

Neutral Citation No: [2023] NIKB 116

Ref: McC12336

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

ICOS No: 22/100760/01

Date: 17/11/2023

IN THE HUGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY CHARLES McDONAGH
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

The applicant was unrepresented
Mr Philip Henry (instructed by the Departmental Solicitor) for the Respondent

McCLOSKEY LJ (*ex tempore*)

[1] Both parties have been notified of today's case management listing. The substantive listing is scheduled for 12 December 2023. There is no appearance on behalf of the applicant. The respondent is represented in court by counsel.

[2] The court received an email yesterday from the applicant's solicitors. The gist of the email is that there would be no attendance by any legal representative this morning because of some form of industrial action by – I will just quote from the Law Society document to give it its formal description:

“Members of the legal profession practising in the field of criminal law will be withdrawing their services tomorrow, Friday 17 November 2023, across all criminal courts.”

[3] This is the King's Bench Division of the High Court. The High Court is not a criminal court: see the Judicature (NI) Act 1978, Part II. It exercises no criminal jurisdiction. The High Court exercises no jurisdiction in “the field of criminal law.” It does occasionally consider, in the content of civil proceedings, a species of challenge that is known under the Judicature Act and the Rules of the Court of Judicature as a criminal cause or matter. Cases of this kind do not belong to the field of “criminal law” and, hence, are not assigned or transferred to a court exercising criminal jurisdiction.

[4] The court has convened this morning to convenience the parties by taking steps to ensure that this elderly application for leave to apply for judicial review is receiving all the attention it requires, with a view to ensuring that we can proceed with the scheduled listing on 12 December. The state of affairs that has been brought about by the premeditated choice and action of the applicant's legal representatives is one of deliberate obstruction of, and non - cooperation with, the court. This is quite intolerable.

[5] The court does not accept that it was in any way appropriate for no member of the applicant's legal team to attend this morning. The excuse put forward is a combination of the unacceptable, the misconceived and the irrelevant.

[6] The court will now proceed to make the necessary case management order. Much has been neglected and thus there is much to be done on behalf of the applicant. There will be no liberty to apply provision. The substantive hearing date is set in stone, subject only to the convenience of the court. If the applicant's legal representatives are serious about pursuing this challenge, which has been limping along for so long, they will be able to demonstrate this by full and timeous compliance with the court's order.

[7] The respondent's costs are reserved.