

APPROVED

THE HIGH COURT

[2024] IEHC 160

Record No. 2022/586SS

BETWEEN:

DONEGAL COUNTY COUNCIL

Prosecutor

-AND-

CONOR QUINN

Accused

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 1st day of March 2024

INTRODUCTION

Preliminary

1. This is a consultative case stated dated 2nd March 2022 from Judge Sandra Murphy in Donegal District Court which raises a single issue:

“Does section 1 of the Courts (No. 3) Act, 1986 as amended by S.49 of the Civil Liability and Courts Act 2004 authorise the issue of a summons on the application of “V.P. McMullin” being a firm of solicitors and an unincorporated body of persons?”

Facts

2. The following are the facts as found by Judge Murphy:¹
 - (i) A summons on 8th June 2018, alleging the offence that the Accused, being a person on whom an enforcement notice dated 30th November 2017 was served by the Prosecutor in accordance with the Planning and Development Act 2000 relating to an unauthorised development (as detailed in the Second Schedule of the said notice) at Croagh, Dunkineely within the Donegal Court Area and District did not, within the period specified in the said notice, take the steps

¹ See Order 102, r. 12 of the District Court Rules (as amended); *DPP (Travers) v Brennan* [1988] 4 I.R. 67; *The DPP (at the suit of Garda Liam Varley) v Ciaran Davitt & the Attorney General* [2023] IESC 17.

required to be taken contrary to the form of sections 154(8) and 156 of the said Act.

- (ii) The summons records that the application for its issue was made by “*V.P. McMullin, Solicitors on behalf of the above-named Prosecutor.*”
- (iii) At the hearing before Donegal District Court on 26th July 2021, the summons was opened and an application was made on behalf of the Accused for a ruling as to the validity of the summons on the basis that it specified the name of the person who applied for the issue of the summons as “*V.P. McMullin.*” The District Judge adjourned the hearing and directed the exchange of written legal submissions on the issue raised on behalf of the Accused.
- (iv) It was submitted on behalf of the Accused that V.P. McMullin is not a legal person being an unincorporated body of persons and that section 1 of the Courts (No. 3) Act 1986, as amended by section 49 of the Civil Liability and Courts Act 2004, requires application for a summons to be made by a person with legal capacity.
- (v) The Prosecutor accepted the fact that the application for the summons was made by V.P. McMullin Solicitors on behalf of the Prosecutor and that V.P. McMullin is a firm of solicitors and, as such, an unincorporated body of persons, but submitted that section 18(c) of the Interpretation Act 2005 defines ‘person’ to include an unincorporated body of persons.
- (vi) In response, the Accused submitted that an unincorporated body of persons does not come within the meaning of the word “*person*” in section 1 of the Courts (No. 3) Act 1986.
- (vii) On 13th December 2021, Judge Murphy decided to state a case by way of consultative case stated to this court, pursuant to section 52 of the Courts

(Supplemental Provisions) Act 1961 and was satisfied that the agreement of the facts as to the form of the summons and the status of V.P. McMullin provided a sufficient evidential platform for the consultative case stated.

(viii) On 2nd March 2022, Judge Murphy approved the draft case stated and the question to be asked, as set out in paragraph 1 above.

Positions of the parties

3. In summary, the central argument on behalf the Accused, Mr. Quinn, by his counsel Mr. Peter Bland SC (with Mr. Keith O’Grady BL), is that “*V.P. McMullin*” is the business name (a ‘brand of convenience’) of a firm of solicitors or the style and title of a solicitor’s practice. It is submitted that “*V.P. McMullin*” does not describe a natural or legal person and is not a ‘person’ within the meaning of section 1 of the Courts (No. 3) Act 1986 (as amended). It is contended by Mr. Bland SC that a person who applies for a summons pursuant to the Courts (No. 3) Act 1986 (as amended) is to be construed as a person with legal personhood, such as a natural person or an artificial legal person and this necessarily *excludes* a brand name or an unincorporated body of persons under which a group of solicitors practice, such as “*V.P. McMullin*” in this case.

4. Again, by way of synopsis, Mr. Richard Lyons SC (with Mr. Ivan Toner BL), for Donegal County Council, points out, in response, that the central purpose and objective of the Courts (No. 3) Act 1986 was to provide for the issuing of a summons as a matter of *administrative procedure* in the aftermath of the decision of the Supreme Court in *The State (Clarke) v Roche* [1986] I.R. 619. Further, they say that

the amendment to section 1(4) of the Courts (No. 3) Act 1986 by section 49 of the Civil Liability and Courts Act, 2004 (now section 1(3) of the Courts (No. 3) Act 1986 and the provision which deals with the application for the issuing of a summons) is substantially the same. Therefore, Mr. Lyons SC contends that the decision of Morris J. (as he then was) in joint cases *Kelly v The Foyle Fisheries Commission & District Judge Liam McMenamin and Ivers v The Northern Regional Fisheries Board & District Judge Liam McMenamin* (Unreported, (Morris J.), 24th April 1995), which involved the same firm as in this case (although spelt differently - V.P. McMullen & Son, Solicitors), remains applicable. He submits that Morris J. decided in *Kelly v The Foyle Fisheries Commission & Anor* that *V.P. McMullen & Son, Solicitors* were authorised to make an application for the issue of a summons and since the same authorisation exists after the 2004 amendment, the finding of Morris J. in that regard has not been displaced.

THE APPLICABLE LEGAL TEST

5. Generally, (paraphrasing Murray J. in *FOIE CLG v The Legal Aid Board & Ors* [2023] IECA 19, quoted below), the starting point in the construction of a statute is the language or words used in the provision under consideration, having regard to the relationship of the provision in question to the legislation as a whole, the legal context in which it was enacted, and the connection between the language and words being considered, the whole Act and the context, purpose and objective of the legislation in question.

6. Specifically, section 4(1) of the Interpretation Act 2005 (“the 2005 Act”) provides that a provision of the 2005 Act applies to an enactment, except insofar as the contrary intention appears in the 2005 Act, in the enactment itself or, where relevant, in the Act under which the enactment is made. Section 4(2) provides that the provisions of the 2005 Act which relate to other Acts also apply to the 2005 Act, unless the contrary intention appears in the 2005 Act.
7. Section 18(c) of the 2005 Act states that the word “*person*” shall be read as importing a body corporate (whether a corporation aggregate or a corporation sole) and an unincorporated body of persons, as well as an individual, and the subsequent use of any pronoun in place of a further use of “*person*” shall be read accordingly.
8. In *FOIE² CLG v The Legal Aid Board & Ors* [2023] IECA 19,³ the Court of Appeal (Murray J.) affirmed the decision of this court (Hyland J.) in *FOIE CLG v The Legal Aid Board & Ors* [2020] IEHC 454 and rejected the claim on behalf of FOIE CLG that it was a ‘person’ for the purposes of those provisions of the Civil Aid Act 1995 which addressed the eligibility to apply for, and obtain, legal aid from the Legal Aid Board. Both the High Court and Court of Appeal concluded that on its proper construction, the 1995 Act allowed the provision of legal aid and advice only to individuals and not to bodies corporate.
9. In approaching the question posed in the consultative case stated in this case by Judge Murphy, the test to be applied, therefore, is that set out by Hyland J. in *FOIE CLG v*

² Friends of the Irish Environment CLG.

³ The Court of Appeal was comprised of Barniville P., Murray and Noonan JJ.

The Legal Aid Board & Ors [2020] IEHC 454 and affirmed by the Court of Appeal (Murray J.) in *FOIE CLG v The Legal Aid Board* [2023] IECA 19 at paragraph 40 as follows:

“The starting point in the construction of a statute is the language used in the provision under consideration, but the words used in the provision must still be construed having regard to the relationship of the section to the statute as a whole, the place of the statute in the legal context in which it was enacted, and the connection between those words, the whole Act, that context, and the discernible objective of the statute. Those provisions of the 2005 Act governed by s. 4(1) have an important role in the ascertainment of the imputed legislative intent to which the process of statutory interpretation is directed, but they do not subordinate the generally applicable principles, in particular the requirement that the court ascertain the meaning of each section by reference to its language, place, function and context.”

10. The starting point in this case, therefore, is that it is to be initially assumed that “*V.P. McMullin*” is an unincorporated body and thus ‘a person’ within the meaning of section 18(c) of the 2005 Act.⁴ The question which I have to address is whether that assumption has been displaced, *i.e.*, whether the contrary intention is shown by the

⁴ The Legal Services Regulation Act 2015 was not relevant to the question posed in the consultative case stated from Judge Murphy.

provisions of the Courts (No. 3) Act 1986 (as amended) in the application of section 4(1) of the 2005 Act.

11. In considering whether a contrary intention appears, I am not confined to any one particular section but can consider the *substance and tenor* of the Courts (No. 3) Act 1986 (as amended) and the fact that section 1 is the primary section in what is a short, but important, piece of legislation comprising only two sections: see the observations in *Blue Metal Industries Ltd & Anor v RW Dilley & Anor* [1970] AC 827 per Lord Morris at p. 846 referred to by the Court of Appeal⁵ *FOIE CLG v The Legal Aid Board* [2023] IECA 19 per Murray J. at paragraphs 31, 38 and 40.

APPLICATION OF THE LEGAL TEST

12. In applying the tests set out in the Superior Court judgments of Hyland J. and Murray J. respectively in *FOIE CLG v The Legal Aid Board & Ors*, it is of assistance in seeking to divine the substance and tenor of the provisions of the Courts (No. 3) Act 1986 (as amended) to examine the provisions by reference to their language, place, function and context at the time of their *enactment and amendment*.

13. In terms of context, purpose and objective, Clarke C.J. concisely described the enactment of the Courts (No. 3) Act 1986 in *Kelly & Anor v Ryan* [2015] IESC 69 at paragraph 4.1 as follows:

⁵ The Court of Appeal was comprised of Barniville P., Murray and Noonan JJ. The judgment of the Court was delivered by Murray J.

*“Since the entry into force of the Courts (No. 3) Act 1986, two parallel systems for the issue of summonses in criminal matters have co-existed in Irish law. The first system ... is the Common Informer system under the 1851 Act. The second arose following the decision of this Court in State (Clarke) v. Roche [1986] I.R. 619, when it became necessary to introduce a new system for the routine issue of summonses following application by members of the Gardaí and other law enforcement personnel. This latter system, as introduced by the Courts (No. 3) Act 1986, as amended by the Civil Liability and Courts Act 2004, **is essentially an administrative process** which does not require consideration of an information or complaint by the issuer of the summons, and it provides for applications for summonses by the Attorney General, the D.P.P., a member of the Gardaí, or ‘any person authorised under an enactment to bring and prosecute proceedings for the offence concerned’”.*⁶

14. Therefore, the Courts (No. 3) Act 1986 was, at the time of its enactment in December 1986, essentially a stopgap (if incomplete) response to the following observations of Finlay C.J. in *The State (Clarke) v Roche* [1986] I.R. 619 at page 641:

“Consideration, therefore, it seems to me, should be given to replacing s. 10 and s. 11 of the Act of 1851 with statutory provisions more suitable to the modern District Court which could include the procedure for the issuing of summonses, in criminal cases at least, as

⁶ Emphasis added.

being an administrative procedure only and which could then, without any question of constitutional challenge, provide that the complaint should be made to the District Court and that the summons should be issued by the officers of that Court upon the making of the complaint.”

15. The initial function, purpose and context of section 1 of the Courts (No. 3) Act 1986 was to provide for that *administrative procedure* but it did not replace (or repeal) the judicial process prescribed in the Petty Sessions (Ireland) Act 1851.

16. Arising from the judgment of the Supreme Court (Finlay C.J.) in *DPP v Nolan* [1990] 2 I.R. 526 at page 545, the parallel jurisdiction of the District Court under the Courts (No.3) Act 1986 is invoked *at the time that the summons is issued* in accordance with the 1986 Act, whereas the jurisdiction of the District Court under the Petty Sessions (Ireland) Act 1851 is invoked by the making of a complaint to the District Judge:

“I am satisfied that only one meaning can be given to sub-s. 6 of s. 1 and that is that a summons duly issued under the Act of 1986 shall have the same force and effect as has a summons issued pursuant to s. 10 of the Act of 1851 which was, of course, the law in force immediately before the passing of the Act of 1986. That was, having regard to the relevant provisions of the Courts of Justice Act, 1924, and the Courts (Supplemental Provisions) Act, 1961, to vest in the District Court the jurisdiction to try summary offences. I am satisfied that the learned President of the High Court was correct in

concluding in Nolan's case that the procedures provided for in the Act of 1986 must be considered as parallel to those provided for in the Act of 1851”.

17. The Courts (No. 3) Act 1986 was enacted within one week of the decision of the Supreme Court in *The State (Clarke) v Roche* [1986] I.R. 619.

18. It consisted of two sections: section 1 addressed the issue of summonses in relation to offences and initially contained nine subsections (with section 1(9) defining ‘appropriate District Court clerk’, ‘appropriate office of the District Court’ and ‘summons’); section 2 contained the short title, collective citation and construction.

19. While the collective citation clause stated that “[t]he collective citation ‘the Courts (Supplemental Provisions) Acts, 1961 to 1986’ shall include this Act [i.e. the Courts (No.3) Act, 1986] and the said Courts (Supplemental Provisions) Acts, 1961 to 1986, shall be construed together as one”, as the Court of Appeal (Murray J.) observed (at paragraph 56 of the judgment) in *FOIE CLG v The Legal Aid Board* [2023] IECA 19 arising from the definition of ‘enactment’ in section 2(1) of the Interpretation Act 2005, section 18(c) of the 2005 Act is concerned with the construction of “any part of an enactment” and it is possible for the same word to be used in different senses in various sections of the same Act. Murray J. referenced the judgment in *Briggs v Gibson’s Bakery Ltd.* [1948] NI 165 where it was held that the word could, notwithstanding the provisions of the Interpretation Act 1889, have different meanings within the same section of an Act.

20. Applying the approach adopted by Hyland J. in *FOIE CLG v The Legal Aid Board & Ors* [2020] IEHC 454 and endorsed by the Court of Appeal (Murray J.) in *FOIE CLG v The Legal Aid Board* [2023] IECA 19,⁷ having regard to the provisions of section 4(1) and 18(c) of the 2005 Act, the *starting point* or *first step* in the interpretive process is that the use of the word ‘person’ in the Courts (No. 3) Act 1986 (as amended) imports an unincorporated body of persons such as “*V.P. McMullin*”. The second step, however, in the interpretive process, is the application of what Hyland J. referred to in *FOIE CLG v The Legal Aid Board* as “*the contrary intention test*” in section 4(1) of the 2005 Act. The primary purpose of applying section 4(1) of the 2005 Act was to assist the drafting process by avoiding repetition in definitions while simultaneously avoiding the consequence of radically changing the intended meaning of a word. In the interpretive exercise in which the court is now engaged, the application of section 4(1) means whether the “*substance and tenor*” of the provisions of the Courts (No. 3) Act 1986 (as amended) express a contrary intention in the meaning of the word ‘person’ which suggests that it excludes (displaces) an unincorporated body of persons such as “*V.P. McMullin*”.

21. In this case, the Courts (No. 3) Act 1986 (“the 1986 Act”) as initially enacted contained four references to ‘person’. In contrast, insofar as the Courts (No. 3) Act 1986 (as amended) is concerned, there are now eleven references to the word ‘person’, but the definition of ‘person’ in section 18(c) of the 2005 Act has *not been expressly disapplied* in the 1986 Act, as initially enacted or in any amendment since.

⁷ The Court of Appeal was comprised of Barniville P., Murray and Noonan JJ.

22. In considering the legislation, as initially enacted, for example, section 1(3) of the 1986 Act provided that a “*summons shall – (a) state shortly in ordinary language particulars of the offence alleged and the name and, if known, the address of the person alleged to have committed the offence, and (b) notify him that he will be accused of that offence at a sitting of the District Court which sitting shall be specified by reference to its date and location and, insofar as is practicable, its time*” (emphasis added).
23. Section 1(4) of the 1986 Act provided that “[*a*]n application for the issue of a summons in relation to an offence may be made to the appropriate office of the District Court by or on behalf of the Attorney General, the Director of Public Prosecutions, a member of the Garda Síochána or any person authorised by or under statute to prosecute the offence” (emphasis added).
24. Section 1(7)(a) of the 1986 Act provided that “[*a*]ny provision made by or under any statute passed before the passing of this Act relating to the time for making a complaint in relation to an offence shall apply, with any necessary modifications, in relation to an application under subsection (4) of this section” and section 1(7)(b) of the 1986 Act provided that “[*n*]otwithstanding the provisions of paragraph (a) of this subsection, where a complaint in relation to an offence was duly made by a person referred to in subsection (4) of this section and was received, on or after the 20th day of March, 1986, and before the passing of this Act and during the period within which the complaint was required by law to be made, by a District Court clerk or a Peace Commissioner, then, not later than the 20th day of March, 1987, it shall be lawful for such person to apply under subsection (4) of this section for the issue of a summons in

relation to the offence and for the appropriate office of the District Court to issue the summons” (emphasis added).

25. Considerable reliance was placed by both Mr. Bland SC and Mr. Lyons SC on the decision of this court, delivered approximately nine years after the enactment of the Courts (No. 3) Act 1986 but before any amendments, by Morris J. (as he then was) in joint cases *Kelly v The Foyle Fisheries Commission & District Judge Liam McMenamín and Ivers v The Northern Regional Fisheries Board & District Judge Liam McMenamín* (Unreported (Morris J.), 24th April 1995).

26. Those proceedings involved the same firm (albeit under a previous business name) as in this case, V.P. McMullen & Son, Solicitors, (although, as noted earlier, the spelling of ‘McMullen’ in that judgment is different from ‘McMullin’ in this case). Morris J. rejected the substantive point argued on behalf of Mr. Kelly in that case and held that when making an application for the issue of a summons, ‘V.P. McMullen & Son’ did not act as a *common informer*. Mr. Lyons SC relied on the additional observations of Morris J. (at pp. 4-5 of the judgment):

“Courts (No.3) Act of 1986, Section 1(4) provides that an application for the issue of a summons in relation to an offence may be made to the appropriate office of the District Court by or on behalf of “...any person authorised by or under statute to prosecute the offence.”

I am satisfied that the First [sic.] named Respondent [sic.] being authorised to prosecute the offence, an application could be made for the issue of a summons on its behalf. This is described in the Act as

“a matter of administrative procedure.” Accepting as I do that V.P. McMullen & Son made the application on behalf of the Second named Respondents, I am of the view that they were clearly authorised to make the application and the issue of the summons in the circumstances was a proper exercise of this administrative act”.

27. A number of observations arise. The gravamen of the judgment related to the decision that ‘V.P. McMullen & Son’ did not act as a common informer and it did not address the question posed in this consultative case stated. As set out in this judgment, the amendments to the Courts (No. 3) Act 1986 are significant when seeking to understand the meaning of the word ‘person’ in the legislation and these, of course, were not considered in *Kelly v The Foyle Fisheries Commission*. Therefore, the decision in *Kelly v The Foyle Fisheries Commission* is not dispositive of the question posed in this case stated. The point is, therefore, *res integra*, and the principle of “*a point not argued is a point not decided*” applies (see *Laurentieu v Minister for Justice* [1999] IESC 47; [1999] 4 I.R. 26 at page 59, where Denham J. (as she then was) referenced *The State (Quinn) v Ryan* [1965] I.R. 70 (120)). Further in *FOIE CLG v The Legal Aid Board* [2023] IECA 19, Murray J. observed at paragraph 35 that although a short passage from the judgment of Lord Morris (in the Privy Council) in *Blue Metal Industries Ltd. & Anor v RW Dilley & Anor* [1970] AC 827 was cited with approval in *McGuinness v Property Registration Authority* [2021] IECA 25 (at paragraph 26), the precise test to be applied in the similar situation which applied in that case (and which applies here) had not been the subject of any detailed consideration in this jurisdiction.

28. Importantly, additional amendments have taken place since 1986: in 2004, section 49 of the Civil Liability and Courts Act 2004 substituted a new section into the Courts (No. 3) Act 1986; in 2008, section 19 of the Civil Law (Miscellaneous Provisions) Act 2008 further amended section 1(14) of the Courts (No. 3) Act 1986 (which had been inserted by section 49 of the Civil Liability and Courts Act 2004) by inserting the following after the definition of “*appropriate office*”: “*‘electronic means’, in relation to an application for a summons or the issue of a summons, includes the use of an information system (within the meaning of section 2 of the Electronic Commerce Act 2000) under the control of a person other than—(a) the person who applied for the summons or a person acting on his or her behalf, or (b) the appropriate office*”; in 2017, a number of further changes were made by section 2 of the Courts Act 2017; in 2022, Regulation 1 of the European Union (Right to Information in Criminal Proceedings) Regulations 2022 (S.I. No.549/2022) provided that “[*a*] summons issued under section 11 (2) of the Petty Sessions (Ireland) Act 1851 or section 1 of the Courts (No. 3) Act 1986 (and served upon the person to whom it is directed shall be accompanied by the following written information on the procedural rights of the person: (a) his or her right of access to a solicitor; (b) his or her entitlement to free legal advice and the conditions for obtaining such advice; (c) his or her right to interpretation and translation.”

29. The updated Courts (No. 3) Act 1986 (as amended) can now be described as follows.

30. Section 1(6) of the Courts (No. 3) Act 1986 (as amended) replaced section 1(3) of the initial 1986 Act (referred to above) and now section 1(6)(a) provides that “*a summons shall specify the name of the person who applied for the issue of the summons*”,

section 1(6)(b) now provides that “a summons shall ***specify*** the application date as respects the summons”, and section 1(6)(e) of the 1986 Act provides that “a summons shall ***specify*** the name of an appropriate District Court clerk” (emphasis added).

31. The reference to “*specify*” is a requirement to identify clearly and precisely the name of the person who applied for the issue of the summons and the name of the appropriate District Court clerk and the application date. This suggests a requirement for legal personality in the sense of a natural person rather than an unincorporated body of persons. Hypothetically, for example, “*Sheila Citizen of VP McMullin*” would have sufficed rather than solely the name of an unincorporated body such as “*VP McMullin*.”

32. Likewise, the date is the precise date, not for example, “*September 2018*”, but rather “*5th September 2018*”, which was in fact the date provided in this case.

33. The word “*person*” is also used in the interpretation of the word “*prosecutor*” and “*accused*”.

34. Section 1(14) of the 1986 Act provides that ‘prosecutor’ includes “*a person*” acting on behalf of the prosecutor. The certification of a ‘true copy’ in section 1(14) requires a copy of the summons to be certified by the “*prosecutor*” which suggests the signature of a natural person and not an unincorporated body. In this regard, section 1(14) defines ‘true copy’ as meaning in relation to a summons “*the issue of which was effected in accordance with section 1(2) of the 1986 Act, a document that purports to*

be a reproduction in writing of the summons certified by the prosecutor as being a true copy thereof.”

35. The word ‘*person*’ is also used by reference to the ‘accused’, and section 1(6)(c) of the 1986 Act provides that a summons shall state shortly and in ordinary language particulars of the alleged offence, ‘*the name of the person*’ alleged to have committed the offence and the address (if known) at which he or she ordinarily resides.
36. Again, the meaning of the ‘*name of the person*’ in section 1(6)(a) and section 1(6)(c) of the 1986 Act does not admit of an interpretation which includes an unincorporated body of persons but is suggestive of the name of a natural person.
37. The pronouns in section 1(6)(c) and (d) suggest a natural person. Accepting that section 18(c) of the Interpretation Act 2005 addresses pronouns, section 1(6)(c) of the Courts (No. 3) Act 1986 (as amended) provides that a summons shall state shortly and in ordinary language particulars of the alleged offence, the name of the person alleged to have committed the offence and the address (if known) at which he or she ordinarily resides. Also, section 1(6)(d) of the Courts (No. 3) Act 1986 (as amended) provides that a summons shall notify that person that he or she will be accused of that offence at a sitting of the District Court specified by reference to its date and location and, insofar as is practicable, its time. Paraphrasing and adapting the observations of the Court of Appeal (Murray J.) in *FOIE CLG v The Legal Aid Board* [2023] IECA 19 at paragraph 64, the reference to pronouns in s. 18(c) does not detract from the fact that the references to the pronouns ‘*her or she*’ in section 1(6)(c) and (d) suggest that ‘person’ means a natural person and not an unincorporated body of persons.

38. Further, section 1(7) of the 1986 Act provides that “[f]or the avoidance of doubt, particulars of the penalty to which a person guilty of the offence concerned would be liable are not required to be stated in a summons.”
39. Section 1(3) of the Courts (No. 3) Act 1986 (as amended) now provides that “[a]n application for the issue of a summons may be made to the appropriate office by or on behalf of the Attorney General, the Director of Public Prosecutions, a member of the Garda Síochána or **any person** authorised by or under an enactment to bring and prosecute proceedings for the offence concerned” (emphasis added).
40. Previously, section 1(4) of the 1986 Act stated that “[a]n application for the issue of a summons in relation to an offence may be made to the appropriate office of the District Court by or on behalf of the Attorney General, the Director of Public Prosecutions, a member of the Garda Síochána or **any person** authorised by or under statute to prosecute the offence” (emphasis added).
41. Section 1(4), for example, was referred to by Morris J. (as he then was) on page 4 of the decision in *Kelly v The Foyle Fisheries Commission* which immediately preceded the extract quoted above and relied upon by Mr. Lyons SC. As set out earlier, the substance of the issue in that case was in relation to the status of a common informer and the point raised in this consultative case stated was not expressly raised in that case. Further, section 1(3) of the Courts (No. 3) Act 1986 (as did its predecessor section 1(4)) addresses the prosecuting entities who are authorised by virtue of their office (*i.e.*, the Attorney General, the Director of Public Prosecutions, a member of

An Garda Síochána) or by virtue of law (any person so authorised to bring and prosecute proceedings) to make an application for the issue of a summons. The point of the consultative case stated is that section 1(3) now has to be read in the context of the *amended* section 1(6) of the Courts (No. 3) Act 1986 (as amended), the first requirement of which provides for the specification of “*the name of the person who applied for the issue of the summons*”, and suggests that the person who acts as an agent for a prosecutor be identifiable and not an unincorporated body of persons.

CONCLUSION

42. The written Legal Submissions on behalf of the Accused, dated 30th September 2021 which were before Judge Murphy described the provisions of the Courts (No. 3) Act 1986 as amended which addressed the word ‘person’ as a “*prescription for specificity and not a dispensation for ambiguity.*”
43. In summary, therefore, sub-sections of section 1 of the Courts (No. 3) Act 1986 (as amended) require, paraphrasing Lord Blackburn’s formulation in *Pharmaceutical Society v London and Provincial Supply Association* (1880) 5 AC 857, pp. 869-870),⁸ that the word ‘person’ shall have ‘the less extended sense’ when applied to the entire of the Courts (No. 3) Act 1986 (as amended).

⁸ As referred to by the Court of Appeal *FOIE CLG v The Legal Aid Board* [2023] IECA 19 per Murray J. at paragraph 36.

44. In answering the question posed by Judge Sandra Murphy on 2nd March 2022, therefore, section 1 of the Courts (No. 3) Act 1986 (as amended)⁹ does not authorise the issue of a summons on the application of “*VP McMullin*” being a firm of solicitors and an unincorporated body of persons.

45. I shall put the matter in for mention at 10:30 on Tuesday 9th April 2024 to discuss any ancillary or consequential matters which arise, including the question of costs.

⁹ I have amended the reference in the case stated from “*section 1 of the Courts (No.3) Act, 1986 as amended by S.49 of the Civil Liability and Courts Act 2004*” to “*the Courts (No.3) Act 1986 (as amended)*” because the Courts (No.3) Act, 1986 has been amended (and substituted) by section 49 of the Civil Liability and Courts Act 2004, section 19 of the Civil Law (Miscellaneous Provisions) Act 2008, section 2 of the Courts Act 2017 and the European Union (Right to Information in Criminal Proceedings) Regulations 2022 (S.I. No.549/2022).