Neutral Citation Number: [2013] IEHC 321

THE HIGH COURT

[2012 No. 436 J.R.]

BETWEEN

MARY KELLY AND DECLAN BUCKLEY

APPLICANTS

AND

DISTRICT JUDGE ANN RYAN

RESPONDENT

AND

PATRICK HALPIN

NOTICE PARTY

JUDGMENT of Mr. Justice Hogan delivered on the 9th July, 2013

1. To what extent, if at all, has the right of the private prosecutor to prosecute an indictable offence being affected by the wholescale amendment of the Criminal Procedure Act 1967 by the Criminal Justice Act 1999, and the abolition of the traditional preliminary examination before the District Court? This is one of the many difficult questions raised in this application for judicial review. The issues arise in the following way.

2. The notice party, Mr. Patrick Halpin, swore two informations as common informer which were laid before the District Court. Acting on foot of these complaints made by Mr. Halpin, the District Court (District Judge Ryan) granted leave on 5th March, 2012, to issue summonses against the applicants, Mary Kelly and Declan Buckley, alleging offences of dishonesty under s. 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001 ("the 2001 Act"). The summonses were themselves issued pursuant to s. 10(4) of the Petty Sessions (Ireland) Act 1851 ("the 1851 Act"). This sub-section provides that:-

> "Whenever information should be given to any justice that any persons has committed or is suspected to have committed any, treason, felony, misdemeanour or other offence within the limits of the jurisdiction of such justice for which such person shall be punishable either by indictment or upon a summary conviction…it should be lawful for such justice to receive such information or complaint and to proceed in respect of the same, subject to the following provisions…"

3. The applicants are, respectively, a current and former employee of Irish Bank Resolution Corporation Ltd. Mr. Halpin was a director and shareholder of two companies (Elektron Holdings Ltd. and Crossplan Investments Ltd.) which apparently owed significant sums to IBRC. The gist of Mr. Halpin's complaint to the District Court is that, immediately prior to the appointment of a receiver to these two companies on 17th February, 2012, Mr. Halpin and his accountant were asked by the applicants to attend at short notice a meeting with them at IBRC offices. According to Mr. Halpin, he says that he was advised that the purpose of the meeting was to confirm that both creditor and debtors should co-operate in relation to the sale and/or the realisation of the assets of Merrion Hall on a consensual basis for the bank. He said that it was thereby envisaged that there would be some form of constructive engagement between the lender and the debtor. On foot of that, Mr. Halpin says that he and his accountant had such a meeting with Mr. Buckley and Ms. Kelly and that they left with the impression that the matter would be considered within the higher echelons of the bank and that the bank would, in turn, revert with further proposals.

4. The complaint then continues by alleging:-

> "4. Unbeknown to myself and Mr. Murphy [Mr. Halpin's accountant] a decision had already been taken to appoint a receiver to both companies and the necessary paperwork had been prepared and was waiting for a final stamp at close of business…
>
> 5. Mr. Murphy wrote a letter of complaint to Mr. Buckley and received a reply showing clearly that both accused had known that a receiver was to be installed at the time of the meeting and had deliberately concealed this knowledge from us. Mr. Murphy cannot recover the professional fees due to him and he would not have participated in the meeting had he been aware of the situation and neither would I. Loss was thereby caused to us both…"

5. The complaint then goes on to state as against each respective applicant:-

> "That you, on or about 17th February, 2012, did at 2 Grand Parade, Dublin 6…by deception with the intention of making a gain for yourself or another or of causing loss to another, falsely represented to Patrick Halpin a director of Elektron Holdings Ltd and Aiden Murphy, an accountant instructed on behalf of Elektron Holding Ltd, that your employer, the Irish Bank Resolution Ltd, was prepared to continue a process engaged in between it and Elektron Holdings Ltd whereby Elektron Holdings Ltd would be unable to trade normally, contrary to s. 6 of the Criminal Justice (Theft and Fraud Offences) Act 2001."

It is important to state at this juncture that the applicants both vigorously contest and deny these charges.

6. Given the importance (and, to some degree, the novelty) of the issues at stake here, counsel for the Director, Mr. O'Malley, appeared as *amicus curiae* at my invitation and his submissions were of considerable assistance. At an earlier stage of the proceedings the applicant sought discovery of any contacts which had taken place between the private prosecutor and the Director. It emerged from an affidavit very fairly sworn on behalf of the Director that there had in fact been so such contacts. The Director's submissions were accordingly confined to arguing that the right of private prosecution had survived the enactment of the Constitution

and the amendments effected by the Criminal Justice Act 1999. Mr. O'Malley was also anxious to observe that the Director had yet to take any position whatever regarding the merits or otherwise of this particular private prosecution.

7. Against this background we may now consider the relevant statutory provisions of the 2001 Act.

The relevant statutory provisions of the 2001 Act
8. Section 6 of the 2001 Act provides:-

> "6(1)A person who dishonestly with the intention of making a gain for himself or herself or another or of causing loss to another, by any deception induces another to do or to refrain from doing an act is guilty of an offence.
>
> (2) A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment not exceeding five years or both."

9. Although s. 6 is an indictable offence, s. 53 of the 2001 Act allows for the summary disposal of the offence under certain circumstances:

> "(1)The District Court may try summarily a person charged with an indictable offence under this Act if –
> (a) the Court is of the opinion that the facts proved or alleged constitute a minor offence fit to be tried summarily,
>
> (b) the accused, on being informed by the Court of his or her right to be tried with a jury, does not object to be tried summarily, and
>
> (c) the Director of Public Prosecutions consents to the accused being tried summarily for the offence."

Whether the Right of Private Prosecution has been affected by the Abolition of the Preliminary Examination Procedure
10. One critical feature of the applicants' submissions is that the right of private prosecution in respect of an indictable offence of this kind has been effectively abolished by reason of the enactment of the Criminal Justice Act 1999 ("the 1999 Act") and that this legislative development had effectively overtaken the decision of the Supreme Court in *The State (Ennis) v. Farrell* [1966] I.R. 107.

11. In *The State (Ennis) v. Farrell* the Supreme Court held that the right of private prosecution had indeed survived the enactment of the Constitution. The applicants nonetheless submitted that this decision had been entirely predicated on the existence of the preliminary examination procedure as it existed at that date and as was preserved by the Criminal Procedure Act 1967. They contend that everything changed following the enactment of the 1999 Act, which to all intents and purposes abolished the traditional practice of holding a preliminary investigation in the District Court to determine if sufficient grounds existed for sending forward a person for trial on indictment to either the Circuit Court of the Central Criminal Court. Before examining this issue, it is necessary first to set out the terms of a number of statutory provisions.

12. Section 4A (as inserted by s. 9 of the 1999 Act) provides:-

> "(1)When an accused person is before the District Court charged with an indictable offence, the court shall send the accused forward for trial before the court which he is to stand trial ("the trial court") unless –
> (a) the case has been tried summarily,
>
> (b) the case has been dealt with s. 13….
>
> (2) The accused shall not be sent forward for trial under subsection (1) without the consent of the prosecutor.
>
> (3) Where the prosecutor refuses to give a consent required under subsection (2) in relation of an indictable offence, the District Court shall strike out the proceedings against the accused in relation to that offence.
>
> (4) The striking out of proceedings under subsection (3) shall not prejudice the institution of proceedings against the accused by the prosecutor.
>
> (5) The accused shall not be sent forward for trial under subsection (1) until the documents mentioned in subsection (4)B(i) have been served on the accused."

13. The term "prosecutor" is now defined by s. 4 of the 1967 Act (as inserted by s. 8 of the 1999 Act) and which provides:-

> "(1) In this Act, "the prosecutor" means in relation to an offence –
> (a) in part 1(a) and s. 13 the Director of Public Prosecutions, and
>
> (b) in parts 2 and 3 of s. 13 –
>
> (i) the Director of Public Prosecutions,
>
> (ii) a person prosecuting the offence at the suit of the Director of Public Prosecutions, or
>
> (iii) a person authorised by law to prosecute the offence."

14. Section 9 of the Criminal Justice (Administration) Act 1924 ("the 1924 Act"), provides:-

> "(1)All criminal charges prosecuted upon indictment in any court shall be prosecuted and the suit of the Attorney General…
>
> (2) Save for a criminal prosecution in a court a summary jurisdiction is prosecuted by a Minister, Department of State or person (official or unofficial) authorised on that behalf by the law for the time being in force, all prosecutions in any court a summary jurisdiction will prosecuted at the suit of the Attorney General…"

15. The 1924 Act must, of course, be now be read in the light of the Prosecution of Offences Act 1994, which transferred the Attorney General's functions in criminal matters to the Director of Public Prosecutions.

16. Article 30.3 of the Constitution provides:-

> "All crimes and offences prosecuted in any court constituted under Article 34 of this Constitution under than a court of summary jurisdiction shall be prosecuted in the name of the people and at the suit of the Attorney General or some other person authorised in accordance with law to act for that purpose."

The definition of "prosecutor" in s. 4 of the 1967 Act (as inserted by s. 8 of the 1999 Act) is one which has plainly been drafted with great care. In the case of Part IA (and s. 13) of the 1967 Act (as inserted by s. 9 of the 1999 Act) – which deals with proceedings relating to indictable offences – prosecutor is defined as meaning only the Director of Public Prosecutions. But so far as Part II and Part III of the 1967 Act is concerned, the term "prosecutor" is given a broader meaning by s. 4 and includes a person "authorised by law to prosecute the offence." There is no doubt but that at common law, a common informer was so authorised. The matter was, in any event, put beyond doubt by the Supreme Court's decision in *Ennis*.

15. This special definition of the term prosecutor – with differential definitions for different contexts - as effected by the 1999 Act gives a clear signal that the Oireachtas consciously decided not to abolish the system of private prosecution, even for indictable offences. It is true that no further practical step can be taken by a private prosecutor in relation to the prosecution of an indictable offence beyond the issuing of proceedings since it is at that point that the prosecution comes within the realm of Part 1A of the 1967 Act (as amended). It is at this point that the Director enjoys the monopoly as *dominus litis*. Counsel for the applicants, Mr. Murray S.C., nonetheless submitted that the changes effected by the 1999 Act in relation to the examination of preliminary offence were so far-reaching that they must be taken implicitly to have abolished the right of private prosecution. The argument was so powerfully advanced that it must command the respect of all who were privileged to hear it. Yet I am not persuaded that this is what the Oireachtas actually intended and I take this view for the following reasons.

16. First, if the right of private prosecution is to be abolished one would expect to see that this had been done by clear words. As O Dálaigh C.J. observed ([1966] I.R. 107, 121) in *Ennis*, the court "should require clear language to abolish the valuable right of private prosecution". Besides, the presumption against unclear changes in the law would further counsel such an approach, since it is well established that clear words are required before the courts can properly hold that well established common law rights have been displaced or even abolished: see, e.g., the judgment of Henchy J. in *Minister for Industry and Commerce v. Hales* [1967] I.R. 67b at 76-77. Indeed, in *Wedick v. Osmond & Sons* [1935] I.R. 820, 852 Hanna J. invoked this very presumption before concluding that "clear and unmistakeable language" would be required to abolish the right of private prosecution.

17. Surprising as it may seem, there are, in fact, many individual instances of where the right of private prosecution has been entirely excluded by statute. A notable example is provided by s. 5(2) of the Criminal Law (Amendment) Act 1990, which provides that:-

> "Criminal proceedings against a man in respect of the rape by him of his wife shall not be instituted except by or with the consent of the Director of Public Prosecutions."

18. It will be seen from this provision that proceedings for marital rape may not even be *instituted,* save with the consent of the Director, so that private prosecutions for marital rape are thereby necessarily excluded. The Oireachtas, could therefore, have readily employed the language appropriate to effect such an exclusion of a private prosecution but has refrained from doing so. The very fact that it has chosen not to do so is in itself telling.

19. Nor is the fact that the common informer cannot actually do much more other than to launch the proceedings is itself a reason for holding that the right has been abolished. Here it must be recalled that since the very earliest days of the State, the effective control of all prosecutions on indictment has remained with the law officers, first the Attorney General (via s. 9(1) of the 1924 Act) and then subsequently the DPP (following the enactment of the 1974 Act), a control underscored by Article 30.3 of the Constitution. All that *The State (Ennis) v. Farrell* decided that the private prosecutor could conduct the prosecution up to the return for trial. But this fact was in itself regarded as important by the Supreme Court, for as O Dálaigh C.J. observed ([1966] I.R. 107, 122):-

> "It is some limitation that the private prosecutor cannot on a return for trial carry the prosecution further but must yield place to the Attorney General. But if a District Justice has received informations it may be assumed that the Attorney General would enter a *nolle prosequi* only after the fullest consideration and for good reason; that is to say, that a private prosecutor who had adduced sufficient evidence to effect a return for trial might, as a general rule, rest assured that the Attorney General would thereafter carry the case to trial before judge and jury."

20. It is true that the precise rationale for this reasoning no longer holds good in the wake of the significant changes to the 1967 Act brought about by s. 9 of the 1999 Act. But the existence of a private prosecutor still acts as an external check against the risk of a rare lapse or oversight on the part of the Director. The commencement of a private prosecution is in effect an appeal from the party who claims that he or she has suffered a private injustice for the public justice envisaged by Article 30.3, so that a prosecution can be brought in the name of the People at the suit of the Attorney General or the Director of Public Prosecution beyond the point where the private prosecutor can no longer act. Even if the role of the private prosecutor is far less extensive than was the case prior to 1999, the underlying purpose of the private prosecution is still the same, namely, to draw the public prosecutor's attention to the case with the implicit request that the prosecution be taken over.

21. Nor can it be said that the Supreme Court's decisions in either *Cumann Luthcleas Gael Teo. v. Windle* [1994] 1 I.R. 525 or *TDI Metro v. Delap (No.2)* [2000] 4 I.R. 520 provide the applicants with any real assistance. It must be recalled that neither *Cumann Luthcleas Gael* nor *TDI Metro* were concerned a private prosecution in the classic or conventional sense of that term. Both of these cases were simply concerned with the right of particular statutory bodies to conduct a prosecution. Moreover, the right of such a body to pursue a prosecution derives entirely from statute, since as Finlay C.J. put it in *Cumann Luthcleas Gael*, there ([1994] 1 I.R. 525, 544) are no grounds for "implying a right in a body corporate to institute proceedings for an indictable offence by way of common informer". These decisions cannot be regarded as having any direct bearing on the common law rights of common informers.

22. It is for these reasons that I would accordingly reject the argument that the 1999 Act had the effect of indirectly abolishing the right of private prosecutions. While it is true that the private prosecutor no longer has the right to have a preliminary examination conducted (because that system has itself been abolished), the common informer has the right to institute the prosecution, once the matter comes back before the District Court, the continuation of the prosecution is entirely contingent on whether the Director consents to summary trial or the sending forward of the accused for trial in the manner contemplated by Part IA. In the event that the Director has not so consent or direct, then the prosecutions must be struck out.

Whether the applicants had a right to be heard before the issuing of the summonses
23. The applicants contend that they were entitled to be heard before Mr. Halpin laid the information before the District Court. One can understand – and, indeed, sympathise - with them in respect of their predicament. From their standpoint, Mr. Halpin is unreasonably seeking to haul them before the District Court in respect of criminal proceedings which have no foundation in law or fact in aid of a private grievance which he has against their employer (or, as the case may be, former employer). It is true that, as counsel for Mr. Halpin, Mr. Dixon, observed, it might seem curious that the applicants would seek to have a prior hearing when they will be given their opportunity to be heard at a later opportunity. Yet the fact that they will undoubtedly be heard at a later stage does not quite meet the objections advanced by the applicants, since the very fact that the summonses were issued by the District Court may be understood by some as lending a degree of verisimilitude to the complaints which may not be altogether deserved.

24. It is true that there are some circumstances where a person affected by administrative decisions with significant implications for their personal or corporate reputation may be entitled to be heard before such proceedings are commenced. The classic example here is where disciplinary proceedings are commenced against a professional person. The implications for the professional reputation of the professional concerned are regarded as so serious that the professional is entitled to be heard before such proceedings are formally put in train: see *O Ceallaigh v. An Bord Altranais* [2000] I.R. 54. One might not unreasonably draw a rough analogy with the situation of the present case where they suddenly find themselves charged with serious criminal offences to which they have had no opportunity to respond, even if in strictness a summons of this kind is simply "a process to compel the attendance of the person accused of the offence": *Attorney General (McDonnell) v. Higgins* [1964] I.R. 374, 391, *per* Kingsmill Moore J.

25. Yet while not unsympathetic to their position, their claim, if allowed, would introduce an unworkable rule. Given the sheer volume of prosecutions in the District Court, the administration of criminal justice would simply grind to a halt if accused persons could claim – even if in the most exceptional circumstances – a right to be heard before a summons was issued. Indeed, it may be noted that in *O'Ceallaigh* itself, the Supreme Court refused to extend that very principle beyond disciplinary proceedings to court proceedings themselves, so that, for example, the professional is not entitled to be heard in advance of an application to this Court for an emergency order suspending the nurse from practice in accordance with s. 44 of the Nurses Act 1985: see, e.g., [2000] 4 I.R. 54, 134, *per* Geoghegan J.

26. It is for this single reason that I find myself coerced to the conclusion that the special rule articulated in *O'Ceallaigh* does not apply in the case of criminal prosecutions.

Whether the information discloses an offence under s. 6 of the 2001 Act
27. There seems little doubt but that as matters stand, the informations sworn do not point unambiguously to any allegation of a dishonest act or any deception by way of inducement. It must be recalled that at the heart of s. 6 of the 2001 Act is the requirement that the accused acted dishonestly with the intention of making a gain for himself or herself or another or of causing loss to another, by any deception induces another to do or to refrain from doing an act. Taking the matter as it highest, it seems that the charge is that the accused remain silent while knowing that Mr. Halpin would incur the cost of retaining an accountant to attend a meeting to discuss a rescue plan while knowing that the die had already been cast with regard to the appointment of a receiver. But even taking the charge at its very height, the evidence of dishonesty or inducement seems at best slender and tenuous. It is also important to remember that these charges have been denied in the most emphatic terms by the applicants and that they have yet to be heard on the merits of these complaints.

28. These reservations notwithstanding, I nevertheless consider that I would not be justified in intervening by way of judicial review, at least at this juncture. It may be that further evidence will come to light and, moreover, it must be recalled that the District Court enjoys a wide power of amendment in respect of defects in summons: see O. 38, rr. 1 and 2 of the District Court Rules 1997. In any event, O. 38, r. 1 generally allows the prosecutor to tender evidence which is at variance with the terms of the complaint itself, subject to the discretion of the Court to allow disallow this where such would be prejudicial to the interests of the accused.

29. In these circumstances, I consider that it would be premature for this Court to interfere with a matter which so pre-eminently within the discretion of the District Court to examine and to consider.

Whether the prosecution constitutes an abuse of process by reason of an improper motive
30. One of the difficulties inherent in any system of common informer is that it effectively promotes a system of private criminal justice instead of the public criminal justice that is at the heart of the criminal justice system. After all, Article 30.3 provides that all prosecutions which are tried on indictment are to be prosecuted in the name of the People. While the Constitution therefore envisages that all crimes tried on indictment shall be prosecuted through a system of public prosecution, this nevertheless does not mean, as O Dálaigh C.J. pointed out in *Ennis*, that the a private prosecutor may not *commence* such a prosecution.

31. It is true that Mr. Halpin feels very strongly about this treatment by the Irish Bank Resolution Corporation, but the mere fact that he nurses a private grievance regarding his treatment by the IBRC does not in itself mean that the prosecution is tainted by improper motives or by malice. It may, for example, be assumed that a common informer who alleges that he was assaulted by another and who launches a private prosecution to this effect is also personally aggrieved and affronted by this behaviour. As Latham L.J. observed in *Dacre v. City of Westminster Magistrates Court* [2008] EWHC 1667, "it is inevitable that many private prosecutions will be brought with mixed motives".

32. Likewise, in *R. v. Bow Street Stipendiary Magistrate, ex p. South Coast Shipping Co. Ltd.* (1993) Cr. App. Rep. 405 – perhaps the leading English authority on the point - the English High Court rejected the argument that a private prosecution was tainted merely by the presence of mixed motives. The decision in *South Coast Shipping* arose out of an incident on the River Thames when a pleasure boat was sunk following a collision with a dredger. Some 51 people lost their lives, including a Ms. Hadden. Ms. Hadden's husband, Mr. Glogg, was one of those who sought a public inquiry. When this was not forthcoming, Mr. Glogg then commenced a private prosecution for manslaughter against the dredger's owners.

33. In the High Court Lloyd L.J. rejected the argument ((1993) 96 Crim. App. Rep. 405, 409) that such mixed motives as might be ascribed to Mr. Glogg in themselves rendered abusive the private prosecution:

> "Does it then follow from Mr. Glogg's desire for a public inquiry that he had some direct or indirect motive in launching the prosecution? I do not think that it does. At the start, Mr. Glogg's state of mind may well have been that he wanted *both* a public inquiry *and* a prosecution for manslaughter. The fact that a public inquiry has been ruled out does not mean that his motive in instituting the prosecution should now be regarded as improper. If there is evidence that a defendant has been guilty of an offence, then a desire to see him prosecuted and, if found guilty, punished is not am improper motive, especially where the prosecutor is one of the bereaved. Even if Mr. Glogg's motives were mixed, the courts should be slow to halt a prosecution unless the conduct of the prosecution

is truly oppressive..."

34. While the facts of the present case are very different, the principle nonetheless applies by analogy. It cannot accordingly be said that merely because Mr. Halpin feels very strongly about the conduct of IBRC that this *in itself* disables him from the bringing this prosecution.

Whether the decision to issue the summons was unreasonable

35. It is well established that this Court can quash a summons on vires grounds, such as where the statutory preconditions for the issuing of a valid summons are not met: see Dunne, *Judicial Review of Criminal Proceedings* (Dublin, 2012) at para 4.34. This Court also doubtless enjoys a power to quash a summons not simply on grounds of *vires*, but also because the exercise of judicial power permitting the issuing of the summons was itself unreasonable.

36. Here it must be recalled that the Supreme Court confirmed in *The State (Clarke) v. Roche* [1986] I.R. 619 that the issuing of a summons pursuant to s. 10(4) of the 1851 Act did involve the exercise of judicial power. While it is true that by virtue of s. 1 of the Courts (No.3) Act 1986 (legislation which was enacted in the immediate aftermath of *Clarke*) the vast majority of summonses are now issued administratively on the application of, for example, members of An Garda Siochána, the fact remains that for 135 years all summons were issued through the judicial process. Even accepting that the system of administrative law and judicial review which obtained during this period was nothing as well developed as is the case now, it is nonetheless a singular fact that, with one possible exception, there appears to be no recorded case in this jurisdiction of where a summons has been quashed on grounds of reasonableness alone.

37. The one possible exception is a decision of Charleton J. which is recorded in *The Irish Times*, 2nd September, 2011, where he granted an order of prohibition restraining a private prosecution for perjury which was then pending in the District Court. The basis on which Charleton J. took this step are, however, not clear from the report and I am not sure that I can extrapolate any wider principle as a result.

38. Bearing in mind that the issuing of a summons is simply a procedural step which invites a response from the accused, it seems to me that it would require wholly exceptional circumstances before this Court could properly intervene to quash the decision to issue the summons. The fact that this Court has, subject to one possible exception, not previously intervened to quash a summons on this ground is in itself a singular fact which highlights the need for judicial caution.

39. It is true that the subject-matter of the complaint and the evidence led to justify it would appear at first blush to be tenuous – even trivial – yet the considerations just mentioned must make one hesitate to intervene on reasonableness grounds. It is true that there have been instances where the English courts have quashed summonses on these grounds, but these cases have been truly exceptional.

40. Thus, for example, in *Stephenson v. McWhiter*, *The Times*, 23rd January, 1989, the complainant alleged that the accused was guilty of the offence of blackmail by the mere act of tabling a proposal to exclude South African cricketers from the International Cricket Conference (this was during the apartheid-era South Africa). The Court quashed the summons, since as McNeill J. observed, how "a charge of blackmail can be founded on an agenda with resolutions for consideration is difficult to understand". Likewise, in *R. v. Bow Street Magistrates, ex p. Sakashita*, Queen's Bench Division, 15th October, 1996, a summons alleging assault was quashed in circumstances where it was clear that the private prosecutor accepted that no stage was the accused even in the room when the events giving rise to the assault took place. Another example is supplied by *Dacre v. City of Westminster Magistrates Court* [2008] EWHC 1667, [2009] 1 W.L.R. 2241, a case where the private prosecutor had sought to prosecute a newspaper editor for publishing the name of a child contrary to the relevant legislation. The High Court nonetheless quashed the summons as an abuse of process given that she had evinced an intention herself to name the child in the course of the prosecution. It seems evident from the judgment of Latham L.J. that the prosecution was simply a vehicle which the private prosecutor would use to identify the child and thereby advance a political and ideological cause.

41. While acknowledging the existence of this jurisdiction, it must really be confined to cases where the private prosecutor himself admits that there is no evidence to found the prosecution (as in *Sakashita*) or where the overwhelming evidence is that the summons constitutes an abuse of process (as in *Stephenson* and *Dacre*). Tempting as it might be to interfere in the context of a private prosecution which, as I have already observed, appears to be based on somewhat slender evidence, I fear that I must ultimately conclude that to interfere by way of judicial review would be altogether too great an incursion into the domain of the District Court in respect of a core function which is ascribed to that Court.

Conclusions

42. In summary, therefore, I would refuse to grant the relief sought for the following reasons:

A. The right of private prosecution has not been indirectly affected by the abolition of the preliminary examination procedure by the Criminal Justice Act 1999. In the light of *The State (Ennis) v. Farrell*, clear and express statutory language would be required for this purpose. The special and varying definitions of the word "prosecutor" now contained in s. 4 of the 1967 Act (as inserted by s. 8 of the 1999 Act) provides clear indication that the Oireachtas, so far from evincing an intention to abolish the right of private prosecution, actually intended to preserve it.

B. The mere fact that the private prosecutor, Mr. Halpin, seeks to assuage a private grievance regarding the conduct of IBRC does not in and of itself render abusive this private prosecution, since the vindication of private grievances is nearly always a motivation for the private prosecutor.

C. While the evidence to support the prosecution seems slender and tenuous, I do not feel that I would be justified in taking a step which is (almost) unprecedented in this jurisdiction and to quash a summons on grounds of unreasonableness. This would represent a far-reaching intrusion into the exclusive domain of the District Court and it would require quite exceptional circumstances before this Court could take such a step.

D. Having commenced the prosecution, in view of the provisions of s. 53 of the 2001 Act and Article 30.3 of the Constitution, no further step in that process can be taken without the express consent of the Director of Public Prosecution. Absent such positive consent, the prosecution must be dismissed by the District Court.