

**APPROVED  
NO REDACTION NEEDED**



**THE COURT OF APPEAL  
CIVIL**

**Appeal Number: 2024/4**

**Whelan J.  
Faherty J.  
Allen J.**

**BETWEEN/**

**JOSEPH LAVERY**

**PLAINTIFF/APPELLANT**

**- AND -**

**RICHARD HUMPHREYS, JAMES FAUGHNAN, JOHN FRANCIS AYLNER, RORY  
HAYDEN, JOSEPH SMITH, BRIAN O'CALLAGHAN, FRANCIS COMERFORD,  
ALAN MITCHELL, IRELAND, THE ATTORNEY GENERAL, THE MINISTER  
FOR JUSTICE AND EQUALITY, NORA RAFFERTY, MARTIN COSGROVE, CIAN  
O'BRIEN, THE GARDA COMMISSIONER, THE DIRECTOR OF PUBLIC  
PROSECUTIONS, THE COURTS SERVICE OF IRELAND AND START  
MORTGAGES DESIGNATED ACTIVITY COMPANY**

**DEFENDANTS/RESPONDENTS**

**JUDGMENT of Mr. Justice Allen delivered on the 17<sup>th</sup> day of June, 2024**

### *Introduction*

1. This is an appeal by Mr. Joseph Lavery against the judgment and order of the High Court (Sanfey J.) delivered and made on 23<sup>rd</sup> October, 2024 refusing an application by Mr. Lavery for an order to set aside an order made by the High Court (O'Moore J.) on 21<sup>st</sup> June, 2023 striking out the proceedings on the grounds that they were frivolous and vexatious and disclosed no reasonable cause of action and that they had been issued in breach of an *Isaac Wunder* order.

### *The action*

2. By plenary summons issued on 19<sup>th</sup> January, 2022 Mr. Lavery claimed a declaration that he is immune to court summonses and orders and €2,000,000 damages. The general indorsement of claim was one with which the High Court chancery judges have become all too familiar with over the past number of years. It has sometimes been referred to as the "*Cafferkey argument*".

3. On 14<sup>th</sup> May, 2007 in an action (2006 No. 1114P) in which a Mr. Eugene Cafferkey (a litigant in person) was the plaintiff and the Director of Public Prosecutions was the defendant, Gilligan J. made an order by consent extending the time for the entry of an appearance by the respondent by one week and extending the time for delivery of a defence by four weeks, and reserving the costs of the motion.

4. On 4<sup>th</sup> March, 2019 in proceedings (2018 No. 9410P) in which a Mr. John O'Doherty (a litigant in person) was plaintiff, and Ireland, the Attorney General and the Minister for Justice and Equality were defendants, Reynolds J. made an order striking out a motion for judgment in default of appearance, as well as the action, with no order as to costs.

5. The premise of Mr. Lavery's claim was that these orders showed – or possibly had the effect – that the Minister for Justice and Equality, the Attorney General, and the Director of

Public Prosecutions are immune to court summonses and orders. Of course, they showed no such thing and could not possibly have had any such effect.

6. Invoking the guarantee of equality in Article 40.1 of the Constitution and Article 2 of the “*Treaty of Europe*”, Mr. Lavery claimed that he, too, was immune to court summonses and orders, and in particular was immune from a series of orders made over the previous five and a half years or so by Humphreys J., His Honour Judge O’Callaghan, His Honour Judge Aylmer, His Honour Judge Comerford, District Court Judge Faughnan, District Court Judge Mitchell, and the County Registrar for County Cavan, Mr. Joseph Smith.

7. Mr. Lavery’s claim made no sense. In the same breath, Mr. Lavery was invoking and disavowing the jurisdiction of the High Court. Conceptually, the very making of the orders referred to showed that the defendants in those proceedings were subject to the jurisdiction of the High Court. Although the premise of the claim was that they were immune from suit, Mr. Lavery named the Minister for Justice, the Attorney General, and the Director of Public Prosecutions as defendants. If the guarantee of equality invoked meant that Mr. Lavery was immune to suit, it followed that all of the defendants were similarly immune to suit. In the course of the oral presentation of his appeal, Mr. Lavery submitted that the general immunity said to have been created or conferred by the procedural orders made in Mr. O’Doherty’s and Mr. Cafferkey’s cases was one that needed to be claimed, but as Mr. Lavery had not previously claimed the immunity he asserted, that made no sense either.

8. By the way, on 13<sup>th</sup> November, 2007 Mr. Cafferkey’s action against the Director of Public Prosecutions was dismissed by the High Court (Lavan J.) on the grounds that it was frivolous and vexatious and disclosed no reasonable cause of action; and on 28<sup>th</sup> October, 2011 the Supreme Court dismissed his appeal against that order.

*The motion to dismiss*

**9.** Not altogether surprisingly, the respondents moved to have Mr. Lavery's action struck out on the grounds that it was frivolous and vexatious and disclosed no reasonable cause of action. They also relied on the fact that the proceedings had been issued in breach of a so-called *Isaac Wunder* order made by the High Court (Humphreys J.) on 4<sup>th</sup> July, 2016 by which Mr. Lavery was restrained from instituting any High Court proceedings without the leave of a judge of the High Court.

**10.** The three motions issued on behalf of all of the respondents were listed for hearing together on 16<sup>th</sup> March, 2023 before the High Court (O'Moore J.). The first to twelfth and the fifteenth to seventeenth respondents – together referred to as the Public Law respondents – and the eighteenth defendant – Start Mortgages DAC – were represented by solicitors and by counsel and the thirteenth defendant – Mr. Martin Cosgrove, solicitor – by a solicitor. There was no appearance by Mr. Lavery. Mr. Lavery was plainly aware of the listing as he had sent an e-mail to the chancery list registrar on 14<sup>th</sup> March, 2023 seeking an adjournment on various grounds. O'Moore J. saw no reason why the motions should be adjourned and he proceeded to hear them.

**11.** On 19<sup>th</sup> May, 2023 O'Moore J. delivered a written judgment ([2023] IEHC 266) in which he first reprised his reasons for refusing the adjournment.

**12.** O'Moore J. then considered the *Isaac Wunder* order made by Humphreys J. on 4<sup>th</sup> July, 2016; noting that there was then no appearance by or on behalf of Mr. Lavery but that Mr. Lavery had been given liberty to apply in respect of the order made against him, which he had not availed of. O'Moore J. noted that the order was broad and clearly prohibited Mr. Lavery from issuing the proceedings but – with some misgivings – went on to consider whether the case was one for which leave might be granted. Specifically, he considered whether the claim which Mr. Lavery sought to agitate was frivolous and vexatious.

**13.** O'Moore J. identified eight cases in which written judgments had been delivered in cases in which litigants in person claimed to be immune from court proceedings and orders on more or less the same basis as had been advanced by Mr. Lavery in his plenary summons, and in which the argument advanced was variously described as fundamentally misconceived and – if more robustly, no less accurately – as simply preposterous. He found that the claim was frivolous and vexatious and bound to fail and for that reason must be struck out. He also found that had Mr. Lavery sought leave to issue the proceedings – as he was obliged to do by the order of 4<sup>th</sup> June, 2016 – such leave would not have been granted.

**14.** The judgment delivered by O'Moore J. on 19<sup>th</sup> May, 2023 was delivered electronically and the motions were listed for mention on 21<sup>st</sup> June, 2023 to deal with any outstanding matters, including costs. When the matter came back into the list, there was again no appearance by Mr. Lavery and O'Moore J. made an order for the respondents' costs. The orders were perfected on the same day.

**15.** Mr. Lavery was entitled to appeal within 28 days of the date of perfection of the orders but did not do so.

*The motion to set aside*

**16.** By notice of motion issued on 19<sup>th</sup> July, 2023 Mr. Lavery applied to the High Court for an order setting aside the orders of 21<sup>st</sup> June, 2023. That motion appears to have been issued by leave of O'Moore J. but it is not entirely clear on what basis that leave was granted. The registrar's indorsement on what must at the time have been a stamped draft showing "*Leave to issue and serve short notice of motion for 16<sup>th</sup> October, 2023*" may have meant that the motion was given an earlier return date than would otherwise have been available. According to an e-mail of 20<sup>th</sup> October, 2023 sent by Mr. Lavery to the chancery list registrar and the solicitors for the respondents, leave was granted for an application to set aside an order which had been obtained in his absence, but as I will immediately come to, that was not

the basis on which the motion was brought. As counsel for the respondents pointed out, the motion to set aside the orders of O'Moore J. was issued within the time for an appeal.

**17.** Mr. Lavery's motion was grounded on a short affidavit sworn on 19<sup>th</sup> July, 2023 by which he averred that his "*constitutional case*" had been struck out, while – he said – in contrast, Mr. O'Doherty had been granted judgment in a case in which he – Mr. O'Doherty – had relied on the same indorsement of claim. Mr. Lavery asserted that under Article 40.1 of the Constitution and Article 2 of the "*Treaty of Europe*" he was entitled to equality with Mr. O'Doherty and that he, like the Director of Public Prosecutions who – he asserted – had failed to comply with the order made in Mr. Cafferkey's case, was immune from suit.

**18.** The O'Doherty case to which Mr. Lavery referred in his affidavit was a different case to that referred to in his general indorsement of claim.

**19.** Mr. Lavery exhibited a copy of an order made by O'Moore J. on 18<sup>th</sup> July, 2022 in another case (2021 No. 2308P) in which Mr. John O'Doherty was the plaintiff and Ireland, the Attorney General and the Minister for Justice and Equality are defendants, by which Mr. O'Doherty was to have judgment against the defendants for such amount as the court might assess for damages as well the costs of the motion and action, by reason of the defendants' failure to comply with an earlier order in those proceedings; but which was subject to a stay for two weeks for the delivery of a defence and in the event of the delivery of a defence within that time, would be vacated. There was no evidence as to whether a defence was delivered in that case within the two further weeks allowed.

**20.** A short replying affidavit of Ms. Niamh O'Shea was filed on behalf of the eighteenth respondent – Start Mortgages DAC – in which she deposed that there had been no appeal against the order of O'Moore J. and suggested that Mr. Lavery's motion was misconceived and that the grounding affidavit disclosed no reason why the court might grant the relief sought. The other respondents did not file replying affidavits but in opposing Mr. Lavery's

motion, appear to have relied on the affidavits previously filed in support of their motions to have the proceedings dismissed.

**21.** Mr. Lavery’s motion to set aside the orders of O’Moore J. was returnable for Monday 16<sup>th</sup> October, 2023 but he did not appear. Sanfey J. took in the papers and adjourned the motion for a week with a direction that Mr. Lavery be notified. Mr. Lavery was so notified but yet again failed to appear. Instead, on the preceding Friday, 20<sup>th</sup> October, he sent an e-mail to the chancery list registrar asking for a copy of what he described as the alleged order adjourning the motion for a week. It was clear to the High Court judge – not least from Mr. Lavery’s e-mail – that he was aware that his motion was listed for hearing and the judge proceeded to hear it.

**22.** In a short *ex tempore* judgment Sanfey J. summarised the background to the motion. Referencing the affidavit of Ms. O’Shea, he said that Mr. Lavery’s application to set aside the decision of another High Court judge was inappropriate. He found that the motion was clearly unstateable and he dismissed it, with costs.

#### *The appeal*

**23.** By notice of appeal dated 2<sup>nd</sup> January, 2024 Mr. Lavery appealed against the judgment and order of Sanfey J. on two grounds – to which I will come. The appeal was listed for directions on 16<sup>th</sup> February, 2024.

**24.** In the meantime, on 1<sup>st</sup> February, 2024 Mr. Lavery issued a motion in this court seeking *inter alia* “an order for contempt by” Judge Aylmer and a number of persons – not parties to the proceedings – who appear to have had some involvement with a hearing in the Circuit Court in Cavan on 21<sup>st</sup> November, 2023. That motion came before the list judge (Haughton J.) on 16<sup>th</sup> February, 2024 and was – inevitably – struck out for want of jurisdiction, with costs to the respondents.

**25.** Undaunted, on 1<sup>st</sup> March, 2024 Mr. Lavery issued another motion in this court seeking to set aside the order of 16<sup>th</sup> February, 2024. By order of this court (Haughton J.) made on 8<sup>th</sup> March, 2024 that motion was refused, with costs to the respondents.

**26.** By a third notice of motion, issued on 21<sup>st</sup> March, 2024 – which was served on the solicitors for all of the respondents to the appeal and on some of them directly – Mr. Lavery applied to this court for “*an order for contempt of ongoing proceedings, record no. 2024/4*” – that is to say, this appeal – by the County Registrar for Cavan, Start Mortgages DAC, the Courts Service of Ireland, the Minister for Justice and Equality, the Chief State Solicitor and Mason Hayes and Curran – who are the solicitors for Start Mortgages. By order of this court (Costello J.) made on 12<sup>th</sup> April, 2024 that motion was refused, with costs to the respondents.

**27.** Mr. Lavery’s grounds of appeal are:-

- “1. The High Court has ruled in favour of the plaintiff in High Court Constitutional Case No. 2121/2308P, and that case like my High Court Constitutional Case No. 2022/176P relies on Supreme Court Case Law No. 334/2007 along with Article 40.1 of the Irish Constitution and Article 2 of the Treaty of Europe, like that of the Director of Public Prosecutions who ignored High Court Order No. 2006/1114P, I am immune to Court Orders as that equality is guaranteed under Article 40.1 of the Irish Constitution and Article 2 of the Treaty of Europe.*
- 2. No Judge can overrule High Court Order 2021/2308P which means that the High Court must rule in my favour in my High Court Constitutional Case No. 2022/176P as that equality with the Plaintiff in High Court Constitutional Case No. 2021/2308P is guaranteed under Article 40.1 of the Irish Constitution and Article 2 of the Treaty of Europe and all Orders ever made*



*against me are unconstitutional and void which automatically terminates all cases and convictions against me.”*

**28.** I pause here to say that there is no appeal against the finding of Sanfey J. – which is recited in the perfected order – that Mr. Lavery was well aware that the matter was in the list on 23<sup>rd</sup> October, 2023 and would be heard that day; or against his decision to hear the motions in Mr. Lavery’s absence.

**29.** The reference in the first ground of appeal to High Court Constitutional Case No. 2021/2308P is to the second – or at least subsequent – case brought by Mr. O’Doherty in which the order of O’Moore J. was made on 18<sup>th</sup> July, 2022. As is apparent from the record number, that case post-dated the issue of Mr. Lavery’s proceedings. The reference to Supreme Court Case Law No. 334/2007 is entirely unclear but in the course of his oral presentation Mr. Lavery suggested that it was a case in which Irvine J. (as she then was) sitting as the list judge in the Court of Appeal referred an appeal back to the Supreme Court. Mr. Lavery was unable to produce any judgment or order and did not even know the name of No. 334/2007 but he thought that it might have been Mr. Cafferkey’s case. The judgment of Simons J. in *Kavanagh v. Start Mortgages DAC* [2023] IEHC 452 shows that it was indeed Mr. Cafferkey’s appeal to the Supreme Court in 2006 No. 1114P, against the judgment and order of Lavan J. dismissing his case as disclosing no cause of action, which, in turn, was dismissed by the Supreme Court.

**30.** Unsurprisingly, Mr. Lavery’s appeal was opposed by all of the respondents who emphasised that he was seeking at the same time to rely on court orders made in other proceedings which he claims were in his favour, while asserting that he is immune from orders made against him. They also submit that the remedy available to Mr. Lavery if he wished to contest the order made by O’Moore J. was to appeal: which he has not done.

**31.** The Public Law respondents' respondents' notice lists six additional grounds on which it is said the High Court order should be affirmed, including that in applying to set aside the order of O'Moore J. Mr. Lavery did not identify any of the exceptional grounds on which that might have been done; and that the order made in July, 2022 in Mr. O'Doherty's case did not confer any rights on Mr. Lavery and was irrelevant.

**32.** By way of cross-appeal, the Public Law respondents asked that this court should extend the *Isaac Wunder* order against Mr. Lavery so as to prohibit him from filing any document of any kind either in the Central Office of the High Court or the Office of the Court of Appeal without the prior specific leave of that or this court, as the case may be. At the time of filing of the Public Law respondents' notice, such an extension of the *Isaac Wunder* order was said to be justified on the grounds of the continued pattern of filing meritless pleadings, affidavits and applications; the continued disregard of the *Isaac Wunder* order; the significant and ongoing impact on the time and resources of those respondents; and what was said to be the continuing abuse of the process of the High Court and of this court.

**33.** The appeal can be readily disposed of.

**34.** Mr. Lavery's written and oral submissions amounted to no more than a repetition of his general indorsement of claim. He did not address the finding of Sanfey J. that Mr. Lavery's motion was misconceived and that the High Court simply had no jurisdiction to set aside the judgment and order of O'Moore J.

**35.** Mr. Lavery's application to the High Court to set aside the judgment and order of O'Moore J. was misconceived. The circumstances in which the High Court may revisit a final order are extremely limited. Mr. Lavery did not invoke or lay the ground for any of them.

**36.** In *In Re Greendale Developments Ltd. (No. 3)* [2000] 2 I.R. 514 the Supreme Court contemplated that there might be cases in which, in the most special or exceptional

circumstances, a final judgment of the Supreme Court could be reopened where, through no fault of the party, he or she has been subject to a breach of constitutional rights. In *Start Mortgages DAC v. Kavanagh* [2023] IEHC 37, Simons J. identified in the judgment of the Supreme Court in *Student Transport Scheme Ltd. v. Minister for Education and Skills* [2021] IESC 35 two principles, the first of which was that a party seeking to set aside a final order must clearly establish a fundamental denial of justice against which no other remedy, such as an appeal, is available.

**37.** While the issue was not argued and so I am not to be taken to have finally decided it, it seems to me that the constitutional imperative subtending what has come to be referred to as the *Greendale* jurisdiction in a court of final appeal does not apply where – as in this case – the party affected has a right of appeal. I do not understand the judgment of Simons J. in *Kavanagh* or indeed the short *ex tempore* judgment of Noonan J. dismissing Mr. Kavanagh’s appeal ([2023] IECA 251) as suggesting otherwise.

**38.** In this case it is sufficient to say that the premise of Mr. Lavery’s High Court motion to set aside the order of O’Moore J. was simply and solely that it was said to have been wrong and that the grounds on which Mr. Lavery sought to set aside the order of O’Moore J. made were precisely the same as the grounds on which the making of the order had been resisted. Sanfey J. quite correctly said that he was not entitled to hear an appeal from the decision of another High Court judge and that the application was unstateable.

**39.** That being so, it is unnecessary to dwell on what are said to be additional grounds on which the decision of the High Court should be affirmed.

**40.** I would dismiss Mr. Lavery’s appeal.

*The application to vary the Isaac Wunder order*

**41.** The position in relation to the Public Law respondents’ cross-appeal is more nuanced.

**42.** In section 3 of their respondents’ notice filed on 24<sup>th</sup> January, 2024, the Public Law respondents indicated that they would apply to this court to extend the *Isaac Wunder* order against Mr. Lavery on a number of grounds. This was not an application which had been made to the High Court judge and so – as counsel acknowledged at the oral hearing – was not strictly speaking a cross-appeal. But whatever about the technicalities, the form gave clear notice of the Public Law respondents’ intention to apply for an order extending the *Isaac Wunder* order against Mr. Lavery so as to prohibit him from filing any document of any kind in the Central Office of the High Court or in the Office of the Court of Appeal, without the prior leave of the High Court or of this court, as the case might be.

**43.** The grounds on which the extension was sought were:-

- “1. The continued pattern of filing meritless pleadings, affidavits and applications that has continued since the application giving rise to the June 2023 Order;*
- 2. The continued disregard of the Isaac Wunder order that arise on the making, without leave, of the application giving rise to the Impugned Order;*
- 3. The significant and ongoing impact of the foregoing on the time and resources of the respondents on whose behalf the present notice is filed, and in particular the re-allocation of time and resources in being compelled to address applications made in disregard of the existing Isaac Wunder Order, which said applications should never have been brought before the High Court or on appeal before this Honourable Court without leave first having been granted;*
- 4. The continued abuse of the process of the High Court and of this Honourable Court culminating in the Appellant’s present appeal, which has the consequence that it is open to this Honourable Court in disposing of the appeal to consider extending the terms of the existing Isaac Wunder Order.”*

**44.** As I have said, the Public Law respondents' respondents' notice was filed on 24<sup>th</sup> January, 2024. By the time the appeal was heard on 30<sup>th</sup> May, 2024 the ground had shifted considerably.

**45.** At the time he issued his plenary summons on 19<sup>th</sup> January, 2022 Mr. Lavery was the subject of an *Isaac Wunder* order made by Humphreys J. on 4<sup>th</sup> July, 2016 restraining him from instituting any High Court proceedings and from issuing and serving any notice of motion on any person or party whatsoever without the leave of a judge of the High Court. The order shows that the order made was broader than that which had been sought: which was an order prohibiting Mr. Lavery from issuing any further proceedings without the leave of the President of the High Court or of another judge of the High Court nominated by the President.

**46.** If, before the order of 4<sup>th</sup> July, 2016 was made, it might have been argued that the order sought on behalf of the Director of Public Prosecutions was implicitly limited to any further proceedings against the Director of Public Prosecutions and should be expressly confined to any further proceedings against the Director of Public Prosecutions, no such argument was made. If, before the order of 4<sup>th</sup> July, 2016 was made it might have been argued that the scope of the order sought extended far beyond the legitimate interest of the Director of Public Prosecutions or was disproportionate to the risk of frivolous or vexatious litigation which had by then been established or could properly be anticipated, no such argument was then made. If, after the order of 4<sup>th</sup> July, 2016 was made, Mr. Lavery had any argument to make as to the scope or terms of the order, he had liberty to apply on 24 hours' notice but did not do so. Or, he could have appealed against the order of 4<sup>th</sup> July, 2016 but did not do so.

**47.** The three motions issued on behalf of the respondents to strike out Mr. Lavery's action each clearly referenced the order of 4<sup>th</sup> July, 2016. If there was any argument to be

made that the order was or ought to have been limited to further proceedings against the Director of Public Prosecutions, or that Mr. Lavery understood – or misunderstood – it to be so limited, so such argument was made.

**48.** In their written submissions the Public Law respondents identified four written High Court judgments between 2016 and 2021 which showed that in that time Mr. Lavery made eleven leave applications, most of which were refused. According to Mr. Lavery, he made a total of fourteen such applications, ten of which were refused. These were all leave applications which Mr. Lavery was perfectly entitled to make. To the extent that they were refused, there was no burden on the respondents' time or resources. Moreover, they all long predated June, 2023: which was the starting date of the "*continued pattern*" relied on.

**49.** Subsequent to the order of O'Moore J. of 21<sup>st</sup> June, 2023, Mr. Lavery made one High Court application, which was his motion filed on 19<sup>th</sup> July, 2023 to set aside that order. That motion was issued by leave of O'Moore J. and – whatever my suspicions may be – the respondents have not sought to make the case that O'Moore J. was misled as to the grounds on which Mr. Lavery sought to set aside an order made in his absence. Accordingly, Mr. Lavery's single High Court motion cannot have amounted to a pattern. And, since he had leave to issue it, it cannot have been issued in disregard of the existing *Isaac Wunder* order.

**50.** At the date of filing of the Public Law respondents' respondents' notice, Mr. Lavery had obviously filed his notice of appeal against the judgment and order of Sanfey J. In the event, the appeal was dismissed but it seems to me that to condemn it as meritless – still less, as I believe is the correct test, as vexatious or an abuse of process – would be to prejudge the outcome. The filing by Mr. Lavery of his notice of appeal cannot have amounted to a pattern. And, since Mr. Lavery did not need leave to file his notice of appeal, it cannot have amounted to a disregard of the *Isaac Wunder* order. As matters stood on 24<sup>th</sup> January, 2024, I would

have seen no justification for any restriction on Mr. Lavery's right of access to the Court of Appeal.

**51.** However, as I have said, the ground has since shifted.

**52.** In *Kearney v. Bank of Scotland plc* [2020] IECA 92, Whelan J. (Baker and Collins JJ. concurring) restated the well-established principle that an *Isaac Wunder* order should only be made to the extent necessary to prevent an abuse of court processes or the pursuit of vexatious litigation and no further. She emphasised that the power of the court to prevent, restrain or delimit a party from commencing or pursuing legal proceedings must be regarded as exceptional and that the court should be particularly vigilant in regard to making such orders in cases where a litigant is unrepresented and may not be in a position to properly articulate his interest in maintaining access to the courts.

**53.** As matters stand, Mr. Lavery is subject to a very broad restriction on his right of access to the High Court. Somehow or other, he managed to issue his plenary summons in this case without leave. On the hearing of the appeal he said that during the COVID-19 restrictions he had sought a hearing before a judge but was given an appointment in the Central Office instead, at which the official directed a number of manuscript corrections to his draft summons and then issued it for him. It is common case that the summons ought not to have been issued without leave and that there was an oversight in the Central Office. The case was not made that Mr. Lavery misled the official. I see no justification for extending the *Isaac Wunder* order insofar as it relates to High Court applications.

**54.** What has happened since the filing of the Public Law respondents' respondents' notice is that Mr. Lavery issued three motions in this court which had nothing whatsoever to do with his appeal but were calculated to disrupt proceedings in the Circuit Court in Cavan. Each of those motions was obviously an abuse of the process of the Court of Appeal and each of them was – as far as the Public Law respondents to these proceedings is concerned –

vexatious. At the hearing of the appeal, Mr. Lavery conceded that he was attempting to disrupt the business of the Circuit Court in Cavan and explained that he had issued the motions in this court because he “*couldn’t use the High Court.*” I am satisfied that this pattern of abuse properly gives rise to an apprehension that unless the court intervenes, it will continue.

**55.** The extension to the *Isaac Wunder* order sought by the respondent’s notice was to prohibit Mr. Lavery, without leave, from filing any document of any kind in the Court of Appeal Office. That would have precluded any appeal against any High Court order in any case which Mr. Lavery would have obtained leave to issue and serve, but which might have failed. At the hearing of the appeal, the form of order sought was modified so that there would be no restriction on Mr. Lavery’s right to appeal but that he would need leave to issue any motion in any appeal he might bring but I consider that an order in those terms would go further than necessary and appropriate. It would constrain the prosecution by Mr. Lavery of an appeal to which the Public Law respondents are not party.

**56.** It seems to me that the apprehended mischief is that Mr. Lavery might attempt to further abuse process by issuing further motions in this appeal and that the order which this court should make should be directed and confined to that.

**57.** I would dismiss the appeal and affirm the order of the High Court.

**58.** I would further order that the appellant be restrained from issuing any further motion on this appeal without the prior leave of the President of the Court of Appeal or such judge of the Court of Appeal as may be nominated by him or her, such leave to be sought by application in writing addressed to the Registrar of the Court of Appeal.

**59.** As to the costs of the appeal, it seems to me that as the respondents have been entirely successful in resisting the appeal, they are all entitled to an order for their costs. If Mr. Lavery should wish to contend for any other costs order, he may within ten days of the



electronic delivery of this judgment file and serve a short written submission (not exceeding 1,000 words), in which event the respondents will have ten days to file a response, similarly so limited.

**60.** As this judgment is being delivered electronically, Whelan and Faherty JJ. have authorised me to say that they agree with it and with the orders I have proposed.