



[2024] IEHC 728

THE HIGH COURT
PLANNING & ENVIRONMENT

[H.JR.2024.0000588]

IN THE MATTER OF

ARTICLE 6, 15.2.1°, 15.2.2°, 35, 34, 38, 40.3.1°, 40.4.1°, 40.5, 40.6.1°, 45.1,
45.2(I), 45.2(II), 45.2(III), 45.2(IV), 45.4(1), 45.4(2) AND SECTION 10 AND SECTION
20 OF THE PLANNING AND DEVELOPMENT ACT 2000 AND
S.I. NO. 376/2023 - PLANNING AND DEVELOPMENT (EXEMPTED DEVELOPMENT) (NO. 4)
REGULATIONS 2023

BETWEEN

PATRICK MCGREAL

APPLICANT

AND

THE MINISTER FOR HOUSING, LOCAL GOVERNMENT AND HERITAGE OF IRELAND
RESPONDENT

(II)
(No. 2)

JUDGMENT of Humphreys J. delivered on Friday the 20th day of December 2024

1. The applicant seeks an exemption from stamp duty to file a notice of motion seeking to set aside my previous judgment in these proceedings, on the basis that his motion deals with liberty and thus attracts the exemption related to Article 40.4 of the Constitution. The question is whether the exemption applies.

2. The applicant, a litigant in person, has brought a number of previous applications, which have an almost unblemished record of failure insofar as they have been determined:

- (i) An application by way of appeal from a decision of the Information Commissioner was dismissed by Owens J. *ex tempore* on 23rd January 2024 in proceedings 2023/95 MCA.
- (ii) An appeal from that decision was dismissed by the Court of Appeal: *McGreal v. Office of the Information Commissioner* [2024] IECA 208 (Unreported, Court of Appeal, Noonan J., 31st July 2024).
- (iii) An application in proceedings numbered 2024 No. 971 JR for an injunction seeking to restrain the use of those accommodation facilities was refused by Holland J.: *McGreal v. Minister for Housing* [2024] IEHC 520 (Unreported, High Court, 31st July 2024) (which I will refer to as *McGreal I*).
- (iv) Those proceedings were later withdrawn by the applicant.
- (v) In these proceedings (*McGreal II*) the applicant was granted leave to seek judicial review by Hyland J. On application by the State that was discharged: *McGreal v. Minister for Housing Local Government and Heritage* [2024] IEHC 690 (Unreported, High Court, 6th December 2024).
- (vi) We can add the present application to the list for reasons explained below.

3. The fact that he has previous unsuccessful applications doesn't mean his next one is going to be unsuccessful, but at the same time one can see common strands which may explain the consistent negative outcomes. Noonan J. for example refers at para. 15 to "a large number of grounds which, on their face, appear to bear no relationship to the issues that were agitated in the High Court", to the fact that "it is very difficult to understand what point is being made" and the inclusion of "various serious allegations". At para. 16 he refers to "a number of scurrilous allegations". These elements have continued unfortunately.

4. In the early 1970s, the Chinese Prime Minister Zhou Enlai is supposed to have said of the effects of the French Revolution of 1789 that it was "too early to say". That may be a slightly apocryphal quotation, but something similar perhaps applies to the Reformation of 1517 onwards. That movement sparked a new figure in European history, the man who takes up the Bible himself in his own language and interprets it without the need for institutional guidance. Recent decades have given rise to a less wholesome jurisprudential heir to Reformation man, the idiosyncratic pseudolegal autodidact. This man typically takes up the Constitution himself and asserts his own interpretation unharnessed from the rulings of courts. In one sense that is harmless enough. The problem is when he tries such legal nonsense out on others, sometimes even seeking money in doing so, ventilates such nonsense in court and then expresses surprise that judges don't share such bogus theories. The psychic tension thereby created for the sufferer is generally relieved by

attributing base motives to those who disagree. Obviously it can't be down to the given applicant being wrong. Hence to an extent, claims of conspiracy, corruption, treason, fraud, perjury, crime, perversion of justice and so forth are an indispensable psychological crutch for the person who goes down the pseudolegal route. As in all such scenarios (Doomsday cults are similar, as are some forms of positive thinking which blames one for not believing enough), there is always a reason why the magic sauce doesn't work.

5. There seems to be almost no end to the lengths some people will go to in order to avoid confronting the fact that their approach isn't succeeding. The difference between religion and law in this regard is that religion is voluntary but the law claims a right of compulsion over all persons subject to its jurisdiction. You are entitled to your own views but not to your own private legal system. The application of law on the citizen (and others within the jurisdiction) is mandatory, not a matter of contract, and is applied in accordance with interpretations laid down by courts, not individual actors. It applies compulsorily irrespective of whether any given person considers themselves bound by it or has some different theory in their head which, in their view, clearly flawed State actors in the real world are inexplicably failing to agree with.

6. All of that is general comment about phenomena in the legal system rather than specific to this applicant. Insofar as concerns him particularly, the problem is that his own interpretations of law are not automatically correct. Correctness must be judged by the only standard that matters, whether the argument is one that is accepted by a court. That doesn't make all of his points bad ones of course. But the present application is doomed by two pseudo-legal misconceptions:

- (i) There is no cheat sheet to circumvent the legal system. Using magic words or adding "Article 40.4" to the top of the page doesn't turn a motion into an application under that provision if it would not otherwise be so.
- (ii) Words in law are interpreted in line with judicial decisions, not an applicant's personal beliefs. The reference in the fees order to proceedings under Article 40.4 does not include judicial review at all and in particular does not include generalised complaints about liberty in the abstract. It is about applications made substantively under that provision of the Constitution seeking release from physical detention and quasi-detention.

Facts

7. As noted in the No. 1 judgment in this case, there are no specific facts related to any specific development involved in the challenge. The point made is a general and abstract one.

Procedural history

8. By *ex parte* docket dated variously 29th and 30th April 2024, with the record number of the present proceedings, the applicant sought a number of reliefs against the respondent, including injunctive relief, declaratory relief, and relief by way of prohibition, to prevent the provision of accommodation to displaced persons and persons seeking international protection in the State.

9. The actual date was presumably 30th April 2024 because the record number was assigned on that date when a statement of grounds was filed.

10. Whatever about seeking an injunction in the *ex parte* docket, there was no basis to seek prohibition or declarations because those would be for a substantive hearing of a judicial review. The *ex parte* docket should have sought leave to seek those reliefs.

11. The applicant's *ex parte* application came on for hearing before Hyland J. on 30th April 2024 whereupon Hyland J. declined to grant the applicant the reliefs being sought, noted that no application for leave to apply for judicial review had been made, and adjourned the matter for mention to 17th June 2024, when an application for leave to seek judicial review could be brought.

12. On 17th June 2024, the applicant applied *ex parte* for leave to apply for judicial review seeking the following reliefs:

"(1) Injunction - prevent the use of S.I. No. 376/2023 - Planning and Development (Exempted Development) (No 4) Regulations 2023.

(2) Injunction - prevent the movement of displaced persons or persons seeking international protection throughout the state into accommodation that is not within the scope of the provisions of the Planning and Development Act 2000.

(3) Injunction - prevent the movement of displaced persons or persons seeking international protection throughout the state into accommodation that is not within the scope of the provisions of the Constitution of Ireland.

(4) Prohibition - prevent action being taken to accommodate any displaced persons or persons seeking international protection outside the provisions of the Planning and Development Act 2000.

(5) Prohibition - prevent action being taken to accommodate any displaced persons or persons seeking international protection outside the provisions of the Constitution of Ireland.

(6) Declaration - A declaration that any action being taken to accommodate any displaced persons or persons seeking international protection must adhere to the provisions of the Planning and Development Act 2000.

(7) Declaration - A declaration that any action being taken to accommodate any displaced persons or persons seeking international protection must adhere to the provisions of the Constitution of Ireland."

13. On 17th June 2024, Hyland J. granted the applicant leave to apply for judicial review for all of the reliefs on the grounds set out in the applicant's statement required to ground his application for judicial review dated 29th April 2024.

14. The respondent was served with the applicant's judicial review papers on 19th June 2024.

15. The substantive notice of motion was filed on 25th June 2024.

16. On 24th October 2024, the respondent filed a notice of motion seeking to set aside leave, grounded on the affidavit of an official of the Department of Housing, Local Government and Heritage.

17. The applicant replied by affidavit filed on 11th November 2024.

18. The State's motion was heard on 2nd December 2024, when judgment was reserved. Judgment was delivered on 6th December 2024 setting aside leave with no order as to costs.

19. On 16th December 2024 the applicant applied, *ex parte*, for an order allowing him to file a motion without paying stamp duty. Counsel for the State happened to be in court that day and remained available until the matter was called. I heard the parties briefly and reserved judgment subject to brief further written comments.

20. The applicant delivered a 175-page submission on 18th December 2024, and requested a further hearing on the following day. The registrar replied saying that while a further hearing is not ruled out it had not been envisaged. He also requested the State to clarify if and when they might be in a position to contribute.

21. On the same date the CSSO wrote as follows:

"Please be advised that we are of the view that the requirement to pay court fees is a matter for the court and the Minister does not take a formal position in respect of this application. However, the Minister wishes to note as follows:

- The requirement to pay court fees in respect of applications is provided for in the Supreme Court, Court of Appeal and High Court (Fees) Order 2014 (S.I. No. 492 of 2014). Those Regulations specify the court fees payable for various items. Regulation 5 states that:

'5. No fee shall be payable under this Order in connection with—[...]'

- The Minister understands that the motion that you intend to issue, to which the application to dispense with the requirement to pay court fees relates, seeks to set aside the judgment and Order of Humphreys J of 06 December 2024 in the proceedings bearing the record number 2024/588 JR. The Minister reserves its position in respect of any such application that may be made to the court.

- The judgment and Order of Humphreys J of 06 December 2024 do not engage Article 40.4 of the Constitution or the deprivation of liberty"

22. In those circumstances there was no necessity or even basis for a further hearing as sought by the applicant and the registrar informed the parties on my behalf that a ruling would follow as soon as possible.

Relief sought in proposed motion

23. The reliefs sought in the proposed notice of motion are as follows:

"NOTICE OF MOTION

TAKE NOTICE that on the day of 2024, at o'clock in the forenoon or at the earliest available opportunity thereafter, Counsel on behalf of the Respondent herein will apply to this Honourable Court sitting at the Four Courts, Inns Quay, Dublin 7 for the following:

1. Reliefs;

(i) An order quashing the High Court's decision of December 6, 2024, pursuant to the inherent jurisdiction of the Court, on the basis that the order was issued in reliance on a motion by the Respondent that was ultra vires, unconstitutional, and procedurally defective.

(ii) A declaration that the Respondent's motion to set aside the Applicant's leave to seek judicial review was brought in contravention of the Minister's statutory and constitutional limits of authority.

(iii) A declaration that the Respondent's actions breached the Applicant's constitutional rights under Articles 40.1, 40.2, 40.3, and 40.4.1° of the Constitution of Ireland.

(iv) Such further and other reliefs as this Honourable Court deems just and equitable.

(v) An order for the costs of this motion."

24. One assumes that the reference to the application being made by counsel for the respondent is merely a copy-and-paste error, possibly from the State's motion against the applicant.

Grounds of the motion

25. While a notice of motion doesn't normally need to set out grounds, the applicant has, helpfully, provided his grounds in the proposed motion:

"GROUNDS FOR RELIEF

The Minister Lacked Statutory Authority to Invoke Inherent Jurisdiction

2. The Minister Lacked Statutory Authority to Invoke Inherent Jurisdiction

The principle of statutory authority, as outlined in the Ministers and Secretaries Act 1924, establishes that each Minister is a corporation sole whose powers are strictly limited to those explicitly conferred by statute, the Constitution, or delegated authority from the Executive Council. This legal framework precludes Ministers from acting beyond their designated administrative and statutory functions. Consequently, the Minister for Housing, Local Government, and Heritage lacks the legal capacity to invoke the inherent jurisdiction of the High Court, a principle uniquely reserved for the judiciary and accessible to private citizens seeking constitutional redress.

Key Supporting Points:

Corporation Sole with Limited Statutory Authority

3. Section 2(1) of the Ministers and Secretaries Act 1924 defines a Minister as a corporate entity empowered solely to perform functions tied to their specific Department. This statutory construct limits the Minister's powers to administrative and legislative tasks outlined within the enabling statutes. The concept of inherent jurisdiction, as a judicial principle, does not fall within the scope of powers conferred upon the Minister.

4. Inherent jurisdiction is an exclusive attribute of the courts, used to address procedural gaps, ensure fairness, and protect the integrity of judicial processes.

5. A Minister, as an executive actor, has no statutory or constitutional basis to request or exercise such judicial powers.

Citizens Can Invoke Inherent Jurisdiction; Ministers Cannot

6. While citizens, as natural persons, are entitled to invoke the inherent jurisdiction of the High Court to vindicate their constitutional rights, Ministers, as corporations sole, are constrained by their statutory remit.

7. Citizens can appeal to the courts' inherent jurisdiction because it is rooted in ensuring justice and protecting individual rights under Articles 40.1–40.4 of the Constitution.

8. Ministers, on the other hand, lack standing to invoke inherent jurisdiction because they are bound by the administrative and statutory framework governing their office. Allowing a Minister to invoke inherent jurisdiction would amount to an unconstitutional encroachment on judicial functions.

Absence of Explicit Statutory Authority

9. The Minister's application to invoke inherent jurisdiction assumes a power that is neither explicitly nor implicitly granted by the Planning and Development Act 2000 or any other enabling legislation.

10. Inherent jurisdiction is not transferable to executive entities, including statutory corporations such as Ministers.

11. Without explicit legislative authorization, the Minister's action constitutes an ultra vires overreach.

Judicial Nature of Inherent Jurisdiction

12. The inherent jurisdiction of the High Court is fundamental to its constitutional function, enabling it to:

(i) Protect judicial processes.

(ii) Ensure fairness in the administration of justice.

(iii) Safeguard individual constitutional rights where statutory remedies are inadequate.

13. This jurisdiction is judicial in nature and governed by Article 34 of the Constitution, which vests these powers exclusively in the courts.

14. The executive branch, represented by the Minister, cannot lawfully claim or invoke this judicial authority.

15. Allowing a Minister to do so would blur the separation of powers and undermine judicial independence.

Infringement on the Separation of Powers

16. Article 6 of the Constitution delineates clear boundaries between the legislative, executive, and judicial branches of government.

17. The Minister's attempt to invoke inherent jurisdiction infringes on the judiciary's exclusive domain, creating an unconstitutional overlap of functions.

18. Ministers are tasked with administrative and legislative functions, not with judicial powers such as inherent jurisdiction.

Lack of Legislative or Executive Council Authorization

19. Section 5 of the Ministers and Secretaries Act 1924 emphasizes the collective responsibility of the Executive Council.

20. The Minister's unilateral application lacked delegation of powers or explicit approval from the Executive Council.

21. This failure to secure collective authorization further underscores the ultra vires nature of the application, rendering it procedurally and substantively defective.

Summary:

22. The Minister for Housing, Local Government, and Heritage acted beyond their statutory and constitutional authority by attempting to invoke the inherent jurisdiction of the High Court. This jurisdiction is an integral judicial safeguard, available to citizens seeking justice, but entirely incompatible with the statutory and constitutional limits governing a Minister's office. The Minister's actions violated the principle of separation of powers, encroached upon judicial functions, and failed to adhere to the statutory framework required under the Ministers and Secretaries Act 1924.

23. Accordingly:

(i) The Minister's application was ultra vires.

(ii) Any High Court order predicated on such an application must be deemed invalid to uphold constitutional governance and judicial independence.

Breach of the Separation of Powers

24. The actions of the Minister for Housing, Local Government, and Heritage represent a clear infringement upon the judiciary's exclusive domain, violating the constitutional principle of separation of powers enshrined in Article 6 of the Irish Constitution. This principle ensures that the legislative, executive, and judicial branches operate independently, preventing one branch from overstepping its bounds and encroaching on the functions of another. By attempting to invoke inherent jurisdiction—a power reserved exclusively for the judiciary—the Minister has disrupted this balance, rendering the High Court's reliance on the Minister's motion unconstitutional.

Key Supporting Points:

Constitutional Foundation of Separation of Powers

25. Article 6 establishes a framework for the separation of powers, dividing the governance of the State among the legislative, executive, and judicial branches. Each branch is bound by its constitutional remit, with clear boundaries to ensure independence and accountability.

26. The judiciary, as the guardian of constitutional justice, is entrusted with exclusive authority over the interpretation and application of laws under Article 34. By seeking to invoke inherent jurisdiction, the Minister has trespassed on this judicial authority, thereby breaching the separation of powers.

Judiciary's Exclusive Domain

27. Inherent jurisdiction is a principle of judicial power, allowing courts to safeguard their own processes, ensure fairness, and uphold the rule of law. It is not a power that can be claimed or exercised by the executive branch, which is limited to statutory and constitutional functions.

28. By attempting to invoke inherent jurisdiction to influence judicial decisions, the Minister has engaged in an unconstitutional encroachment on the judiciary's exclusive domain. This undermines the independence of the judiciary, which is a cornerstone of the separation of powers.

Violation of Article 15 and Judicial Independence

29. Under Article 15, the legislative power is exclusively vested in the Oireachtas, while the executive branch is confined to implementing and enforcing laws. The Minister's action in this case blurs the lines between executive and judicial functions, violating the clear constitutional mandate of separation.

30. Judicial independence, as enshrined in Article 35.2, ensures that the judiciary remains impartial and free from interference by other branches of government. The Minister's actions amount to an attempt to indirectly direct or influence the High Court, which contravenes the constitutional guarantee of judicial independence.

Ministerial Overreach and Unconstitutional Blurring of Roles

31. The Minister's motion to overturn a High Court order through inherent jurisdiction constitutes an overreach of executive authority. Ministers are empowered to act within their statutory and constitutional limits, not to challenge or influence judicial processes reserved exclusively for the courts.

32. This action undermines the balance of powers by suggesting that the executive can interfere with or bypass judicial processes. Such interference violates the core tenet of separation, which ensures that no branch can dominate or unduly influence another.

Judiciary's Role as a Check on Executive Power

33. The Constitution entrusts the judiciary with the responsibility to act as a check on executive overreach, ensuring that all actions comply with constitutional principles. The High Court's reliance on the Minister's motion erodes this protective function, as it allows the executive branch to interfere with judicial autonomy.

34. Allowing the Minister's motion to stand sets a dangerous precedent, suggesting that the executive can bypass established judicial processes by invoking powers it does not constitutionally possess.

Public Confidence in the Rule of Law

35. The separation of powers is fundamental to maintaining public trust in the rule of law and the impartiality of the judiciary. When executive overreach disrupts this balance, it undermines confidence in the judiciary's ability to act independently.

36. The High Court's reliance on the Minister's motion risks eroding public confidence by creating the appearance of undue executive influence on judicial processes. This not only weakens the judiciary's role but also damages the integrity of Ireland's constitutional framework.

Summary

37. The Minister's actions constitute a direct violation of the separation of powers by infringing upon the judiciary's exclusive authority to exercise inherent jurisdiction. This interference undermines the constitutional independence of the judiciary and disrupts the delicate balance between the executive and judicial branches. Consequently, the High Court's reliance on the Minister's motion is unconstitutional, as it facilitates an encroachment on judicial autonomy and compromises the foundational principles of Article 6 of the Constitution. To uphold the rule of law and protect the integrity of Ireland's constitutional framework, the resulting High Court order must be deemed invalid.

The Minister Acted Without Collective Executive Authorization

38. The actions of the Minister for Housing, Local Government, and Heritage in bringing a motion to invoke the inherent jurisdiction of the High Court were undertaken without the requisite authorization from the Executive Council (the Government). Under Section 5 of the Ministers and Secretaries Act 1924, Ministers are bound by the principle of collective responsibility and must act within the authority delegated to them as agents of the Executive Council. The absence of explicit authorization or delegation of such authority renders the Minister's motion procedurally and constitutionally defective.

Key Supporting Points

Principle of Collective Responsibility

39. Section 5 of the Ministers and Secretaries Act 1924 establishes the principle of collective responsibility, requiring Ministers to act as agents of the Executive Council rather than in their personal or unilateral capacity. This principle ensures that the actions of individual Ministers reflect the collective decision-making process of the Government.

40. In the context of this case, the Minister's motion to invoke the inherent jurisdiction of the High Court represents a significant legal and constitutional action. Such a motion would require prior collective approval or explicit delegation from the Executive Council to align with the principles of government accountability and unity of purpose.

Minister's Lack of Independent Legal Authority

41. As a statutory corporation sole, the Minister's powers are limited to those explicitly conferred by legislation or delegated by the Executive Council. The authority to invoke inherent jurisdiction does not fall within the Minister's statutory functions under the Ministers and Secretaries Act 1924 or any enabling legislation.

42. By acting independently of the Executive Council and without proper delegation of authority, the Minister exceeded their statutory remit. This undermines the principle that individual Ministers must act as representatives of the collective executive, not as autonomous actors.

Failure to Secure Explicit Sanction

43. No evidence has been provided to demonstrate that the Minister obtained the explicit sanction of the Executive Council to initiate the motion. Without such sanction, the Minister's actions lack the necessary legal and constitutional basis, making the High Court's reliance on the motion procedurally invalid.

44. Article 28.4.2° of the Constitution reinforces the requirement that government actions must be carried out in a manner consistent with collective responsibility. Any unilateral actions by a Minister that fall outside the scope of their statutory duties violate this constitutional principle.

Violation of the Principle of Accountability

45. The principle of collective responsibility ensures that the Government, as a collective entity, is accountable to the Oireachtas and, by extension, the people. When individual Ministers act independently of this framework, it undermines the transparency and accountability central to democratic governance.

46. In this case, the Minister's unsanctioned motion creates a lack of accountability, as it bypasses the scrutiny and approval mechanisms inherent in collective decision-making. Implications of Ministerial Overreach

47. Allowing a Minister to independently invoke judicial powers outside their statutory or delegated authority sets a dangerous precedent. It disrupts the balance between the executive and judicial branches and weakens the principle of collective accountability that underpins responsible government.

48. This overreach also raises concerns about potential abuse of executive powers. By circumventing the collective decision-making process, the Minister's actions risk eroding public trust in the integrity of governmental operations.

Procedural Defect in the High Court Motion

49. The High Court's reliance on the Minister's motion amplifies this procedural defect. Without proof of collective authorization or proper delegation, the motion itself is procedurally invalid, and any order granted on its basis lacks legitimacy.

Summary

50. The Minister's motion to invoke the inherent jurisdiction of the High Court was brought without explicit authorization or delegation from the Executive Council, violating the principle of collective responsibility established under Section 5 of the Ministers and Secretaries Act 1924. This failure renders the motion procedurally defective and constitutionally invalid. By acting outside the bounds of their authority, the Minister has disrupted the balance of executive accountability, undermining the integrity of collective governance. Consequently, the High Court's reliance on the motion is fundamentally flawed and must be deemed *ultra vires*.

Lack of Attorney General's Fiat for Judicial Actions

51. The Minister for Housing, Local Government, and Heritage acted without securing the Attorney General's fiat, as required under Section 2(1) of the Ministers and Secretaries Act 1924, to initiate or proceed with legal actions in the name of the State. This procedural defect highlights a critical oversight, rendering the Minister's application to overturn the High Court's order procedurally invalid and *ultra vires*.

Key Supporting Points

Role of the Attorney General as Legal Adviser to the Government

52. The Attorney General serves as the chief legal adviser to the Government and represents the State in legal matters, as outlined in Section 2(1) of the Ministers and Secretaries Act 1924. This includes overseeing legal proceedings involving Ministers acting in their official capacities.

53. The Attorney General's fiat is required to ensure that legal actions initiated by Ministers are consistent with the broader legal and constitutional obligations of the State and are not undertaken unilaterally without proper legal oversight.

The Minister's Limited Authority for Judicial Actions

54. As a corporation sole under the Ministers and Secretaries Act 1924, the Minister for Housing, Local Government, and Heritage operates within a statutorily defined scope of powers. These powers do not extend to initiating independent legal actions without the explicit sanction of the Attorney General.

55. By failing to secure the Attorney General's fiat, the Minister acted beyond the limits of their authority, violating the procedural safeguards established to prevent unauthorized or uncoordinated legal actions on behalf of the State.

Procedural Requirement for the Attorney General's Fiat

56. Section 2(1) of the Ministers and Secretaries Act 1924 mandates that the Attorney General's authorization is required when Ministers initiate or are involved in legal actions in their official capacities. This requirement ensures consistency, legality, and alignment with the Government's collective position in judicial matters.

57. The absence of evidence that the Attorney General approved the Minister's motion to overturn the High Court's order creates a procedural defect that undermines the legal foundation of the application.

Impact on the Validity of the Minister's Motion

58. The Attorney General's fiat is a procedural precondition for Ministers initiating judicial actions. Without it, the motion lacks legal standing and is fundamentally defective.

59. The absence of the Attorney General's sanction means that the High Court should not have entertained the Minister's application, as it was not properly authorized in accordance with statutory and constitutional requirements.

Undermining the Principle of Collective Responsibility

60. The requirement for the Attorney General's fiat ensures that legal actions by individual Ministers are consistent with the collective decision-making framework of the Executive Council. By bypassing this procedural step, the Minister's motion disregarded the principle of collective responsibility and created the appearance of unilateral action outside the bounds of statutory authority.

Implications of Procedural Noncompliance

61. Failing to obtain the Attorney General's fiat compromises the procedural integrity of the Minister's motion and undermines public confidence in the legitimacy of government actions.

62. This oversight sets a dangerous precedent where Ministers could act independently in judicial matters without proper legal oversight, disrupting the balance of powers and accountability mechanisms established by the Constitution and statutory law.

Summary

63. The absence of the Attorney General's fiat for the Minister's motion to overturn the High Court's order constitutes a critical procedural defect under Section 2(1) of the Ministers and Secretaries Act 1924. The fiat serves as an essential safeguard to ensure that judicial actions initiated by Ministers align with the collective authority of the Government and adhere to statutory and constitutional principles. Without the required fiat, the Minister's application is procedurally invalid and ultra vires, and any order granted by the High Court on the basis of this defective motion lacks legal validity.

Ministers' Powers Are Limited to Administrative and Statutory Functions

64. The Ministers and Secretaries Act 1924 delineates the specific powers and duties of Ministers, confining their roles to administrative functions tied to their respective departments and powers explicitly granted by statutory or constitutional law. The Minister for Housing, Local Government, and Heritage's attempt to overturn a judicial order by invoking the inherent jurisdiction of the High Court falls well outside these defined functions, rendering their actions ultra vires.

Key Supporting Points

Statutory Basis of Ministerial Powers

65. The Ministers and Secretaries Act 1924 establishes Ministers as corporations sole, granting them powers exclusively tied to the administration and oversight of their assigned governmental departments.

66. Section 1(iv) outlines that the Department of Local Government (now the Department of Housing, Local Government, and Heritage) is responsible for planning, housing, and public administration functions. These powers are administrative in nature and do not include interfering with judicial decisions or invoking inherent judicial powers.

Judicial Functions Fall Outside Ministerial Remit

67. The inherent jurisdiction of the courts is a judicial power designed to regulate court processes, address procedural fairness, and uphold justice. This jurisdiction is exclusively vested in the judiciary and cannot be appropriated by executive actors, including Ministers.

68. Ministers are not empowered to participate in or direct judicial processes unless explicitly authorized by primary legislation or through representation by the Attorney General.

Administrative and Departmental Focus of Ministerial Roles

69. The Minister for Housing, Local Government, and Heritage's statutory remit pertains to housing policy, planning regulations, and local government administration. These duties do not include challenging court orders or invoking legal doctrines outside the framework of statutory law.

70. Decisions regarding judicial orders fall squarely within the independent purview of the judiciary, and any interference by a Minister undermines the constitutional separation of powers.

No Statutory Authority to Invoke Inherent Jurisdiction

71. The Planning and Development Act 2000, under which the Minister derives their powers to make regulations (such as S.I. No. 376/2023), does not confer authority to interfere with judicial orders or invoke inherent jurisdiction.

72. The lack of statutory or constitutional provisions allowing such actions reinforces the Minister's overreach in this matter.

Violation of the Separation of Powers

73. By attempting to invoke inherent jurisdiction, the Minister intrudes into the exclusive domain of the judiciary, breaching the separation of powers principle under Article 6 of the Constitution. This principle ensures that judicial, legislative, and executive branches operate independently, with each confined to its respective constitutional role.

74. Ministers are constitutionally restricted to administrative and executive functions and cannot exercise judicial powers.

Implications of Ministerial Overreach

75. Allowing a Minister to unilaterally interfere in judicial processes sets a dangerous precedent, eroding public confidence in the separation of powers and the independence of the judiciary.

76. Such overreach circumvents established legal safeguards, opening the door to unchecked executive interference in matters of judicial discretion.

Summary

77. The Ministers and Secretaries Act 1924 confines the Minister for Housing, Local Government, and Heritage's powers to administrative and statutory functions. Attempting to overturn a judicial order by invoking the inherent jurisdiction of the High Court represents a clear departure from these legally defined duties. Judicial powers are constitutionally vested in the courts, and any action by a Minister in this domain constitutes ultra vires interference in the judicial branch. The High Court's reliance on the Minister's application was fundamentally flawed, as it was based on an action exceeding the Minister's statutory and constitutional authority.

Procedural Impropriety in the High Court's Acceptance of the Minister's Motion

78. The High Court's decision to grant relief to the Minister for Housing, Local Government, and Heritage was procedurally flawed, as the motion upon which it was based lacked a solid statutory or procedural foundation. The granting of relief under such circumstances represents a serious procedural impropriety, undermining the integrity of the judicial process and the validity of the resulting order. This defect compels the court to exercise its inherent jurisdiction to quash the order.

Key Supporting Points

Absence of Statutory Basis for the Minister's Motion

79. The motion relied upon by the Minister failed to identify any specific statutory provision or legal framework empowering the Minister to invoke the inherent jurisdiction of the court.

80. Section 2 of the Ministers and Secretaries Act 1924 limits the powers of Ministers to those explicitly granted by law. The Minister's motion exceeded this statutory authority, rendering the procedural foundation of the motion legally unsound.

Improper Invocation of the Court's Inherent Jurisdiction

81. The inherent jurisdiction of the High Court exists to ensure procedural fairness and administer justice, but it cannot be invoked by parties who lack standing or statutory authority to do so.

82. By accepting a motion that improperly invoked inherent jurisdiction, the High Court acted outside the scope of its procedural safeguards, undermining the legitimacy of its decision.

Failure to Meet Procedural Requirements for Judicial Motions

83. The Rules of the Superior Courts (RSC) set out specific procedural requirements for motions seeking judicial relief, including:

- (i) Clear articulation of the legal grounds for the motion.
- (ii) Proper notice to affected parties.
- (iii) Compliance with jurisdictional limits.

84. The Minister's motion failed to satisfy these requirements by:

- (i) Omitting clear statutory or legal grounds for invoking inherent jurisdiction.
- (ii) Failing to provide sufficient procedural evidence to justify the relief sought.
- (iii) Overstepping the Minister's jurisdictional authority as a corporation sole.

Improper Basis for Relief

85. Relief granted by the court must be based on motions that comply with procedural rules and legal principles. In this case:

- (i) The Minister's motion was procedurally defective, lacking legal standing or statutory authorization.
- (ii) The absence of these prerequisites undermines the legitimacy of the relief granted.

Breach of Judicial Duty to Ensure Proper Procedural Compliance

86. Courts have an inherent duty to ensure that motions comply with procedural and legal requirements before granting relief. In this case:

(i) The High Court failed to adequately scrutinize the procedural validity of the Minister's motion.

(ii) By granting relief without ensuring compliance, the court compromised the integrity of its decision-making process.

Impact on the Rule of Law

87. The granting of judicial relief on the basis of a procedurally improper motion undermines the rule of law, as it creates a precedent for bypassing established procedural safeguards.

88. This threatens public confidence in the judicial process and the separation of powers, as executive overreach goes unchecked when procedural improprieties are not corrected.

Remedy Through the Court's Inherent Jurisdiction

89. The High Court possesses the inherent jurisdiction to correct procedural errors and quash orders that are procedurally defective or granted on an improper basis.

90. In this case, the court must exercise this jurisdiction to ensure procedural integrity, restore public confidence, and uphold the rule of law.

Summary

91. The High Court's acceptance of the Minister's motion represents a clear procedural impropriety, as the motion lacked a proper legal foundation, failed to comply with procedural rules, and was based on an overreach of the Minister's statutory authority. The resulting order is tainted by this defect and cannot be allowed to stand. To rectify this error and restore the integrity of the judicial process, the High Court must exercise its inherent jurisdiction to quash the order.

Violation of My Constitutional Rights

92. The Minister's actions, compounded by the High Court's acceptance of his motion, have resulted in a direct violation of my constitutional rights under Articles 40.1, 40.2, 40.3, and 40.4 of the Irish Constitution. These Articles are not abstract principles; they are concrete guarantees that safeguard equality, liberty, and due process for all citizens, including myself. The infringement of these rights through the Minister's ultra vires motion and the subsequent judicial error requires urgent redress to uphold the rule of law and protect my rights as a natural person and citizen of Ireland.

Breach of Equality Before the Law (Article 40.1)

93. Article 40.1 of the Constitution guarantees that all citizens are equal before the law. This principle obligates the State, including all its branches, to ensure fairness in how laws are made, enforced, and applied. However, the Minister's unauthorized motion created an imbalance in the legal process. By attempting to invoke inherent jurisdiction—an authority not vested in the executive—the Minister placed himself above the law.

94. This action, coupled with the High Court's acceptance of the motion, violated the principle of equality, as it gave the Minister an undue procedural advantage while compromising my right to a fair and level playing field in court. As a citizen, I am entitled to the same protections under the law as any public authority or officeholder. This breach undermines the integrity of the legal system and my constitutional right to equal treatment.

Violation of My Personal Liberty (Articles 40.3 and 40.4)

95. Article 40.3 obliges the State to respect and vindicate the personal rights of citizens, while Article 40.4.1° guarantees protection against unlawful deprivation of liberty. Although these provisions often apply to physical liberty, they also encompass procedural fairness and freedom from arbitrary interference by the State.

Unlawful Deprivation of Liberty Under Article 40.4.1°

96. Article 40.4.1° provides that no citizen may be deprived of liberty save in accordance with law. While this protection is most commonly understood in the context of physical detention, it also extends to the broader principle of ensuring that personal freedoms, including access to justice, are not infringed arbitrarily or unlawfully. In this case:

(i) **Procedural Liberty Breached:** The Minister's motion, which was outside his statutory remit, deprived me of my procedural liberty—the right to pursue justice under a lawful, fair, and constitutionally compliant process. By acting ultra vires, the Minister unlawfully interfered with my legal pathway to have my rights determined fairly.

(ii) **Judicial Complicity:** The High Court's acceptance of this improper motion effectively endorsed the arbitrary restriction of my procedural liberties, compounding the breach and denying me the constitutional guarantee of due process.

Broader Impact of Procedural Overreach

97. The procedural unfairness caused by the Minister's actions undermined my ability to defend my rights effectively. Article 40.4.1° demands adherence to strict legal safeguards, ensuring that no branch of the State—executive, legislative, or judicial—may act outside the boundaries of its lawful authority. The Minister's unauthorized motion and the High Court's

subsequent reliance on it constitute a direct violation of these safeguards, infringing my liberty to assert and protect my rights.

Denial of Due Process

98. The Constitution guarantees that justice will be administered in a fair, impartial, and lawful manner. This includes ensuring that all parties adhere to their proper roles and legal limits within the judicial process. The Minister's motion, which lacked statutory and procedural legitimacy, subverted this principle. The High Court's acceptance of the motion compounded the harm by denying me the right to have my case heard under conditions that respect the rule of law.

99. Due process is not merely a procedural formality; it is a cornerstone of constitutional justice. The Minister's overreach deprived me of this guarantee, while the High Court's error in granting relief on an improper basis exacerbated the breach. This denial of due process must be addressed to preserve the constitutional rights of all citizens, starting with my own.

Compounding the Breach by the High Court

100. While the Minister's actions initiated the breach of my rights, the High Court's acceptance of his motion compounded it. The judiciary has a constitutional obligation to act as the guardian of individual rights and the arbiter of legal disputes. In this case, the High Court failed to scrutinize the Minister's application for its procedural and statutory legitimacy, allowing an ultra vires motion to undermine my constitutional protections.

101. This failure undermines the judiciary's independence and its role in safeguarding the rights enshrined in the Constitution. As a result, the harm caused by the Minister's overreach was not only unchecked but legitimized by the judicial process, compounding the violation of my rights under Articles 40.1, 40.3, and 40.4.

Broader Public Implications

102. While these violations have a direct and personal impact on my rights as a natural person and citizen of Ireland, they also carry broader implications for the public interest. The Minister's overreach and the High Court's error set a dangerous precedent, signaling that constitutional rights and procedural safeguards can be bypassed when it suits the executive. This undermines public confidence in the rule of law and erodes trust in the judiciary as a defender of constitutional principles.

103. If left unaddressed, these actions risk normalizing executive interference in judicial processes and diminishing the Constitution's ability to protect citizens from arbitrary power. This case is not just about my individual rights; it is about preserving the integrity of the constitutional framework that safeguards the rights of all citizens.

Remedy Required

104. To rectify this violation of my constitutional rights, the High Court must exercise its inherent jurisdiction to quash the order made on the basis of the Minister's ultra vires motion. This is not merely a matter of procedural correction; it is a necessary step to restore my equality before the law, vindicate my personal liberty, and ensure that due process is upheld in accordance with the Constitution.

105. The principles at stake in this case are fundamental to the rule of law and the protection of citizens' rights. By addressing this breach and correcting the error, the High Court will reaffirm its role as the guardian of constitutional justice and restore the balance of power between the executive and judicial branches.

Summary

106. The Minister's overreach and the High Court's reliance on an ultra vires motion have deprived me of my constitutional rights under Articles 40.1, 40.3, and 40.4. These rights are not privileges—they are guarantees that must be upheld to protect the individual and collective integrity of our legal and constitutional order. The specific breach of procedural liberty under Article 40.4.1^o underscores the gravity of this situation, requiring urgent judicial redress.

107. I respectfully request that the High Court quash the order made on December 6, 2024, and take all necessary steps to vindicate my rights as a natural person and citizen of Ireland. By doing so, the Court will restore constitutional integrity, uphold the rule of law, and reaffirm the guarantees that protect all citizens from arbitrary State action.

The judgment of Mr. Justice Clarke in *Friends of the Irish Environment CLG v. Government of Ireland, Ireland and the Attorney General* [2020] IESC 49 strongly affirms my position that the Minister for Housing, Local Government, and Heritage acted outside their statutory authority in seeking to invoke the inherent jurisdiction of the High Court. Justice Clarke's analysis provides clear and binding guidance on the scope of powers available to Ministers, statutory entities, and corporate bodies under Irish law.

Application of Key Principles from *Friends of the Irish Environment CLG*

108. Standing Requires a Direct Interest or Clear Legal Justification

Justice Clarke emphasized that standing to invoke judicial powers, particularly inherent jurisdiction, requires a direct and substantial interest or clear legal authority rooted in statutory or constitutional law. Entities, whether corporate or statutory, must operate within their defined capacity and cannot assume rights or powers beyond their legal remit.

109. In my case, the Minister lacked standing to request the invocation of the High Court's inherent jurisdiction because their authority, as a corporation sole under the Ministers and Secretaries Act 1924, is confined to statutory functions. Justice Clarke's reasoning affirms that such standing cannot be extended beyond what is explicitly permitted by statute or constitutional delegation.

110. Corporate Entities Cannot Act Beyond Their Statutory Scope

In *Friends of the Irish Environment CLG*, Justice Clarke was clear that corporate and statutory bodies are bound by the limits of their enabling instruments. Such entities lack inherent powers and cannot operate as if they are natural persons capable of invoking jurisdiction without a legal basis.

(i) The Minister's actions in my case were ultra vires because the Minister attempted to invoke the inherent jurisdiction of the High Court, a power that lies wholly outside the statutory scope of their office. The Minister, as a statutory corporation sole, cannot exercise inherent powers, as confirmed by Justice Clarke's judgment.

111. The Role of the Attorney General as the State's Legal Representative

Justice Clarke reaffirmed the role of the Attorney General as the primary legal officer of the State. Ministers are not free to act independently in judicial proceedings involving the State's interests. Any such actions must be explicitly authorized by the Attorney General or derive from collective government decision-making.

(i) In my case, the Minister's motion lacked the required fiat of the Attorney General, rendering their actions procedurally defective and without legal foundation. Justice Clarke's judgment aligns with my position that the Minister's unilateral actions violated established legal norms.

112. Judiciary's Duty to Ensure Procedural Regularity

Justice Clarke emphasized the judiciary's responsibility to ensure that only valid applications, made by parties with proper standing and procedural compliance, are entertained. The courts must protect the integrity of their inherent jurisdiction by rejecting motions that lack a legal basis.

(i) The High Court erred in granting relief to the Minister's motion without scrutinizing the procedural and substantive defects in their application. Justice Clarke's judgment highlights that such oversights undermine the principle of judicial integrity and the rule of law.

113. Judicial Oversight and Separation of Powers

Finally, the judgment underscores the judiciary's role in preserving the separation of powers. Attempts by statutory or corporate entities to interfere with judicial processes without proper legal authority represent a breach of constitutional governance.

(i) The Minister's overreach in my case disrupts the balance between the executive and judicial branches, violating Article 6 of the Constitution. Justice Clarke's judgment reinforces the principle that executive actions must remain within the bounds of their statutory and constitutional authority.

Affirmation of My Actions

114. Justice Clarke's judgment in *Friends of the Irish Environment CLG* validates my challenge to the Minister's standing and the High Court's reliance on their ultra vires motion. The judgment provides binding precedent to support the following conclusions:

(i) The Minister's application to invoke the High Court's inherent jurisdiction was procedurally defective and substantively invalid.

(ii) The High Court erred in accepting the motion without scrutinizing its lack of statutory foundation, procedural authorization, or compliance with the Constitution.

(iii) My actions in contesting the Minister's standing and the procedural irregularity of their motion are entirely consistent with the principles of Irish constitutional law.

115. By applying these principles, I reaffirm my position that the High Court must quash its order and reject the Minister's motion as being ultra vires and unconstitutional. Justice Clarke's reasoning provides an authoritative framework for ensuring that the rule of law and the separation of powers are upheld in this matter.

Quorum Non-Compliance and Constitutional Invalidity

Introduction

116. I respectfully submit that the judgment delivered by Humphreys J. on December 6, 2024, is fundamentally flawed due to its incorrect interpretation of quorum requirements under Standing Orders of Dáil Éireann, its misapplication of constitutional principles, and its

failure to address the constitutional invalidity of the resolution upon which Statutory Instrument (S.I.) No. 376/2023 was predicated. This quorum breach directly contravenes Articles 15.11.3°, 15.4.1°, and 15.4.2° of the Constitution, rendering both the resolution and the statutory instrument invalid.

Quorum Requirements under Standing Orders

117. Under Standing Order 22(2) of Dáil Éireann, the presence of a quorum is mandatory for the valid passing of motions, including statutory instruments. Specifically:

(i) If at any stage during a sitting, a quorum is not present, the division bells must ring for three minutes. If a quorum remains absent, the sitting is suspended or adjourned, and no decision shall be considered valid.

118. Further, Standing Order 21(1) and (2) mandates a quorum of 20 members for sittings after 12 PM. These rules apply universally to all motions moved within the Dáil, including resolutions approving statutory instruments under Article 15.2.2°.

119. During the approval of S.I. No. 376/2023, only 7 members were present, far below the required quorum of 20. The resolution was passed in direct violation of Standing Orders, rendering the decision invalid.

Constitutional Breaches Arising from the Lack of Quorum

126. The failure to meet quorum requirements directly violates the Constitution, triggering the following provisions:

Article 15.11.3°: Quorum and Legislative Validity

127. Article 15.11.3° states: 'The number of members necessary to constitute a meeting of either House for the exercise of its powers shall be determined by its standing orders.'

128. The Constitution explicitly links legislative validity to compliance with Standing Orders, including quorum requirements. By failing to meet quorum, the resolution approving S.I. No. 376/2023 was enacted in violation of Article 15.11.3°.

Article 15.4.1°: Prohibition Against Repugnant Laws

129. Article 15.4.1° provides: 'The Oireachtas shall not enact any law which is in any respect repugnant to this Constitution or any provision thereof.'

130. A resolution passed without compliance with quorum requirements, as dictated by Article 15.11.3°, is inherently repugnant to the Constitution. The approval of S.I. No. 376/2023 under such circumstances contravenes Article 15.4.1°.

Article 15.4.2°: Invalidity of Repugnant Laws

131. Article 15.4.2° further clarifies: 'Every law enacted by the Oireachtas which is in any respect repugnant to this Constitution or to any provision thereof, shall, but to the extent only of such repugnancy, be invalid.'

132. As the resolution was passed in breach of Article 15.11.3°, it triggers Articles 15.4.1° and 15.4.2°, rendering the resolution and the statutory instrument invalid to the extent of the repugnancy.

Flawed Reasoning in the High Court Judgment

133. In Point 27(vi) of the judgment, the High Court erroneously concluded that: 'Business is not invalid in the absence of a quorum. Rather such absence permits any member to "call a quorum." If a quorum is not present at that time...the House adjourns. But if nobody calls a quorum in the first place, business can proceed with fewer members.'

134. This reasoning is fundamentally flawed for the following reasons:

(i) Standing Order 22(2) mandates quorum: Under this rule, a quorum must be present for decisions to be valid. Even if a member does not call attention to the lack of quorum, no decision shall be considered valid in its absence.

(ii) Article 15.11.3° makes quorum a constitutional requirement: The quorum rule is not a mere procedural formality but a constitutional mandate tied directly to legislative validity.

(iii) Judicial deference to procedural breaches: By classifying the quorum issue as an 'indoor management rule,' the High Court failed to recognize its constitutional significance, undermining the separation of powers and judicial oversight.

Improper Legislative Authority and Delegation

135. The lack of quorum invalidates the resolution approving S.I. No. 376/2023, raising further constitutional concerns:

Breach of Article 15.2.1°

136. Article 15.2.1° vests the exclusive power of law-making in the Oireachtas. The statutory instrument, enacted without valid approval from the Oireachtas due to the quorum breach, usurps this exclusive legislative authority.

Breach of Article 15.2.2°

137. Article 15.2.2° permits the Oireachtas to delegate powers to create subordinate legislation, provided such delegation complies with constitutional and statutory constraints.

The quorum breach invalidates the resolution, rendering the delegation of authority to the Minister for Housing under S.I. No. 376/2023 unconstitutional.

Consequences of Quorum Breach

138. Invalidation of S.I. No. 376/2023:

(i) The statutory instrument is invalid as it was approved without compliance with quorum requirements, violating Articles 15.11.3°, 15.4.1°, and 15.4.2°.

139. Failure of Judicial Oversight:

(i) The High Court’s misinterpretation of quorum rules and its dismissal of the constitutional breaches represent a failure to uphold its duty under Article 34.3.2° to review the validity of laws and statutory instruments.

140. Undermining Separation of Powers:

(i) The High Court’s deference to procedural non-compliance undermines judicial independence and the balance of powers between the legislative, executive, and judicial branches.

Conclusion

Grounds for Quashing the High Court Order

141. The High Court order of December 6, 2024, must be quashed due to the ultra vires actions of the Minister for Housing, Local Government, and Heritage. The Minister, acting as a corporation sole under the Ministers and Secretaries Act 1924, lacks statutory authority to invoke the inherent jurisdiction of the High Court, a power reserved exclusively for the judiciary. This improper invocation constitutes a breach of both procedural and substantive legal principles, rendering the Minister’s application invalid. By relying on this defective application, the High Court acted upon a motion that exceeded the Minister’s legal remit, undermining the rule of law.

142. The Minister’s application also violated the constitutional principle of separation of powers under Article 6, which requires a clear division between the executive, legislative, and judicial functions of government. The judiciary’s acceptance of an ultra vires motion blurred these boundaries, allowing the executive to improperly encroach upon judicial authority.

This undermines judicial independence, a cornerstone of Ireland’s constitutional framework, and sets a dangerous precedent for unchecked executive overreach.

143. Moreover, the High Court failed to address the lack of quorum during the passage of the resolution approving S.I. No. 376/2023, as required under Standing Orders of Dáil Éireann and Article 15.11.3° of the Constitution. Without the mandated quorum, the resolution was invalid, and the statutory instrument derived from it is repugnant to Articles 15.4.1° and 15.4.2°. By dismissing this critical procedural defect, the High Court overlooked the constitutional invalidity of the legislation and its subsequent impact on the legal proceedings.

144. Finally, the High Court’s reliance on the Minister’s defective application violated my constitutional rights under Articles 40.1, 40.3, and 40.4, including my right to equality before the law, procedural fairness, and protection from arbitrary State action. These fundamental rights were compromised by judicial error and executive overreach. To restore constitutional integrity, uphold judicial independence, and vindicate my rights, the High Court must quash its order of December 6, 2024.”

26. One thing that can be seen immediately is that the motion has absolutely nothing to do with the applicant’s physical liberty, still less does it constitute an application under Article 40.4. Even the (erroneously) pleaded basis for Article 40.4 being relevant is tenuous in the extreme.

The basis of the motion – the exemption from stamp duty

27. Current rates of stamp duty on court documents are set out in the Supreme Court and High Court (Fees) Order 2014 (S.I. No. 24 of 2014).

28. Schedule 1 Part 3 section D provides:

“D Notices of Motion, etc.

12	On filing a notice of motion	€60.00
13	On every — (i) ex parte application, or (ii) other application to the court otherwise not specifically provided for	€60.00
14	On filing a notice other than a notice to which the items at reference numbers 12, 15 and 16 of this column relate	€60.00
15	On filing a notice of appeal from the Master	€60.00
16	On lodging a notice of appeal from the Circuit Court to the High Court	€130.00
17	(a) Subject to paragraph (b), on filing a notice of motion for entry of proceedings in the Commercial List of the High Court (b) On filing a notice of motion in the Commercial List of the	

	High Court in proceedings that were entered in that list prior to 10 April 2012	€5,000.00 €60.00
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29. The latter point is a useful reminder that while a motion for entry to the Commercial Court costs €5,000, a motion for entry to the Planning & Environment Court costs only €60. So that is one benefit for those covered by the present list.
30. Article 5 provides for some exceptions:
 "5. No fee shall be payable under this Order in connection with—
 (a) proceedings under Article 40.4 of the Constitution,
 (b) proceedings under the Extradition Acts 1965 to 2012,
 (c) proceedings under the European Arrest Warrant Acts 2003 and 2012,
 (d) bail proceedings, or
 (e) an application (in proceedings for a criminal offence) for judicial review under Order 84 Rule 18 (inserted by Rule 2 of the Rules of the Superior Courts (Judicial Review) 2011 (S.I. No 691 of 2011)) of the Rules of the Superior Courts (S.I. No. 15 of 1986)."
31. The express basis of the present application is that art. 5 applies because a this is a matter under Article 40.4 of the Constitution. The basis for that assertion is that personal liberty is a broad concept and that one's liberties are impinged upon by many kinds of restrictions, not just formal detention.
32. However, when the order uses the phrase "proceedings under Article 40.4 of the Constitution", it is not referring to personal liberty in a broad sense.
33. Article 40.4 provides:
 "4 1° No citizen shall be deprived of his personal liberty save in accordance with law.
 2° Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law.
 3° Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Court of Appeal by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as the High Court shall fix until the Court of Appeal has determined the question so referred to it.
 4° The High Court before which the body of a person alleged to be unlawfully detained is to be produced in pursuance of an order in that behalf made under this section shall, if the President of the High Court or, if he is not available, the senior judge of that Court who is available so directs in respect of any particular case, consist of three judges and shall, in every other case, consist of one judge only.
 5° Nothing in this section, however, shall be invoked to prohibit, control, or interfere with any act of the Defence Forces during the existence of a state of war or armed rebellion.
 6° Provision may be made by law for the refusal of bail by a court to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person."
34. When the order refers to proceedings under Article 40.4 it means proceedings under the jurisdiction created by that section, specifically under sub-sections 2 to 4.
35. The one thing we can be sure about is that the present judicial review is not such a proceeding.
36. Therefore art. 5 – which is the only basis of exemption argued here – simply doesn't apply. The application is based on a misunderstanding. That isn't to exult in the levying of stamp duty. It is simply to deal with the application actually made. Nor is it to deny that the applicant is interested in human liberty in the broad sense. Rather it is to assert that art. 5(a) is not concerned with human liberty in the broad sense. It is confined to proceedings instituted under Article 40.4.2 to 4.
37. For the sake of completeness I should add that merely referring to Article 40.4 in the title of the proceedings, as this applicant has attempted to do, is legally ineffective. The application must actually be a proceeding under that section, not merely some other kind of application that wrongly describes itself as such. The exemption is a matter of substance rather than mere form. If one

wanted to be legalistic about it, I could point out that the applicant only referenced Article 40.4.1, which doesn't provide for proceedings as such, and thus doesn't even on its face attract the exemption.

38. What the applicant's position in this regard reminds me of is the opportunistic attempt in *Kerry Fish Unlimited Co v. Kerry County Council* to include the habitats directive in a case about a challenge to traffic calming measures. In the substantive judgment [2022] IEHC 29, Barr J. said at para. 61:

"In the real world, rather than in some legalistic bubble, it could not be argued that restricting the hours during which vehicular traffic could use two public roads, could be likely to significantly affect any European site."

39. In the costs judgment, [2022] IEHC 112, he said at para. 20:

"It is hard not to come to the conclusion that that ground of challenge was only pleaded in the first place as a failsafe mechanism to protect the applicant from an adverse costs order, should it be unsuccessful in its primary challenge to the decision."

40. The same type of thing applies here. In the real world, this case has nothing to do with proceedings seeking the release of the applicant from detention. It is hard to avoid the conclusion that the throwaway reference to Article 40.4 is only included for the purposes of an unsustainable claim to exemption from fees.

41. There is one further complication, which is that by way of an *ex parte* application, this applicant appears to have obtained two orders [H.IA.2004.0000190 and H.IA.2004.0000191] from Cregan J. allowing him to file papers without stamp duty on the grounds that as recited in orders:

"And it appearing that the intended proceedings raise an issue pursuant to Article 40.4 of the Constitution and do not attract fees at this point in time (subject to the right of the Intended Defendants to reply at a later stage)"

42. But there are a number of problems with that as a basis for the present application:

- (i) I have every sympathy with Cregan J. for not wanting to take a final position on a mere *ex parte* application. There isn't anything unusual about a judge considering something to be the case *ex parte* and a different view being taken after argument. What "appears" at an *ex parte* stage may not appear to be the case on further consideration. Or to put it another way, the way a problem appears the first time it is presented to one may be different to how it appears on a second or subsequent occasion, sometimes due to one's continuing reading and education or one's own ongoing consideration of the matter, which may happen outside one's direct conscious awareness, but more especially if other voices (responding parties, colleagues, appellate courts or relevant others) have made themselves heard in the meantime. That's all perfectly normal and unavoidable. There isn't anything wrong with coming to a view that one's previous position could be improved. Indeed repudiating the possibility of coming to such a view would eradicate the vitality and dynamic of law, and existence generally. That said, wriggling out of stamp duty to bring a motion is not like being granted leave *ex parte* in that it is not something that can easily be undone by the responding parties at a later stage. Suppose they point out facts from which it can be inferred that the exemption did not apply – the motion is already underway at that stage and the court would have to invent a procedure to stay the motion until the stamp duty is paid. Maybe that's the only solution but it's a bit messy.
- (ii) The basic problem is that the wording set out in the orders produced is not the legal test. The fees order is not about proceedings that "raise an issue pursuant to Article 40.4". It is about "proceedings under Article 40.4 of the Constitution" which is clearly a far more specific category of case.
- (iii) More fundamentally, that approach contradicts the structure of art. 5 of the fees order altogether. Each paragraph of art. 5 deals with a different *type* of proceeding, not a different *subject-matter*, distinguishing between bail applications, extradition applications, and so on. The reference to Article 40.4 proceedings has simply no application whatever to judicial review, which is dealt with separately in para. (e). The only type of judicial review covered by the exemption is an application in proceedings for a criminal offence. That is also extremely specific and is not open to the "raises an issue" method of coach-and-four creative rewriting. To put it another way, para. (a) doesn't apply to judicial review at all, so an application for confirmation of a fee exemption in a judicial review on the basis of para. (a) fails *in limine*.
- (iv) I also have every sympathy for Cregan J. in that one can understand the desire of any court to facilitate access to justice, especially *ex parte*, but giving legislation a meaning which it does not bear is not a permissible option.

- (v) The fees order is not like rules of court which the court can dispense with – the role of the court is to apply the law in this instance. There is no clause in the 2014 order analogous to the power to dispense with rules of court. The effect of any asserted power to dispense is to diminish State revenues on an ad hoc and almost random basis by overly sympathetic consideration of individual requests, contrary to the imperative for equal application of the laws. To put it another way, the court simply has no jurisdiction to set aside the application of the order any more than it can decide not to apply an Act of the Oireachtas. The function of the court is to uphold the Constitution and the laws – as they are as opposed to, for example, how one thinks they should be.
- (vi) The nature of litigation in person in this day and age is such that if a court benevolently tries to re-write the legislation, the anarchy can't be confined to a couple of cases. It will inevitably create a whole new bogus workstream for the courts and an assembly line of applicants who think that their cases "raise issues" related to Article 40.4 – that could be nearly anything given how creative people can be. The application I have today is an example of that – and well-intentioned exemptions contrary to the order only stimulate and encourage that unfortunately.

43. With the greatest possible respect of course, an unreasoned *ex parte* decision isn't precedent anyway, but in any event the position taken in the orders produced is clearly wrong. It applies a test that is very significantly different from and contrary to the statutory test.

44. A final and general point worth making is that officials of the Central Office don't have authority to waive fees that are not waivable under the fees order. On the contrary, they are obliged to collect revenue in accordance with the order (just as the courts are obliged to give effect to the order as part of the law of the State). So whatever a given applicant's frustrations, it would be totally unacceptable to take those out against court officials.

45. In the circumstances it is best to stop there rather than address the question of whether the motion if issued is bound to fail and thus of whether the court should facilitate its issue in any event.

Costs

46. Given that the State did get involved in what was in principle an *ex parte* application, costs could potentially arise as an issue. But as with the No. 1 judgment in this case I would be inclined to exercise discretion as to costs in a way that results in no order, rather than penalising the applicant, given the underlying quasi-environmental nature of the original challenge. Also the State's letter didn't specifically ask for the costs of having been involved. So I think the applicant is safe enough under that heading.

Order

47. For the foregoing reasons, it is ordered that:

- (i) the application for an order allowing the applicant to file the proposed notice of motion without the payment of stamp duty be refused;
- (ii) there be no order as to costs; and
- (iii) the present order as the final order in the proceedings be perfected forthwith without further listing.