiff have no contact whatsoever with his wife and children, his wife's doctor, his wife's workplace and that he remain excluded from Dungarvan.

17. In parallel with the above matters, the plaintiff was the subject of a series of complaints for theft and fraud offences relating to non-payment for services he availed of at various hotels and petrol filling stations around the country, principally in the period from early 2011 to July 2011. Sergeant Geary gave evidence that members of An Garda Síochána got in touch with the Irish Hotels Federation on foot of a number of these complaints and it emerged that there were quite a number of hotels around the country where the plaintiff had stayed but not paid on checking out. He was charged with various offences under ss. 7 and 8 of the Criminal Justice (Theft and Fraud Offences) Act 2011 ("the 2011 Act") in respect of these matters ("the theft and fraud charges").

## **October 2011 District Court hearing**

18. The District Court hearing in respect of the breach of protection order, harassment and theft and fraud charges took place before District Judge Finn in Dungarvan District Court over four days from 25 to 28 October 2011.

19. Sergeant Geary said that, in his 25 years of service, he had never seen such a period of time (four days) given to such a case. Sergeant Geary also gave evidence that significant latitude was given to the plaintiff as an unrepresented litigant in terms of cross-examination of the various witnesses, including a lengthy cross-examination of his former wife.

20. At the end of the hearing, Sergeant Geary said the plaintiff thanked him profusely for his support and apologised for the abuse he had subjected him to. He agreed to withdraw the complaints made, as set out in his statement of 28 October 2011, which I will come to later in this judgment.

21. Judge Finn reserved his judgment to 2 November 2011. He then entered the following convictions and sentences on that date:

- s.17 Domestic Violence Act 2018 for breaching protection order on 2/2/11 – 2 months imprisonment suspended for 3 years,
- s.17 Domestic Violence Act 2018 for breaching protection order on 17/3/11 – 2 months imprisonment consecutive, suspended for 3 years,
- s.10 Non-Fatal Offences against the Person Act 1997 harassment from 2/2/11 to 24/3/11 – 10 months imprisonment, suspended for three years.

22. As regards the various theft and fraud offences, Judge Finn adjoined these matters to allow for the plaintiff to make payments to the injured parties.

23. On 9 May 2012, the plaintiff was tried and convicted in Dungarvan District Court of charges under s.13 Criminal Justice Act 1984 for his failures to appear in court on 22 June 2011

and 13 July 2011, in accordance with his recognisances, as noted earlier, with no additional sentence imposed given the sentences imposed the previous November.

24. The adjourned District Court hearing in relation to the theft and fraud charges took place on 25 July 2012. Witnesses turned up from each of the complainant entities whom the plaintiff had not paid and it appears that their evidence was accepted notwithstanding that the plaintiff sought to contend that, in each case, he had been extended credit by agreement and there was no question of him not honouring payment obligations.

25. On that date, the District Court found that the facts were proven in respect of the theft and fraud offences (set out below) but did not proceed to conviction and instead applied the Probation of Offenders Act 1907 (“the Probation Act”) in each case:

- s.8 Criminal Justice (Theft and Fraud Offences) Act 2011 (“Theft and Fraud Offences Act”) on 16/4/11
- S.8 Theft & Fraud Offences Act on 8/7/11
- S.8 Theft & Fraud Offences Act from 3/7/11 to 8/7/11
- S.8 Theft & Fraud Offences Act on 29/7/11
- S.8 Theft & Fraud Offences Act from 9/1/11 to 24/2/11
- S.8 Theft & Fraud Offences Act on 2/7/11
- S.7. Theft & Fraud Offences Act from 28/12/10 to 26/2/11
- S.8 Theft & Fraud Offences Act on 3/7/11
- S.7 Theft & Fraud Offences Act from 19/6/11 to 27/6/11
- S.8 Theft & Fraud Offences Act on 25/7/11

26. There was some dispute before me as to when the plaintiff in fact discharged the amounts owing to the various petrol stations and hotels. He maintains that these payments were made in July 2012, on the day of the hearing of the theft and fraud charges in the Dungarvan District Court but that the Gardai improperly refused to pay over that money to the various retailers in question. This evidence is simply not borne out by the fact that the hearing into the commission of those offences proceeded on 25 July 2012 and in any event could not provide a basis for a contention that the plaintiff should never have been charged with these offences,

based as they were on the failure to pay the sums owing on the dates he availed of the hotel or filling station services.

27. The plaintiff maintains that all of these payments were made by the time of the Circuit Court appeal in December 2013, which I will turn to presently. However, the charges were directed towards non-payment on the dates he checked out of the various hotels or availed of the services in the various filling stations. The fact that he may have paid the sums twelve months or so later did not negate the fact that it was open to the Court to determine that offences had been committed on the dates in question.

### **Circuit Court appeal December 2013**

28. The plaintiff, as was his right, appealed all of his convictions in the District Court to the Circuit Court. Those appeals proceeded by way of a full rehearing before Judge Alice Doyle in Clonmel Circuit Court on 18, 19 and 20 December 2021. This hearing included a number of late sittings. At the conclusion of that hearing, Judge Doyle affirmed the plaintiff's convictions for breach of the protection order and harassment, and changed a number of conditions of the sentences imposed for those convictions. She allowed the appeal of the s.13 Criminal Justice Act 1984 charge (i.e. the conviction for failure to appear in court as directed). She affirmed the s.8 2011 Act charge relating to Fitzpatrick's Killiney Castle Hotel on 16 April 2011 and the s.7 2011 Act charge regarding Gandon Inn from 19 June to 27 June 2011. She allowed the other theft and fraud offences appeals, including in respect of a complaint by the proprietor of a filling station in Kilrush who did turn up to give evidence in support of his criminal complaint. Sergeant Geary explained that the proprietor admitted in his evidence to the Circuit Court that an attendant in his petrol station had opened an account for the plaintiff, unknown to the proprietor and, in those circumstances, that case was dismissed.

29. Sergeant Geary gave evidence that the weather was particularly bad on the dates of the Circuit Court hearing which led to quite a number of the witnesses relevant to the prosecution of the theft charges not being in a position to turn up. The State solicitor for Waterford, Frank Hutchinson, explained this to the Circuit Judge. Contrary to the plaintiff's allegations, I am satisfied that neither Mr. Hutchinson nor the Dungarvan Gardaí admitted to the Circuit Court, as alleged by the plaintiff, that they had been involved in false prosecutions or false arrests. In fact, as we have seen, the relevant complainants in respect of the Killiney Fitzpatrick hotel and



Gandon Inn charges turned up and gave evidence and the Circuit Judge was satisfied that the facts in respect of these offences were proven, but again applied the Probation Act.

### **Complaints made by the plaintiff about the Gardaí**

30. The plaintiff made a complaint to the Garda Síochána Ombudsman Commission (GSOC) on 26 May 2011. He withdrew that complaint in a statement given to Inspector John Mulligan on 28 October 2011 (at the end of the District Court hearing). In this statement, the plaintiff stated as follows:-

*“Having attended my court case in Dungarvan over the last number of days [i.e. the District Court hearing] for the first time in 10 months I had the opportunity of talking to my wife in the witness stand, while cross-examining her as I was acting for myself. I realised the following: my wife for a number of medical reasons is genuinely in fear of me, so instead of Dungarvan Gardaí actioning what I would have viewed as spurious complaints and statements from my wife they were in actual fact responding to an obviously terrified woman. I would acknowledge, in hindsight, Dungarvan Gardaí’s actions, in the majority of cases were totally justified. I would like to express my appreciation for the many long phone calls of advice and support from Sergeant Geary. Accordingly the complaint to [GSOC] which I made on 26th May 2011 is now withdrawn.”*

31. The plaintiff sought to contend when being cross-examined on this statement at the hearing before me that he did not really mean what he said in this statement and only gave the statement as part of a wider deal which would involve the Gardaí investigating complaints he had made of criminal conduct by a variety of other parties (being principally those who had made statements against him in respect of the harassment charge).

32. Sergeant Geary gave evidence, which I accept, that at the conclusion of the District Court case, the plaintiff hugged Sergeant Geary and profusely expressed his gratitude for all that Sergeant Geary had done for him and that this was the true context of the statement made by the plaintiff as set out above.

33. Notwithstanding his statement of October 2011 withdrawing his May 2011 complaint to GSOC, the plaintiff subsequently made fresh complaints to GSOC. These complaints too were understood by Gardaí to have been withdrawn on 4 July 2012 following a court appearance on that date. In this statement, the plaintiff said that he was prepared to drop the complaints against, *inter alia*, Sergeant Geary on the condition that the plaintiff's various criminal complaints against his in-laws, his ex-wife's solicitor and her GPs would be pursued. He stated:

*"In this instance all complaints about all Gardaí are withdrawn. All court matters locally by Dungarvan Gardaí [sic] as a gesture to show I've no difficulty with Dungarvan Gardaí."*

34. The plaintiff's position was that the Gardaí did not honour their end of the alleged agreement (to investigate and charge the various parties he had complaints against) and therefore he did not have to honour his withdrawal of his complaint. Accordingly, the second complaint to GSOC was not withdrawn but rather proceeded and was investigated by Assistant Commissioner Dónall Ó Cualáin.

35. An extensive investigation into these complaints against Sergeant Geary and other Waterford Gardaí was conducted by Assistant Commissioner O Cualáin who delivered a report of his investigations and findings on 23 October 2013 ("the Ó Cualáin report")

36. The Ó Cualáin report outlined findings in respect of each of the plaintiff's complaints. Seven members of An Garda Síochána in the Waterford area were the subject of the complaints, including Sergeant Geary. The plaintiff alleged to GSOC that the Gardaí had failed to action a number of criminal complaints he made against various individuals despite assurances that these matters would be investigated if he withdrew his previous complaints to GSOC. The criminal complaints in question were against his ex-wife, various members of his ex-wife's family, various professional people in Dungarvan including doctors, solicitors and a school teacher and personnel in his ex-wife's employer i.e. the people who gave evidence or tendered statements in support of the prosecutions against him. He also complained that a number of members of An Garda Síochána in Dungarvan had sustained "*a vicious 10-month campaign of harassment against him*". This included complaints against Sergeant Geary. The plaintiff's allegation of a campaign of intimidation and harassment included allegations of false arrests

and allegations of false evidence given by Gardaí in court hearings. The plaintiff made a lengthy statement to Assistant Commissioner Ó Cualáin on 17 January 2013 as part of the investigation.

37. The plaintiff also alleged that Gardaí in Dungarvan had contacted the Irish Hotel Federation in an effort to get him barred from the hotels in Waterford.

38. Assistant Commissioner Ó Cualáin found in his report that *“The results on the investigation together with the outcome of the formal interview of the members complained of shows that the Gardaí were acting on complaints received before they commenced any legal process and were subsequently obeying court orders or directions/advice of their supervisors in the execution of their duty”* (para. 15.3) and concluded that *“There is no evidence to support or corroborate the allegations made by [the plaintiff] or to support any breach of discipline by the members concerned”*.

### **Other complaints**

39. In addition to his complaints to GSOC, the plaintiff complained about his arrests and prosecutions to the Department of Justice’s Independent Review Mechanism (IRM), the President of the District Court, the Chief Justice, the President of the High Court, The Minister for Justice and the Garda Commissioner.

### **High Court application for leave to apply for judicial review**

40. It is also relevant to note that in March 2014, the High Court refused to grant leave to the plaintiff to seek to challenge the convictions (following appeal) in the Circuit Court by way of judicial review.

### **The relevant legal principles**

41. The law applicable to the tort of malicious prosecution is not in dispute. The ingredients of the tort are well established and were set out as follows by Hederman J. in the Supreme Court decision of *McIntyre v. Lewis* [1991] 1 IR 121 at 132:

*“To succeed in an action for malicious prosecution, the plaintiff must prove:—*

*(i) that the criminal proceedings terminated in his favour;*

*(ii) that the defendant instituted and/or participated in the proceedings maliciously;*

*(iii) that there was no reasonable or probable cause for such proceedings;*

*(iv) that the plaintiff suffered damage.”*

42. As noted by McMahon and Binchy *“The Law of Torts”* (4th ed., 2013) at pp. 1391-97, the mere fact of an acquittal does not ground a claim for malicious prosecution, an approach which, as has been judicially observed, would entail *“an end of the criminal justice of the country”* (*Kelly v Midland GW Railway of Ireland* (1872) IR 7 CL 8 at 16). Rather, the other essential ingredients of the tort as set out in *McIntyre v Lewis* must also be made out i.e. the absence of any reasonable cause for bringing the prosecution and the presence of malice on the part of the prosecuting party. This additional requirement of malice was described in the following terms by Judge Fawsitt in *Dullaghan v. Hillen* (1957) Ir Jur 10 at p.16: *“The word “maliciously” implies the doing of that which a person has no legal right to do and the doing of it in order to secure some object by means which are improper. An evil motive is required to complete an actionable wrong.”*

43. The above passages were recently cited with approval by Barrett J. in *Hanrahan v. The Commissioner of An Garda Síochána* [2020] IEHC 180 who emphasised that, while the absence of any reasonable cause was evidence from which malice might be inferred, absence of reasonable cause and malice were two separate requirements each of which must be proved by the plaintiff.

### **Application of legal principles to the facts**

44. It is important to note at the outset that many of the material facts are not in dispute, including the relevant chronology of arrests, warrants, charges, hearing dates and convictions/acquittals.

45. Insofar as there were areas of dispute, they were principally in relation to the motives of the Gardai in taking the various steps they took in the criminal investigations and criminal prosecutions in question. The plaintiff essentially presented his case on the basis that he was the victim of harassment by An Garda Síochána; that the Gardaí unlawfully procured perjured evidence from witnesses for the purposes of prosecution of the criminal charges against him; and that the various investigations into the allegations of misconduct he has made (including to GSOC), which resulted in those complaints being rejected, were part of a criminal cover-up by An Garda Síochána.

46. Having listened carefully to the plaintiff during his evidence, I am quite satisfied that the plaintiff's evidence as to the alleged criminal conspiracy was simply incredible. His stock position was that any adverse finding against him in any process, including the criminal proceedings and the various investigations which were conducted in response to his complaints, could only be explicable as being the result of a cover up and a criminal conspiracy, as opposed to by the fact that he had repeatedly engaged in wrongful behaviour and disregard of court orders and that the various steps taken by the Gardaí and Courts were grounded in *bona fide* complaints properly acted on in good faith. A measure of the plaintiff's inability to accept objective reality was made clear when he was confronted in cross-examination with his own statements in October 2011 and July 2012 (as set out earlier in this judgment) in which he accepted that the Gardaí had not engaged in wrongdoing; rather than accept the contents of those statements, he sought to contend that these statements were deliberately falsely made by him in order to get a tactical advantage. Simply put, the plaintiff was a wholly unreliable witness and was demonstrably incapable of accepting reasonable and objective fact when it didn't suit his case. His evidence was shot through with assertions of conspiracies against him, unsupported by any objective evidence.

47. I found Sergeant Geary, in marked contrast, to be an honest, reliable and fair witness, who made reasonable concessions where he couldn't clearly recall matters but who was otherwise coherent and persuasive in his narrative, which was largely supported by the documentary record.

48. I will turn now to an analysis of the plaintiff's claims in these proceedings, bearing in mind my views on the lack of credibility of the plaintiff's evidence and my views on the cogency of Sergeant Geary's evidence.

### ***Breach of protection order and harassment convictions***

49. The plaintiff sought to re-argue the breach of protection order and harassment cases. As these cases resulted in convictions both in the District Court and, on appeal, in the Circuit Court following a full re-hearing, the plaintiff simply cannot establish the first essential ingredient of the tort of malicious prosecution, namely that the criminal proceedings said to be the subject of malicious prosecution terminated in his favour. Accordingly, his various allegations as to why it was that these charges were not well founded simply do not get off the ground.

50. Notwithstanding this obvious barrier to a key part of his case, the plaintiff proceeded to cross-examine Sergeant Geary on various points of detail relating to the events the subject matter of the prosecution of those offences. The plaintiff, for example, contended that he had not been given a chance to answer the allegation that he was in breach of the protection orders before he was arrested. He sought to contend that Sergeant Geary had given incorrect evidence in respect of various matters of detail including whether a financial institution had been contacted by the Gardaí and whether the principal of his child's school had made a complaint of harassment. The plaintiff was in dispute with Sergeant Geary as to whether he broke down in tears at the Circuit Court appeal or whether (the plaintiff's recollection) or whether (Sergeant Geary's recollection) he lost his cool and began shouting during the Circuit Court appeal. He sought to dispute Sergeant Geary's recollection that the Circuit Judge had acted "*with a level of patience I seldom seen*" and maintained rather that the Circuit Judge had shouted at the plaintiff. He raised questions as to the detail of calls received by his ex-wife when working at the switchboard at Glanbia. All of this is to miss the point. The breach of protection order and harassment prosecutions were successful. They were successful both in the District Court and following a full rehearing in the Circuit Court. Accordingly, a case of malicious prosecution simply cannot be made in these matters and no amount of effort to pour over matters of the detail of the evidence of those cases can alter that legal position.

51. I would observe for completeness that conspicuously absent from the plaintiff's narrative of how the breach of protection order and harassment cases were dealt with was the evidence of the complainant (his ex-wife) and the witnesses who gave evidence for the prosecution, quite apart from the Garda witnesses. The plaintiff has clearly refused to accept

that the very different perspective on his actions offered by the complainant was accepted by the District Court and the Circuit Court following full and fair hearings in which he cross-examined the complainant at length and himself gave evidence.

### *Theft and fraud offences*

52. The same fatal hole in his case applies in respect of the prosecutions for theft in relation to the Killiney Castle Hotel and the Gandon Inn. These criminal proceedings cannot be said to have been terminated in his favour; the District Court and Circuit Court, following a full rehearing on appeal, found the facts proven. Each of those courts exercised their discretion not to proceed to conviction and to apply the Probation Act instead. He was not, however, acquitted of these offences and both the District Court and Circuit Court determined that the facts subtending the criminal charges had occurred. Notwithstanding this, the plaintiff cross-examined Sergeant Geary on the basis that it was somehow inappropriate for Sergeant Geary to contact Fitzpatrick's hotel in Killiney on receipt of bills through his ex-wife, which had been sent to the former family home in which his ex-wife was living forwarded onto Sergeant Geary by his ex-wife's solicitor. He sought to split hairs with Sergeant Geary in relation to Sergeant Geary's knowledge of when the plaintiff ultimately paid the various sums the subject of the theft and fraud charges.

53. On the basis of Sergeant Geary's evidence, I am satisfied that there was, objectively, reasonable and probable cause for each of the theft and fraud charges with which the plaintiff was prosecuted.

54. As regards the Kilrush filling station theft charge, the conviction for which was overturned on appeal, the complainant ultimately accepted in his evidence in the Circuit Court that the plaintiff had an account and the Circuit Court judge found that the charge was not made out to the criminal standard. I do not believe that it can be said that there was no reasonable or probable cause for that prosecution; on the basis of Mr. Foley's evidence to the District Court, there appears to have been such a basis. However, even it could be said that there was no reasonable or probable cause for that charge, I am quite satisfied on the basis of Sergeant Geary's evidence that there was certainly no malice on the part of the Gardaí in prosecuting the charge through to conclusion.

55. Likewise, in circumstances where the various other retail entities (primarily filling stations) had made criminal complaints to An Garda Síochána and had their evidence accepted in the District Court, but those witnesses did not show up in the Circuit Court, (perhaps due to the weather or because the plaintiff had belatedly settled the amounts owing) in my view there was reasonable or probable cause for each of the proceedings based on the complaints made. Insofar as I am wrong in that regard, I am quite satisfied on the basis of Sergeant Geary's evidence, which I prefer to that of the plaintiff, that these proceedings were not instituted maliciously and that neither the DPP nor An Garda Síochána participated in the proceedings maliciously.

***Arrests for breach of bail terms and Conviction for failures to show up in court***

56. I am likewise satisfied on the basis of Sergeant Geary's evidence that warrants for arrest stemming from the various breaches of bail bonds were again *bona fide* and validly obtained on the basis of reasonable and probable cause. The Gardaí did not act maliciously in that regard; the plaintiff repeatedly acted in clear disregard of those conditions.

57. As regards the prosecution of the plaintiff for non-appearance in court in June and July 2011, I accept Sergeant Geary's evidence that these charges arose from the plaintiff's failure to show up in court when there was a reasonable basis for the view that the plaintiff chose not to appear in court on invalid pretexts. I accept Sergeant Geary's evidence that he had to contact the plaintiff when he did not show up at the court hearings and that the plaintiff offered what Sergeant Geary regarded as spurious reasons for non-attendance (such as the plaintiff's need to be at "top secret but very important business meetings"). Sergeant Geary's case in that regard was accepted by the District Court. I accept Sergeant Geary's evidence that the Circuit Court judge when hearing of the fact that Sergeant Geary had made contact with the plaintiff over his non-appearances and the plaintiff sought to offer an excuse for same, said that she was prepared to give the plaintiff the benefit of the doubt. This is very far from a case of the Gardai admitting that they had falsely arrested, convicted and imprisoned the plaintiff as contended for by the plaintiff in his case before me. I am satisfied that these prosecutions were based on reasonable or probable cause and were not instituted or prosecuted maliciously. No case in malicious prosecution is made out on these matters either.



### ***Time spent in custody***

58. The plaintiff says that he served some 175 days in custody (he put the figure at 164 days in another place in his papers). The Gardaí contended he had spent 105 days in custody. Either way, I am satisfied on the basis of Sergeant Geary's evidence that the time spent in custody was on foot of lawfully issued court warrants or orders. Accordingly, the period spent by the plaintiff in custody had a lawful and proper basis as resulting from orders made on a proper basis by the District Court.

59. The plaintiff contended that the courts which issued arrest warrants did so based on Sergeant Geary's "lies" and that Sergeant Geary maliciously sought to ensure that the surety conditions could not be met. Again, I fully reject that contention which is based on a wholly unfair and vexatious allegation against Sergeant Geary, whose integrity and honesty in the witness box impressed me greatly. I am quite satisfied that there is no basis for the allegations of false arrest.

### **Other allegations**

60. For completeness, I note that part of the plaintiff's case is that the Gardaí maliciously contacted the IDA which resulted in the loss of a significant business opportunity involving a multi-million euro call centre business which the plaintiff was seeking to set up in Ireland. I am quite satisfied from Sergeant Geary's evidence that no such malicious calls were made by the Gardaí to the IDA and that this allegation is rooted in the plaintiff's distorted, conspiracy-theory fuelled view of the events underlying the criminal proceedings legitimately brought against him.

### **Claims against DPP and other defendants**

61. Insofar as the DPP was joined in these proceedings and the subject of the allegations of malicious prosecution, no evidence of malicious prosecution by or on behalf of the DPP was adduced and no such case against the DPP is made out.

62. Likewise, I am quite satisfied on the evidence that no case in conspiracy or wrongdoing is made out against the other defendants.

## **Impact on Sergeant Geary**

63. Sergeant Geary gave evidence, which I accept, that he devoted an enormous amount of time to the plaintiff and received a huge number of communications from him including some 479 emails from the plaintiff from the period 2011 to 2013, the vast majority of those being sent in 2011. It is clear that Sergeant Geary had to devote considerable time and energy to his dealings with the plaintiff over the years not just on the criminal investigations arising out of the plaintiff's conduct, but in dealing with the plaintiff's constant contact and in dealing with the groundless complaints made by the plaintiff about Sergeant Geary to Sergeant Geary's superiors and to GSOC.

64. Sergeant Geary gave cogent evidence as to the detrimental effect which all of his dealings with the plaintiff had on him personally. As he explained it, he found it extremely stressful (as one can readily understand) to be the subject of constant communications from the plaintiff, and to have been the subject of a series of different investigations, including by an Assistant Commissioner, into his actions in relation to the plaintiff's various proceedings, when Sergeant Geary believed that he had at all times conducted himself with professionalism, integrity and courtesy, a position clearly vindicated by the findings of the O Cualáin report. One can only have sympathy for what Sergeant Geary has had to endure over many years in the face of the plaintiff's vexatious allegations against him.

## **Conclusion**

65. For the reasons set out in this judgment, I dismiss the plaintiff's claims in their entirety. No basis whatsoever has been made out for the very serious allegations of criminal conspiracy, false arrests and malicious prosecution which he has freely thrown about in these proceedings. The plaintiff has improperly sought to re-litigate in these proceedings matters which have been dealt with properly, fairly and exhaustively through the criminal process, including to appeal, and which have been the subject of complaints to a wide variety of bodies including GSOC and the IRM, all of which were rejected. These proceedings should never have been brought. They are a monument to the waste of time and resources inherent in vexatious proceedings; they have occupied a considerable amount of High Court time, the time of publicly-funded State lawyers and the time of Gardaí whose energies have needlessly been diverted away from matters more genuinely deserving of their attention in the public interest.