



**THE COURT OF APPEAL**

**UNAPPROVED**

**Court of Appeal Record Number: 2022/210  
High Court Record Number: 2020/123MCA  
Neutral Citation: [2025] IECA 2**

**Whelan J.  
Faherty J.  
Binchy J.**

**BETWEEN/**

**DEIRDRE MORGAN**

**APPELLANT**

**- AND -**

**THE LABOUR COURT**

**RESPONDENT**

**-AND-**

**KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD, TUSLA,  
HEALTH AND SAFETY AUTHORITY, DEPARTMENT OF JUSTICE AND  
EQUALITY, MINISTER FOR EDUCATION AND SKILLS AND IRISH HUMAN  
RIGHTS AND EQUALITY COMMISSION**

**NOTICE PARTIES**

**-AND-**

**Court of Appeal Record Number: 2022/220**  
**High Court Record Number: 2020/787JR**

**BETWEEN/**

**DEIRDRE MORGAN**

**APPELLANT**

**- AND -**

**MINISTER FOR EDUCATION AND SKILLS**

**RESPONDENT**

**-AND-**

**KILDARE AND WICKLOW EDUCATION AND TRAINING BOARD**

**NOTICE PARTY**

**JUDGMENT of Ms. Justice Máire Whelan delivered on the 14th day of January 2025**

**Introduction**

1. This judgment concerns two appeals brought by Ms. Morgan (the appellant) against the judgment of the High Court Ferriter J., ([2022] IEHC 361) and consequent orders made in the first entitled appeal on 28 June 2022 (perfected on 19 July 2022) and in the second entitled appeal made on 28 June 2022 (perfected on 5 August 2022) granting *Isaac Wunder* orders pursuant to the inherent jurisdiction of the High Court as sought by both respondents, Kildare and Wicklow Education and Training Board (“the Board”) and the Minister for Education (“the Minister”) against the appellant together with orders striking out various

pending applications before the Workplace Relations Commission (“the WRC”) and pending appeals to the Labour Court.

2. The *Isaac Wunder* orders were granted by the High Court following several days of hearing of the appellant’s sundry applications including appeals from decisions of the Labour Court dated 9 February 2021, an application for leave to apply for judicial review (which by order of the High Court (Meenan J.) was brought on notice to the Minister and the Board) and an application for leave to apply by way of judicial review for an order of certiorari “*quashing the determination of the Minister made under section 70 of [S.I. 292/2015] Education and Training Board Teachers Superannuation Scheme...*”. She then appealed each decision unsuccessfully to this court.

3. The Minister and the Board issued motions seeking orders pursuant to the inherent jurisdiction of the High Court restraining the appellant from instituting any further proceedings in any court or forum against either in relation to any matter involving, relating to or touching upon the appellant’s terms of employment with the Board including matters relating to her suspension and the termination of her contract of employment and/or her pension and gratuity entitlements, without prior leave of the President of the High Court. Like orders were sought restraining the appellant from making new complaints to the WRC or from pursuing extant appeals before the Labour Court against WRC decisions in regard to the same issues. In addition, the Board and the Minister sought orders pursuant to the inherent jurisdiction to strike out identified pending complaints/appeals brought by the appellant to the WRC or the Labour Court as being frivolous, vexatious and/or bound to fail and/or amounting to an abuse of process.

#### **Overview of Key Litigation, Complaints, Appeals and Proceedings**

4. The history of dealings between the parties culminating in the making of the *Isaac Wunder* orders under appeal is complex and involved. Briefly, the appellant commenced

employment as a teacher in a school operated by the Board's predecessor (Wicklow VEC) in September 2000. In 2003 she was made permanent at the school.

5. All of the appellant's complaints are rooted in events of 20 August 2010 when she made an allegation of sexual harassment to her employer, the VEC (now the Board), against a student. The VEC sought additional information which was not forthcoming which led to her being placed on paid protective leave by the Board's predecessor on or about 30 September 2010. The VEC initially sought to conduct a risk assessment. An independent investigation was conducted between 15 November 2010 and 29 November 2010 by a junior counsel retained by the VEC. The appellant withdrew her allegation of sexual harassment on 15 November 2010 during the investigation. The report by the independent investigator issued on 10 December 2010 found that the allegations made by the appellant were malicious and vexatious. Subsequently, the appellant launched a myriad (over 50) of different complaints, applications and appeals in sundry fora culminating in the within appeals (two of six brought by her against various judgments and orders of Ferriter J.)

6. Illustrative of this is that she filed a complaint on 31 December 2010 with the Rights Commissioner pursuant to the Protection for Persons Reporting Child Abuse Act, 1998.<sup>1</sup> On 22 September 2011, the Rights Commissioner<sup>2</sup> determined a separate complaint which the appellant made on 22 March 2011 alleging breach of s.27 *Safety Health and Welfare at Work Act, 2005* holding that actions taken by the relevant VEC did not constitute penalisation. The appellant appealed that decision to the Labour Court in early January 2012. Same was adjourned pending the outcome of her separate Equality Tribunal claim which was subsequently recorded as having been "*settled at hearing*", but which was nevertheless

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<sup>1</sup> This is recorded in the S.105 Inquiry dated 8<sup>th</sup> May 2015, from page 62 onwards in the 'Booklet of Pleadings Evidence 2022 220; 220 263' particularly at page 79.

<sup>2</sup> Details are set out in 2022 210 Book of Pleadings Evidence at page 139.

thereafter re-entered. The appeal was heard on 2 March 2020 and dismissed by the Labour Court by decision of 1 April 2020 affirming the Rights Commissioner's determination.

7. The appellant appealed the decision of the Labour Court on a point of law to the High Court (record no. 2020/123/MCA). Same was ultimately heard by Ferriter J. on 22 March 2022. He delivered an *ex tempore* judgment dismissing same holding that the appellant had not demonstrated any error of law in respect of the Labour Court's determination.

8. Meanwhile, having received the report of the independent investigation in December 2010, the VEC wrote to the appellant informing her of its intention to commence a disciplinary action in light of the report's finding that the appellant's allegations were "*malicious and vexatious*".

9. To return to the actual disciplinary process instigated by the VEC in September 2011, the relevant subcommittee of the VEC was established in accordance with clause 4.2 of circular CL59/2009 (which governs disciplinary proceedings against VEC employees) proceeded to investigate a number of complaints made against the appellant. Several oral hearings were held. At all material times she was represented by a solicitor and also had access to support from her Trade Union representatives (ASTI).

10. At an oral hearing of the VEC subcommittee on 5 September 2012, the appellant explicitly again withdrew her allegation of sexual harassment against the student. This represented the second occasion on which she unequivocally did so. The final decision of the VEC subcommittee was delivered on 27 March 2013 upholding all five of the original complaints made against her and making determinations regarding sanction. Thereafter the appellant appealed the said determination of the VEC subcommittee to the Department of Education and Skills Disciplinary Appeal Panel in accordance with Stage 5 of Circular CL 59/2009. She was legally represented at the said appeal. Her appeal was dismissed.

11. On 1 July 2013 pursuant to the Education and Training Boards Act, 2013 the VEC was dissolved, and the Board took over its functions and effectively became the appellant's employer by Act and operation of the law (S.I. 211/2013). On 23 July 2013 the Board formally notified the appellant of her suspension from duties in light of the findings of the subcommittee of the VEC aforesaid in the disciplinary proceedings. The Department of Education was also formally notified.

### **Section 105 Inquiry**

12. In February 2014, an inquiry was established by the Minister pursuant to s.105 of the Vocational Education Act 1930 (as amended) ("the VE Act 1930"). In August 2014, the Minister appointed an Inquiry Officer pursuant to said Act to conduct an inquiry. The appellant was legally represented throughout the Section 105 Inquiry. The final report of the s.105 Inquiry Officer made significant adverse determinations including, *inter alia*, that the appellant's false allegations of sexual harassment had exposed the VEC to potential legal action and loss, that she had accessed material from students' Facebook accounts inappropriately to support her position, that she had written untrue statements in her notice of complaint form and that she had failed to honour her responsibilities pursuant to Child Protection Guidelines.

13. Arising therefrom, on 15 June 2015, the Minister signed the Order formally dismissing the appellant pursuant to s.8(2) of the Vocational Education (Amendment) Act, 1944. The appellant was removed from the Department's payroll on 30 June 2015. She had remained on paid protective leave for four years and nine months until the statutory process concluded.

14. During the High Court hearing in 2022 she disputed the date of termination of her employment contract and sought to locate it at subsequent dates in 2019. There can be no doubt but that she was removed from payroll on 30 June 2015 she was on full notice of the

formal decision of 15 June 2015 by the Minister the import of which was self-evident on its face. The appellant never challenged her removal at the time in 2015. Assertions that her dismissal by the Minister occurred in 2019, years later than 2015 (notwithstanding overwhelming evidence to the contrary), serve to buttress the appellant's contention that her various subsequent applications to the WRC and Labour Court were not out of time.

**15.** The appellant lodged separate complaints with the WRC against the Minister and the Board pursuant to the Employment Equality Act 1998 (as amended) ("the EEA 1998") on 9 June 2016 (almost one year subsequent to her dismissal from office by the Minister) in each contesting her removal from office and alleging discrimination on grounds of disability. The WRC hearing occurred on 7 March 2017. On 14 June 2017 it determined that the said complaints be dismissed as out of time. She appealed the said determination to the Labour Court on 16 July 2017. The Labour Court rendered its determination on 17 January 2018 upholding the WRC finding that she was out of time and had failed to identify any reasonable cause which would justify an extension of same. In one of the four judgments delivered by Ferriter J. in the High Court on 1 June 2022, he held that the Labour Court's determination of 17 January 2018 was final and binding and dispositive of the said EEA 1998 complaints of 9 June 2016 against the Minister and the Board noting that same had not been appealed to the High Court.

**16.** Meanwhile the appellant lodged a complaint with the WRC on 16 November 2017 against the Minister alleging, *inter alia*, discrimination/victimisation in relation to pension pursuant to s.77 of the EEA 1998 and discrimination contrary to s.81E of the Pensions Act 1990 (as amended) ("PA 1990"). In the course of the hearing of these complaints at the WRC on 7 November 2018, the appellant abandoned the process and walked out. In its decision delivered on 11 December 2018 the WRC rejected those complaints. The appellant appealed to the Labour Court on 21 January 2019. The said pending appeal had not been

heard as of the date of the hearings before Ferriter J. in the High Court in March 2022. Reliefs sought by the respondents included that all such pending appeals be struck out pursuant to the inherent jurisdiction.

**17.** It transpired that the appellant, having walked out on the hearing at the WRC on 7 November 2018, on that same day lodged two further complaints alleging discrimination contrary to s.77 of the EEA 1998 and discrimination in respect of her occupational pension under s.81E of the PA 1990. Subsequently she withdrew these complaints in January 2019. Having withdrawn them she then effectively replicated them by lodging two further identical complaints with the WRC on 7 January 2019. The hearing proceeded at the WRC and by a determination dated 17 July 2019, the Adjudication Officer (“AO”) held that this and related victimisation complaints were all *res judicata* in light of *Henderson v. Henderson*. She appealed that decision to the Labour Court on 22 August 2019. The hearing was scheduled for 7 April 2020 but was adjourned at her request and remained in abeyance.

**18.** She had lodged a complaint with the WRC on 7 November 2018 against the Board alleging discrimination on disability and gender grounds and claimed entitlement to an injury gratuity. She alleged victimisation on account of making her complaints. The WRC on 19 March 2019 dismissed all the claims, which were almost three years out of time. She appealed that decision to the Labour Court where same remained pending at the date of High Court hearing (para. 74).

**19.** On 20 November 2018 the appellant was awarded preserved ill health benefits by the Board, but it refused her claim for payment of injury gratuity. It is difficult to understand from her submissions what the basis of her claim for an injury gratuity might be. She appeared to suggest that she sustained injuries at Clonmel Street in Dublin on or about 7 February 2012 in the context of her having to attend at the Equality Tribunal in relation to a claim that she was then pursuing before that body.



**20.** She appealed the Board's decision on the injury gratuity. On 16 November 2020 she received the Minister's determination made on foot of the Department's Internal Disputes Resolution Procedure which upheld the Board's earlier decision of 20 November 2018. She appealed that determination to the Financial Services and Pensions Ombudsman ("FSPO"). On 8 March 2021 in proceedings 2021/103JR, the appellant sought leave to seek *certiorari* of the Minister's determination in respect of her appeal against the Board's refusal to award her an injury gratuity under the Education and Training Board Teachers Superannuation Scheme 2015 (S.I. No. 292 of 2015).

**21.** Undeterred by the aforesaid adverse outcomes, on 15 April 2019 she launched a further complaint against the Board alleging discrimination on the grounds of gender and disability contrary to s.77 of the EEA 1998 and s.81E of the PA 1990 asserting that her dismissal occurred at a WRC hearing on 12 February 2019. Same were dismissed by the WRC on 23 October 2019 on the basis that she had been dismissed on 15 June 2015 and all issues were *res judicata*. She appealed that decision to the Labour Court. Its determination, rendered on 9 February 2021, rejected her appeal and found that there was no *prima facie* case established. She appealed (pursuant to s.46 WRA 2015) from the latter determination to the High Court on a point of law in proceedings record no. 2021/37/MCA. She launched a variant of her previous claim by contending that she was not an office holder at the date of the Ministerial Order removing her on 15 June 2015 and her dismissal could be deemed to have occurred in the course of a WRC hearing on 12 February 2019. This approach was aimed as curing the impediment that claims concerning the validity of her removal from office were all time-barred. A judgment delivered by Ferriter J. on 1 June 2022 dismissed her appeal holding that there was no error of law.

**22.** On 8 August 2019 she launched further WRC complaints against the Board pursuant to s.28 of the SHWWA 2005 and s.9 of the Unfair Dismissals Act 1977 ("the UDA 1977").

This time she characterised her employment status as being “*an administrative bubble from 2019*” claiming that she was dismissed at a WRC hearing on 12 February 2019. Fancifully, she alleged that it was “*a removal from office*” not a dismissal or termination of her employment. It is to be noted that in his *ex tempore* judgment in proceedings (2020/123MCA) on 22 March 2022 Ferriter J. held that this was identical to her initial complaint to the Labour Relations Commission.

**23.** She made further complaints against the Minister to the WRC on 10 August 2019 pursuant to s.28 of the SHWWA 2005, denying her dismissal, alleging discrimination pursuant to s.77 of the EEA 1998 and she was unfairly dismissed at the WRC on “*10 April 2019*” due to victimisation and had been discriminated against in respect of her pension due to that alleged dismissal. She had not progressed these complaints before the WRC before the conclusion of the High Court hearings in 2022.

**24.** On 26 August 2019 she lodged an unparticularised complaint against the Minister with the WRC pursuant to s.13 of the Industrial Relations Act 1969 (“the IRA 1969”) notwithstanding that by virtue of s.23 of the Industrial Relations Act 1990, as amended, (“the IRA 1990”) teachers are expressly excluded from the ambit of the said Act.

**25.** On 30 August 2019 she made a further complaint pursuant to s.13 of the IRA 1969 alleging failures of the Minister and the Board’s predecessor to deal with voluminous matters considered in the context of the VEC disciplinary inquiry and the Minister’s commissioned inquiry pursuant to s.105 of the VE Act 1930 and regarding child abuse allegations.

**26.** In 2020 the appellant’s litigation fervour continued. On 25 February 2020 she complained against the Board pursuant to s.77 of the EEA 1998 and s.81 of the PA 1990 on grounds of gender and disability. She alleged victimisation in relation to the injury gratuity. The hearing was deferred at her request and remained outstanding at the time of the High Court hearing.

**27.** On 1 February 2020 the Labour Court rejected her appeal under the SHWWA 2005. This was the subject of her appeal on a point of law to the High Court (proceedings 2020/123MCA) instituted on 11 May 2020. The Minister was one of several notice parties to same notwithstanding that the Minister had not been a party to the initial WRC complaint or to the Labour Court appeal.

**28.** On 29 June 2020 she launched complaints with the WRC against the Minister and the Board alleging of discrimination on grounds of gender, disability and victimisation contrary to the EEA 1998. On 5 February 2021 she launched complaints against the Minister both under the EEA 1998 and pursuant to s.81 of PA 1990. Respondents to the said complaint included the Minister, the Board, the WRC and the Irish Human Rights and Equality Commission.

**29.** On 4 February 2021 the appellant launched Circuit Court proceedings against the Minister and the Board (Eastern Circuit, Co. Kildare record no. 2021/00033) seeking sundry orders including pursuant to s. 77 EEA 1998 and seeking, *inter alia*, payment of salary since 1 July 2015 and annulment of “... *the unwanted resignation imposed on me in 2019*”. Ferriter J. exercised his inherent jurisdiction to strike out all of the above-mentioned outstanding proceedings to prevent abuses of process. In respect of the Circuit Court proceedings, he made a like order in circumstances where the Circuit Court lacked jurisdiction to make such an order itself.

**30.** On 5 February 2021 she lodged two further complaints with the WRC against the Minister alleging discrimination contrary to the PA 1990 and EEA 1998. On 3 August 2021 she lodged a repeat complaint to the WRC against the Minister alleging penalisation relating to s.28 of the SHWWA 2005 and, relying on identical grounds, made a complaint against the Board replicating her previously unsuccessful complaint as made against the Board’s statutory predecessor, the relevant VEC.

**31.** On 29 June 2021 she issued summary proceedings in the High Court (record no. 2021/404S) claiming “*unpaid salary from 1 July 2015 to 31 October 2018*” in the sum of €210,255.00. Ferriter J. in a judgment delivered on 1 June 2022 ([2022] IEHC 361) ordered that same be struck out pursuant to the inherent jurisdiction to prevent the prosecution of vexatious claims and abuse of process. On 29 December 2021 the appellant made repeat complaints to the WRC against the Minister alleging discrimination under the PA 1990 and EEA 1998.

**32.** She launched further complaints to the WRC against the Minister on 3 August 2021 alleging penalisation for making a complaint under the SHWWA 2005, identifying as the basis for same that that the Board and the Minister’s servants had “*circulated documents about me to the Labour Court and the High Court*”. She lodged yet another duplicative complaint to the WRC against the Board on 3 August 2021 seeking to invoke s.28 of the SHWWA 2005 and again alleging penalisation for having made a complaint. These complaints mirror one another echoing prior complaints. In the months prior to commencement of the High Court hearings, she launched more complaints, firstly against the Minister on 29 December 2021, yet again claiming discrimination pursuant to s.77 EEA 1998 alleging, *inter alia*, “*the Minister keeps making me ill by making false allegations about child sexual abuse, has engaged in ongoing different treatment of me as a teacher further to sexual harassment that occurred in 2010, including different pension treatment*”, which is substantially identical to one previously repeatedly advanced and conclusively determined pursuant to s.81E of the PA 1990 also included. On 3 March 2022, mere weeks before the substantive High Court hearing, she launched repetitive complaints with the WRC pursuant to s.77 EEA 1998. On 22, 23 and 24 March 2022, High Court proceedings (record numbers 2020/123MCA, 2021/37MCA, 2021/38MCA, 2020/787JR and 2021/103JR) went to hearing sequentially following directions given by Meenan J. at a case management hearing held on

14 July 2021. In the first instance on 22 March 2022, Ferriter J. gave an *ex tempore* judgment dismissing all of the s.46 WRA 2015 statutory appeals against various Labour Court's decisions.

**33.** In the course of the second day of the hearing, 23 March 2022, the appellant sought to leave of Ferriter J. to launch five further sets of proceeding alleging sundry breaches of the European Convention on Human Rights Act 2003. The transcript attests to the challenging conduct of the appellant and the unorthodox and unsatisfactory conduct of the appellant throughout the said hearing. In the course of the hearing on day 2, to restore order the judge adjourned the hearing and directed that the appellant participate remotely. This was necessitated by reason of the appellant's disruption and untoward conduct in the course of the hearing. The appeal hearing was adjourned on 24 March 2022 and resumed remotely on 29 April 2022 and concluded on that date. Four written judgments were delivered by Ferriter J. on 1 June 2022. Briefly put, the determinations were as follows: In ***Morgan v. The Minister for Education and Skills [2022] IEHC 360*** he refused leave to seek relief by way of judicial review finding that same were an abuse of process and an inappropriate attempt to seek to litigate the question of her removal as a teacher. The application also was "hopelessly out of time". He dismissed those proceedings. In proceedings ***Morgan v. The Labour Court & Ors. [2022] IEHC 362***, he dismissed two separate s.46 statutory appeals on points of law from determinations of the Labour Court dating to February 2021 and dismissed a discrimination claim under s. 77 of the EEA 1998 and s.81E of the PA 1990. He also held same to be *res judicata* as having been the subject of earlier conclusive findings. In ***Morgan v. The Minister for Education and Skills [2022] IEHC 363*** he refused leave to proceed by way of judicial review on the basis that the application was an improper attempt to reopen the circumstances of her removal as a teacher in 2015 and represented a further

attempt by her long running campaign of “*legally vexatious complaints and proceedings against the respondents*”.

**34.** On 13 October 2022 orders were made by Ferriter J. (perfected 20 October 2022) removing Tusla, the HSA, the Department of Justice and Equality and the Irish Human Rights and Equality Commission as respondents from the proceedings. On 24 October 2022 he made orders refusing the reliefs sought, dismissing all proceedings and ordering costs of the Board and the Minister against the appellant with a stay of execution pending any appeal.

**35.** It was against the above litigation background, which itself is non exhaustive, that the Board and the Minister sought by way of notices of motion filed in the High Court, sundry *Isaac Wunder* orders pursuant to the inherent jurisdiction of the High Court restraining the appellant from instituting further proceedings against either in any court or forum including the WRC relating to or touching upon her terms of employment with the Board including relating to her suspension, termination of her contract of employment, pension or gratuity entitlements, without prior leave of the President of the High Court or a judge nominated by the latter and that the Board and Minister be put on notice prior to the making of any such application with like orders sought restraining appeals from the WRC to the Labour Court without prior leave of the President of the High Court together with orders striking out pending complaints brought by her to the WRC, on the grounds that the same were frivolous, vexatious, bound to fail and/or an abuse of process. The Board sought orders pursuant to O.19, r. 28 Rules of the Superior Courts (“RSC”) striking out proceedings issued by the appellant against it on 29 June 2021 (record no. 2021/404S) on the grounds that same were frivolous and/or vexatious, failed to disclose a reasonable cause of action and like orders in relation to Circuit Court proceedings (record no. 2021/00033), issued at Naas Circuit Court on 4 February 2021.

### **High Court Judgment**

36. Ferriter J. carried out a comprehensive review of the history of the appellant's claims against the respondents. He noted that the relief sought by the respondents extended to restraining the institution of any proceedings hereafter by way of complaint to the WRC and that the respondents sought to strike out all pending complaints against either before the WRC as being frivolous and/or vexatious and/or an abuse of process, being duplicative of her previous complaints which had been the subject of final and binding determinations against her. He noted that all of the WRC claims and court proceedings related in one form or another to the appellant's removal from her teaching post. The judgment scrutinises in excess of fifty separate applications made against the Board/Minister to various entities including the Labour Relations Commission, its successor body the WRC, the Labour Court, the Circuit Court, the High Court, chronicling in detail the repeated applications notwithstanding prior conclusive determinations in each pursuant to the legislative regime. The court noted in respect of all claims including discrimination on various grounds pursuant to the EEA 1998, pension entitlements, injury gratuity claim, unfair dismissal, that each application had been finally and conclusively determined against her.

37. With regard to the Circuit Court proceedings instituted by the appellant, the court noted (para. 25 of judgment) that the Board had overlooked payment to the appellant of €500 awarded by the Equality Officer in respect of victimisation in 2012. It appears that same was overlooked "*amid the barrage of other claims which the board had to deal with, at great costs to it*" (para.25). The Board proceeded to rectify its oversight and subsequently confirmed to the High Court that it had done so. Yet, the appellant declined to admit receipt of the €500 in the course of the Court of Appeal hearing. The Board provided valid proof of service by registered post in May 2022 as considered further below. The appellant's stance in the course of the appeal in refusing to acknowledge that the payment had been sent to her

by registered post, accepted and signed for despite the evidence adduced appears consistent with her stance of seeking to generate multiple claims and suits against the Board and the Minister, rehashing concluded claims and repackaging them with aspects of other also concluded claims in such a manner as to engulf the respondents in a myriad of suits before administrative tribunals and courts.

**38.** The High Court noted the views of the Equality Officer in dealing with the 2012 allegations quoting from the decision of 30 of March 2012 who had presciently observed: “... *[the Board] has invested enormous resources in dealing with the complainant. The complainant is undoubtedly litigious ... I have every sympathy for [the Board] with respect to the work, effort in difficult dealings that it has had to put in to addressing this matter*”. The Equality Officer also observed “... *the complainant had made serious accusations against almost every person involved in the matters before the Tribunal, often with little or no evidence to support these accusations, without regard to the consequences of doing so.*” (para 5.43). The said report also made the observation that “...*the approach of the complainant to the rights of other parties with respect to defending the complaints she has made against them is highly problematic to say the least.*” (para. 5.44).

**39.** The judgment considers the processes undertaken by the Minister leading to the appellant’s removal from post on 15 June 2015 and quotes in detail from the s.105 Inquiry Report procured by the Minister prior to the decision to remove being signed.

**40.** The judge attached weight to the fact that the appellant was legally represented throughout all stages of the process which culminated in her removal from her teaching position on 15 June 2015. He observed: “*Notwithstanding same, no challenge was made at the time of her removal whether by way of judicial review, plenary proceedings for wrongful dismissal or an application to the Employment Appeals Tribunal under the Unfair Dismissals Act, 1977 (being the relevant employment legislation which applied at that*



time).” (Para. 44). Of the process leading to her removal from office by the Minister, the judge observed (at para.45) *“It is clear that the applicant’s removal was a culmination of a lengthy process of investigation and inquiry throughout which she was afforded full fair procedures and had the benefit of legal advice.”* The judgment then chronicles the appellant’s subsequent six-year campaign of complaints and litigation that followed her removal from office, identifying her key complaints and claims, how same were variously disposed of by Adjudication Officers at the WRC, the Labour Court and High Court as the case may be. The court reviewed the determinations (detailed at para 17 *et seq.* above) noting for instance, that following her appeal of the decision of the WRC to the Labour Court, whose written determination delivered on 17 January 2018, affirmed the WRC decision: *“the appellant did not appeal that decision of the Labour Court and it therefore became final and binding.”* (para.53). The court noted that when on 9 June 2016 (*cf para. 17 ante*) she lodged a complaint with the WRC against the Board alleging discrimination on grounds of disability *“This was effectively the same complaint made against the Minister on that date.”* (para 54). The court noted that a separate decision of the AO made on 14 June 2017 regarding a complaint alleging contravention of the EEA 1998 was held out of time. She unsuccessfully appealed that decision to the Labour Court. The judge noted: *“the appellant did not seek to appeal that determination to the High Court. Therefore, the Labour Court’s decision was final and binding.”* (para 57). The judge observed (at para 58) of the said two final and binding determinations: *“...the appellant has sought to repeatedly re-agitate complaints against the Minister and the Board in relation to her alleged unlawful removal from office for, variously, grounds set to amount to discrimination or penalisation or victimisation.”*

**41.** The judge noted that the appellant had walked out at the AO hearing at the WRC on 16 November 2017 (as detailed at para. 16 above) whereupon her application was then dismissed. He noted that thereafter she lodged further complaints against the Minister with

the WRC on 16 November 2017. Same were held to be out of time by the WRC on 11 December 2018. The appellant appealed to the Labour Court on 21 January 2019 but did not progress the appeal leaving it in abeyance to be potentially resuscitated later as part of the arsenal of rolling litigation maintained by her without abatement against the Board and the Minister with increasing intensity over the past twelve years.

**42.** The High Court noted that at times the appellant launched complaints only to withdraw same subsequently. The High Court noted she *“sought to raise matters which had been previously the subject of complaint in determination.”* (para.68). The WRC, on 19 March 2019, dismissed her discrimination claims (detailed at para. 18 *ante*) finding that she had *“failed to establish she was treated less favourably on the gender or disability ground than another person of a different gender or a person without a disability was or would have been treated in a comparable situation”*.

**43.** The High Court analysed the appellant’s contention that her employment with the Board had not ended in June 2015. Her claims launched with the WRC in January 2019 (detailed at para.21 above) asserted *“I was removed from an office I did not hold”* (para.95). Attempting to probe this contention in the course of the appeal hearing, it appears that part of her arsenal of spurious propositions includes the newly- minted proposition that she had only ever been employed by the VEC but never by the Board. This was an unsound argument as the Board assumed the functions of the VEC for all material purposes by operation of law under the provisions of the Education and Training Boards Act 2013.

**44.** Regarding the complaints of 15 April 2019 (detailed at para. 22 *ante*) the trial judge observed (para. 83): *“these complaints were lodged less than four weeks after the AO’s decision of 19 March 2019”* dismissing all her complaints. The High Court judge observed that the complaints advanced by the appellant *“sought, in substance, to agitate the same grievances which had been the subject of her earlier complaints.”* The AO further concluded

that the appellant's allegations in regard to discriminatory dismissal had previously been conclusively adjudicated by the WRC and the Labour Court: "*As the matters have already been heard, considered and decided upon, the principle of res judicata applies and I decide therefore that this complaint is dismissed.*" (AO decision of 23 October 2019 cited at para. 84 High Court judgment). As noted at para. 22 above, she appealed the said decision to the Labour Court which issued two separate decisions, one in respect of the alleged discriminations under the EEA 1998 and the other in respect of alleged discrimination regarding pension, both delivered on 9 February 2021. It was held that she had failed to make out a *prima facie* case in respect of either and she had not brought her claim within the "*cognisable period*" pursuant to the legislation. The appellant appealed to the High Court on a point of law in respect of the Labour Court determinations dismissing her appeals. Both appeals were heard by Ferriter J. on 24 March 2022. He held that there were no errors of law in the determinations of the Labour Court dismissing both appeals.

#### **Treatment of Pending Complaints and Claims**

45. The High Court judge disentangled from the waves of claims as were pending either before WRC or the Labour Court. He gave a separate judgment on the two appeals on points of law from determinations of the Labour Court dated 19 February 2021 upholding decisions of the AO to dismiss claims of discrimination pursuant to s.77 EEA 1998 and s.81E PA 1990 dismissing same on 1 June 2022 ([2022] IEHC 362). The appellant's unsuccessful application to the High Court for leave to apply for judicial review against the Board was the subject of a separate judgment of Ferriter J. delivered on 1 June 2022, ([2022] IEHC 360). The application seeking leave to apply by way of judicial review for an order of *certiorari* quashing what she claimed to be a determination of the Minister made pursuant to clause 70 of S.I. 292/2015 relating to a superannuation scheme for teachers employed by Education and Training Boards was refused by Ferriter J. in a judgment delivered on 1 June

2022, ([2022] IEHC 363). As noted above he also delivered an *ex tempore* ruling on 22 March 2022 in respect of High Court proceedings (record no. 2020/123MCA) dismissing the appellant's appeal to the High Court on a point of law from the Labour Court determination made in April 2020.

**46.** Pending WRC complaints are recited in detail in the High Court Order. They include the following: complaint reference CA-00030140-001, CA-00030140-002 and CA-00030140-003 (assigned WRC reference no. ADJ-00023716); complaint reference CA-00033445-001, CA-00033445-002, (which now have the WRC assigned reference no. ADJ-00026272); complaint reference CA-00039581-001(now assigned WRC reference no. ADJ-00029008); and complaint reference CA-00045699-001 (now assigned WRC reference no. ADJ-00031893). Same are directed primarily against the Board. The appellant launched appeals to the Labour Court identified as complaint reference no. CA-00023083-001, CA-00023083-002, CA-00023084-001 and CA-00023084-002 (subsequently assigned collectively reference ADJ-00017934). All of these appeals pertain to final and conclusive determinations which were favourable to the Board. Separately she has pending complaints against the Minister before the WRC: complaint no. CA-00030155, CA-00030476 and CA-00030567 (assigned by the WRC the reference ADJ-00023680) and complaints no. CA-00042354-001 and CA-00042354-002 (subsequently assigned reference no. ADJ-00029007 by the WRC) together with her appeals to the Labour Court against WRC Adjudicator-0001 1974, (under reference ADE/19/12) and appeal against Adjudication ADJ-00019194 (under reference ADE/1966 + RP/19/4).

**47.** The swathe of pending complaints and appeals were considered by the trial judge at paras. 91-94 inclusive. He concludes:

*“These complaints are plainly an attempt to reopen the question of the lawfulness of her removal from office on 15 June 2015”.* (para. 94).

Of four further complaints she made against the Minister on 10 August 2019 alleging her unfair dismissal had occurred in April 2019, the court noted at para. 96: *“I understand that the WRC has not progressed these complaints pending the determination of the various litigation before the Court, including these applications of the Minister and [the Board].”* The judge concludes *“These complaints are a clear attempt, to re-agitate matters which have already been finally determined by the WRC and/or this Court.”* (para. 97). He went through in detail the array of further complaints she launched with the WRC against the Minister including on 26 and also 30 August 2019 (cf paras. 25,26 ante). In regard to complaints launched against the Board and the Minister to the WRC in 2020, the judge chronicled same, including complaints lodged on 25 February 2020 which repeated the allegation of discrimination pursuant to s.77 EEA 1998 and s.81E PA 1990.

### **Chromatic Semantics**

48. The High Court noted (para. 101) that the appellant’s WRC complaint form had alleged *“green victimisation”*, a phrase she repeatedly deployed in the appeal. The judge noted that when asked what she meant by *“green victimisation”* she was *“not able to give a coherent answer”*. Various other colour-related phrases were deployed in her appeal.

49. The trial judge observed of her claims (outlined at para. 31 above):

*“These again clearly replicate in substance the complaints already ventilated which have been finally dealt with by the WRC (or, on appeal to the High Court) in the case of materially identical complaints levelled against [the Board] arising from the same facts.”* (para. 104).

50. Concerning the complaints set out at para. 33 above, the trial judge observed at para. 109: *“These complaints are again clearly an attempt to re-litigate matters already disposed of.”* On 3 March 2022, shortly prior to the High Court hearing, the appellant launched two

further complaints against the Board with the WRC repeating complaints previously advanced and concluded pursuant to s.77 EEA 1998.

**51.** The High Court noted that “*in addition to the barrage of complaints against the Minister and the Board lodged by the appellant with the WRC, she has also instituted various Court proceedings against the Minister and the Board during the same period.*” He reviewed her statutory appeals arising from adverse Labour Court decisions and her judicial review application. He noted her Circuit Court proceedings against both the Minister and the Board alleging an “... *unwanted resignation imposed on me in 2019*” observing:

*“It is manifest that these proceedings are an improper attempt to reopen the question of her removal from her teaching position by ministerial order of June 2015 and are an abuse of process. These proceedings are vexatious ... it is appropriate that the Court exercises its inherent supervisory jurisdiction to prevent abuse of process including an abuse of process in the Circuit Court (which lacks the inherent jurisdiction to make such orders of its own accord).”* (para. 116)

**52.** The High Court noted that on 29 June 2021 the appellant launched summary proceedings against the Board (High Court record no. 2021/404S) claiming unpaid salary from July 2015 to October 2018 of €210,255.00. He held it was: “*an abuse of process as the appellant has previously brought complaints challenging her removal and those matters were the subject of final and binding determinations*”, and struck out same pursuant to the inherent jurisdiction to prevent the prosecution of vexatious claims and to prevent abuse of process.

**53.** The trial judge characterised the history of her conduct as a “*campaign of complaints and litigation*”. He then turns to the reliefs being sought by the Minister and the Board seeking *Isaac Wunder* type orders to prevent her launching fresh proceedings either in the courts or elsewhere without prior leave of the court. He considered separately the parameters

of abuse of process jurisdiction and the issue of whether the High Court had jurisdiction to strike out as an abuse of process her remaining proceedings against the Minister and the Board which were unfinalised before the WRC. He considered the *Isaac Wunder* jurisprudence including the decisions of McDermott J. in this Court in *Superwood Holdings plc v. Sun Alliance and London Insurance plc* [2017] IECA 76, *Kearney v. Bank of Scotland* [2020] IECA 92 (Whelan J.), *Irish Aviation Authority and DAA plc v. Monks* [2019] IECA 309 (Haughton and Collins JJ.) noting the observations of Collins J. in *Monks* as to the exceptional nature of the *Isaac Wunder* jurisdiction (para. 127).

**54.** Regarding the statutory powers of the WRC, he observed that it enjoyed power to strike out proceedings “*that are frivolous or vexatious*” but that it “*has no statutory power to make an Isaac Wunder-type order.*” He noted that no Irish authority was identified where “*such an order had been made preventing the institution of proceedings before a statutory tribunal without the prior permission of the Court.*” (para. 128).

**55.** Ferriter J. then considered the approach adopted by the Courts of England and Wales where a litigant before a tribunal engages in persistent applications and where there was evidence before the court that absent intervention the repetitive making of hopeless claims would continue. He considered *Nursing and Midwifery Council v. Harrold* [2015] EWHC 2254 (QB), [2016] IRLR 30 where the English High Court (Hamblen J.) reviewed the history of the exercise of the inherent jurisdiction by the Superior Courts for the purposes of preventing abuse of its processes. In England and Wales, the matter had been put on a statutory footing in 2004 by the English Civil Procedure Rules (CPR) conferring power to make Civil Restraining Orders (CROs). He noted (para.130) that such orders could be made “*restraining a party from issuing any claim ... making any application in the High Court or County Court without first obtaining the permission of the relevant court. However, CROs are not available under the CPR in respect of non-court proceedings.*” Hamblen J. had

reviewed the jurisprudence particularly the analysis of Proudman J. in *Law Society of England and Wales v. Otopo* [2011] EWHC 2264 (Ch) which concerned repeat unmeritorious claims against a former employer to an employment tribunal. Proudman J. noted the literature in regard to the inherent jurisdiction of the courts and had concluded that:

*“(1) As a matter of principle the general jurisdiction of the High Court is unlimited save insofar as it has been taken away by statute.*

*(2) The inherent jurisdiction derives historically from coercion, that is to say punishment for contempt of court and of its process, and regulation, that is to say regulating the practice of the court and preventing abuse of its process.*

*(3) Under its inherent jurisdiction the High Court has the power, not to review the decisions of inferior courts, but (i) to prevent interference with the due course of justice in those courts and (ii) to assist them so that they may administer justice fully and effectively.*

*(4) The powers of the court under the inherent jurisdiction are complementary to its powers under the Rules and are not replaced by them.”*

Proudman J. had concluded that the High Court had inherent jurisdiction to make a general CRO against a vexatious litigant which extended to restraining the institution of further proceedings in the Employment Tribunal.

**56.** Hamblen J. in *Harrold*, in approving *Otopo*, had observed:

*“That the High Court's supervisory jurisdiction in relation to inferior courts extends to the grant of CROs is supported by the decision of the Court of Appeal in *Ebert v Venvil*....Whilst the ET and similar tribunals are not part of the civil justice system in the same way as a County Court, as inferior courts they are still part of that system and of an inter-related jurisdiction.”* (paras. 21 and 22).

Ferriter J. noted that Hamblen J. was satisfied he had power to grant such an order.



In the Irish context Ferriter J. observed:

*“...the jurisdiction of the Irish High Courts to make orders preventing abuse of the system of administration of justice including the administration of justice in non-court statutory tribunals such as the WRC is arguably on a stronger constitutional footing in light of the provisions of articles 34 and 37 of the Constitution and the supervisory role of the High Court to ensure proceedings of statutory tribunals are conducted in accordance with law.”*

He considered in particular the decision of O’Donnell J. (as he then was) on behalf of the majority in *Zalewski v. An Adjudication Officer* [2021] IESC 24 where the latter observed that the functions of the WRC and the Labour Court constitute the administration of justice and that the WRC was a body administering justice within Article 37 of the Constitution. He concluded that as a matter of principle the High Court did have jurisdiction in appropriate cases to prevent abuse of process before statutory tribunals administering justice and, where appropriate, to make *Isaac Wunder*-type orders preventing the institution of proceedings before such tribunals without the permission of the court where the criteria set out in the jurisprudence for the making of such orders in respect of court proceedings are also satisfied.

**57.** The High Court judgment (para. 147) noted, based on the evidence, that both the Circuit Court proceedings and High Court summary proceedings were based on the wholly invalid premise that the appellant remained in the employment of the Board after 15 June 2015. The Circuit Court proceedings sought a series of orders clearly outside the legitimate relief which could be sought from that court. The High Court judge was satisfied that all remaining proceedings before the WRC and the Labour Court which remained in being either unheard or unconcluded in each case amounted to an abuse of process involving attempts to relitigate matters previously conclusively determined. Ferriter J. determined that the proceedings pending before the High Court and Circuit Court should be struck out as

constituting an abuse of process. He held that he had inherent jurisdiction to strike out proceedings before an administrative body if same constituted an abuse of process. He concluded that the appeals pending before the Labour Court constituted an abuse of process. He was separately satisfied it was appropriate to grant an order striking out the said appeals. He noted (paras. 157-160) that whilst the WRC had jurisdiction to dismiss a complaint on the grounds that same was “*frivolous or vexatious*” pursuant to s.42 of the WRA 2015, if the WRC made such an order there was a right of appeal to the Labour Court. He was satisfied on the evidence before him that any such dismissal made by the WRC pursuant to s.42 would “*inevitably be appealed by the appellant to the Labour Court given her approach to date*”. The facts were found to be “*sufficiently exceptional*” for the High Court to intervene. On that basis that the High Court determined that the proceedings should be struck out.

**58.** The key determination by the trial judge flowed from his analysis that the High Court had jurisdiction to prevent abuses of process before statutory tribunals which are engaged in the administration of justice where the facts so warrant and in appropriate cases. (para. 142).

He relied on the following factors:

- (a) The appellant’s habitual and persistent institution of proceedings in relation to her removal from office as a teacher with the Board.
- (b) Despite all issues having been the subject of binding and conclusive prior determinations, she repeatedly engaged in the vexatious repackaging of her claims.
- (c) She had made clear to the High Court that she intended to continue her campaign of proceedings.
- (d) The making of an *Isaac Wunder*-type order was not available to the WRC or the Labour Court but that absent the making of such an order further litigation is likely to ensue which would be a clear abuse of process and that a filter was

required to prevent the appellant from initiating any further frivolous or vexatious litigation.

- (e) The court was mindful that the proceedings had occasioned “*an enormous drain of resources on the Board*”. The judge also was of the view that the appellant’s conduct exemplified abuse of the important right of access to the courts protected by Article 40.3 of the Constitution and Article 6 of the ECHR.

**59.** The court considered decisions including *Fox v. McDonald* [2017] IECA 189, *Henderson v. Henderson* and *O’N. v. McD.* [2013] IEHC 135. Citing this court’s decision in *Kearney*, Ferriter J. held that the litigation had been predicated on a “*wholly invalid premise*” viz. that she had remained in the employment of the Board subsequent to 15 June 2015. He noted that the policy underpinning the inherent jurisdiction exemplified by the making of an *Isaac Wunder* order was “... *one of protection of the administration of justice from abuse*” (para. 153) Having analysed her outstanding applications and appeals before the WRC or the Labour Court that stood adjourned, the judge was satisfied same amounted to attempts to relitigate matters already conclusively determined. (para. 154).

**60.** Reviewing the evidence, Ferriter J. was satisfied that the appellant had engaged in habitual and persistent institution of proceedings before the WRC and the courts in relation to her removal from office as a teacher. “*She has repeatedly engaged in the vexatious re-packaging of claims already determined against her. Indeed, she made clear to the Court during the hearing of the various matters before me that she intended to continue her campaign of proceedings.*” He was satisfied to grant the orders sought by the respondents.

**61.** The court then considered her pending proceedings not yet litigated to a conclusion. He considered the jurisprudence in regard to applications to strike out proceedings which constitute an abuse of process noting that “*abuse of process can arise where claims are brought which seek to raise issues that have previously been litigated*” and also “*embraces*

*cases raising issues which should have been litigated in earlier proceedings, as reflected in the seminal case of Henderson v. Henderson (1843) 3 Hare 100...*”.

**62.** He reviewed the litigation brought by the appellant in the High Court and Circuit Court noting that same were based “... *on the wholly invalid premise that the appellant remained employed by the Board after 15 June 2015 when she was not so employed. Furthermore, the Circuit Court proceedings, as already noted earlier, seek a series of orders which are clearly outside any legitimate relief which could be sought from the Circuit Court.*” (para. 152). He noted the policy underpinning the making of *Isaac Wunder* orders in the exercise of the courts inherent jurisdiction as “*one of protection of the administration of justice from abuse.*” Ferriter J. was satisfied in principle that the High Court had an inherent jurisdiction to strike out claims before statutory tribunals such as the WRC which are themselves administering justice if such claims constitute an abuse of process (para. 153).

**63.** He noted the power conferred on the WRC by s.42 of the WRA 2015 empowering an AO to dismiss a complaint if of the opinion that it was “*frivolous or vexatious*” and that s.77A EEA 1998 empowers the Director of the WRC to dismiss a claim if of the opinion “*that it has been made in bad faith or is frivolous, vexatious or misconceived or relates to a trivial matter*”. From such a determination there is a right of appeal to the Labour Court. He noted (para.156) that the said provisions cannot apply to cases where the complaints have been dealt with on their merits at first instance at the WRC and there is a pending appeal before the Labour Court - representing the factual situation here where she appealed to the Labour Court against adverse decisions of the WRC on complaints of 16 November 2017 and 7 January 2019 against the Minister and against the Board of 7 November 2018.

**64.** The judge then considered her currently pending complaints before the WRC where either the Director or the assigned AO would have power to dismiss same as “*vexatious*” in light of the analysis contained in the High Court judgment. Amongst such were those she

submitted to the WRC against the Board on 8 and 10 August 2019, 29 June 2020, and 3 March 2022, against the Minister on 26 and 30 August 2019, 30 February 2020, and 3 August 2021, against both on 5 February 2021 and 29 December 2021. Concerning these complaints, the judge observed that although the Director or assigned AO had power to dismiss same, in light of the High Court's analysis "*any such dismissals would inevitably be appealed by the appellant to the Labour Court given her approach to date.*"

**65.** The judge was mindful that the WRC was not a party to these applications, however he did note "*that the Labour Court and the WRC have effectively pressed pause on the various outstanding complaints and appeals pending the outcome of these applications to this Court.*" He concluded (at para. 159, reflecting this court in *Kearney*) that the facts were:

*"...sufficiently exceptional for the Court to intervene in exercise of its inherent jurisdiction at this point to direct that all the appellant's remaining proceedings before the WRC be struck out without the need for the Director of the WRC or individual AOs or, on appeal, the Labour Court to spend further hearing time on the matters."*

He explained his rationale thus:

*"In deciding to exercise the Court's inherent jurisdiction in this way, I am relying on the fact that the continued maintenance of these proceedings would clearly constitute an abuse of process and that to allow the proceedings to continue to what could only be lawfully one conclusion before the WRC would be to impose further unwarranted time and cost ...on the Minister and the Board, given the number of remaining unresolved complaints and given the appellant's proven propensity to drag such proceedings out. The appellant can have no valid complaint by the Court making such strike out orders now as the continued prosecution of these complaints would clearly amount to an abuse of process. The Board and the Minister (and therefore the public purse) would benefit from the making of such orders now by being spared further*

*expenditure of time and human and financial resources. The WRC's processes will not be undermined in any way by the Court adopting that course of action and rather its resources can be more appropriately deployed to deal with cases which do not involve an abuse of process.” (para. 160).*

He further reflected:

*“The necessarily arid language of judgments as to the legal principles in relation to abuse of process may not fully convey the unwarranted strain on resources and human patience represented by proceedings which constitute an abuse of process. In this case, a considerable number of lawyers and respondents' personnel had to devote their time and energies to addressing the manifestly vexatious claims sought to be maintained by the appellant.”*

He observed that:

*“... apart from the three and a half days of Court time taken up with these matters, a considerable amount of time had to be spent in preparing the judgments arising from the various applications before the Court, including this judgment.”*

### **Two Substantially Overlapping Appeals to this Court**

**66.** In the appellant's notice of appeal against the Minister grounds 2-8 inclusive are identical to grounds 1-7 inclusive of her notice of appeal against the Board. Ground 2 against the Board is replicated as ground 3 against the Minister. Ground 3 against the Board is replicated as ground 4 against the Minister. Ground 5 against the Board is replicated as ground 6 against the Minister. Ground 6 against the Board is replicated as ground 7 against the Minister. Ground 7 against the Board is replicated as ground 8 against the Minister. I propose to deal with same together. It should be observed that the notices of appeal are

substantially incomprehensible and the written legal submissions are difficult to understand from any logical perspective.

### **Notice of Appeal - Against the Minister – Ground 1**

67. As grounds 2-8 inclusive against the Minister are identical to grounds 1-7 inclusive of the notice of appeal brought against the Board, they are considered together above and throughout. In ground 1 the appellant contends “*it was an error for the High Court to adjudicate upon statutory claims in the first instance.*” She complains that the court had “*adjudicated upon statutory complaints I made to the WRC, Labour Court and Circuit Court, under Employment Equality Act, Pensions Act, Safety Health and Welfare at Work Act and Industrial Relations Act*”. The High Court was said to have “*fallen into error*”. She also cited Hogan J. that “*the High Court had no first instance jurisdiction to adjudicate upon statutory claims.*” She further contended that it was *ultra vires* for the High Court to adjudicate the aforesaid claims or to make orders “*about them*” and “*the Acts of the Oireachtas I complained under ... and the Bodies I complained to under those Acts have been given roles to adjudicate my claims not the High Court. They are expert tribunals.*”

### **Ground of Appeal 1 against the Board/Ground 2 against Minister**

68. The grounds of appeal against both respondents are largely identical. The appellant’s appeal falls into seven main grounds each broken down further into a vast number of sub-issues. Briefly put, and attempting to impose some order on same, the first ground appears to encompass a scattergun *corpus* of general allegations. She contends that she was hampered from writing submissions in advance of the hearing “*due to restrictions on the disclosure of information under Section 97 of the Employment Equality Act.*” She further contends that the said section interferes with her writing her appeal form “*because if I could, I would be making appeal grounds based on the suppressed facts.*” She contends “*I was*

*prevented from putting forward the crucial facts by Section 97. The findings that the Mr. Justice Ferriter made in his not yet perfected judgment on this motion are very refutable, but this cannot be done without disclosing information that [the Board] disclosed under Part VII of the Equality Act 2009 to 2021.”* She contends that the principles of fair procedure and natural justice “*cannot be met until I am allowed to present the relevant facts*” She contends that the orders originate from “*my appeal 2020/123/MCA of a Labour Court determination under the Safety Health and Welfare at Work Act.*” She further contends “*the sexual harassment issue and the other issues in that case are very relevant to my appeal here but are very intertwined with the Equality Issues that come under the restrictions in Section 97.*” She further contends “*The destruction by the Labour Court of the Equality Tribunal is being furthered by Mr. Justice Ferriter from what I can understand in his written unperfected judgment on the orders. The Equality Tribunal decision is Res Judicata and cannot be changed ten years later to suit [the Board].*” She asserts: “*Mr. Justice Ferriter is very wrong about every fact – but that is due to my being restricted about disclosing information I gained under Part VII.*” She contended that the Equality Tribunal’s decision from 2012 was “*relevant to the Issues on Appeal*” including that the Board “*was found to be victimising me*”, that “*(ii) neither of the two orders that were made to redress the victimisation were ever complied with and that [the Board] continued down a course of action 2012-2022 that is the opposite of the course it was ordered to take is a breach of my rights in Article 13*”. This amounts to an assertion that the payment of €500 was never made by the Board. She asserts “*(iii) that the matters in which [the Board] breach of Article 10 and 13 involves matters of sex is a breach of Article 14.*” She claims “*(iv) that I had a mental health breakdown in 2012 from the breach of Article 10 that I have not recovered from...*”.

**69.** To more fully grasp the overall thrust of what is being contended here, it is appropriate to interpolate at this point the response of the Board to this particular ground of appeal. In



the first instance they raised the point that in his *ex tempore* ruling on 22 March 2022, Ferriter J. dismissed the appellant's appeal to the High Court on a point of law from the Labour Court's determination of 1 April 2020 (High Court proceedings record no. 2020/123/MCA). It is to be noted in that said dismissal was made in the context of the WRA 2015. The Board relies on s.46 of the WRA 2015. In essence, that section provides that the determination of the High Court is final and conclusive when either party to a decision of the Labour Court brings an appeal to the High Court on a point of law. The said measure became operative on 1 October 2015 pursuant to S.I. 410/2015. The Board observes in its response "*It is unclear on what basis Section 97 of the Employment Equality Act 1998 has any relevance to the Order under appeal. Without prejudice to the foregoing, in the substantive proceedings, which were determined on 22 March 2022, the Trial Judge did permit the Appellant to rely on a one-page document which was the subject of the application pursuant to Section 97 of the Employment Equality Act 1998.*" It is further contended that she had failed to identify "*any error of law in the Judgment dated 1 June 2022 and/or the Order made on 28 June 2022*". The Board denies that the appellant was prevented from making submissions to the High Court. In particular, it asserts that at a case management hearing before Meenan J. on 14 July 2021 she was directed to file written legal submissions by 29 October 2021. She later made an application to Meenan J. on 13 December 2021 and obtained an extension of time to deliver written submissions up to 28 January 2022. "*The Appellant failed to comply with those directions.*" The Board asserts that on the days of the hearing 22 to 24 March 2022 and 29 April 2022 she "... was afforded every opportunity by the Trial Judge to respond to the application made by... [the Board]". It asserts that on 29 April 2022 she was afforded "*additional time to submit in writing her grounds of opposition to the application.*" The Board denies that any matter put before the High Court was "*prejudicial and misleading*".

**70.** The Board contends that the assertions in Ground 1(d) are “*inaccurately summarised and is wholly irrelevant to the Order being appealed*”. It outlines that the appellant’s “*appeal is on a point of law related to a Labour Court determination dated 1 April 2020.*” That hearing had concerned a complaint made by her on 22 March 2011 alleging breaches of s.27 of the SHWWA 2005. A Rights Commissioner had dismissed that complaint on 22 September 2011. She then appealed that determination to the Labour Court. At her request that appeal was adjourned by the Labour Court on 3 January 2012 on account of an Equality Tribunal hearing which she was pursuing in parallel, and which was scheduled to be heard on 25 January 2012, where similar issues were to be dealt with. Seven years later in 2019 “*The appellant... requested that the Labour Court re-enter*” the said appeal initially before it on 3 January 2012. “*The Labour Court agreed to re-enter the matter on the basis that the appeal would be determined on the original submissions made by the parties in 2012.*” This appeal was heard on 2 March 2020 and the determination made on 1 April 2020 is the subject matter of her High Court proceedings (2020/123 MCA). Her appeal of that determination was dismissed by the High Court on 22 March 2022.

**Ground of Appeal 2 against Board/ Ground 3 against the Minister**

**71.** The appellant clings to a contention that the appeals and applications before the High Court were not properly heard or proceeded in her absence. Ground 2 of the notice of appeal against the Board is replicated as ground 3 in the notice of appeal against the Minister. Identical observations apply to both.

**Ground of Appeal 3 against the Board/Ground 4 against the Minister**

**72.** The third/fourth ground against the Board/Minister respectively contends that the High Court procedure was contrary to s.97 EEA 1998 as amended. This complaint re-hashes parts of Ground 1 and is not sustainable insofar as the appellant contends that the High Court orders in respect of same “*were made... contrary to Section 97 of the*

*Employment Equality Act and is possibly is an offence under that section.” It is contended that the Board “... did not ask my consent to disclose information about me that it had gained under Part VII of the Act nor did the Judge when he quoted snippets of my submissions from cases. There was no High Court order made that lawfully disclosed this information. Some of the snippet (sic) quoted are not my words at all but were parts of the online form that fill in sentences automatically.”*

**Ground of Appeal 4 against the Board/Ground 5 against Minister**

73. Ground 4 in the notice of appeal against the Board is replicated as ground 5 in the notice of appeal against the Minister. She contends that the Board/Minister obtained the court orders in issue “*using document that is non-compliant with order from 2012*”. She asserted “*these orders have been procured using a document (Cahalane Report of 2015) that is non-compliant with the orders made to Co. Wicklow VEC in 2012 to redress victimisation under s.82(e) (I call this Green Victimisation to distinguish it from other forms of ongoing victimisation)*”. She states Article 24 “*Victimisation of Gender Directive (recast)... Procurement and attempted procurement is an offence under Section 14 of the Employment Equality Act. The orders made by the High Court are subject to enforcement. I am not qualified to figure out the puzzle as to whether it is possible for the Circuit Court to enforce the 2012 order of Equality Tribunal against a High Court order. There is an implosion of the workings of the Act.*”

**Ground 5 against the Board/Ground 6 against the Minister**

74. Ground 5 in the notice of appeal against the Board is replicated as ground 6 in the notice of appeal against the Minister. This ground impugns para. 41 of the High Court judgment. It states, *inter alia*, “*It is in the public interest and in the interest of justice and in my own health that the baseless attacks on my good name about child sexual abuse, sexual harassment and I, (sic) from KWETB and the Minister’s Inspector finally cease.*” She further

states *“The cover up and denials need to cease. The Judgment in this case at paragraph 41 publishes baseless third hand allegations about child sexual abuse in connection with me. It is damaging to me personally and professionally but it also damaging to the children who are now young adults and may well need to seek justice later in life... The principle that there must be an end to litigation must include ending fraud.”*

**Ground 6 against the Board/Ground 7 against the Minister**

75. Ground 6 in the notice of appeal against the Board is replicated as ground 7 in the notice of appeal against the Minister. This ground offers up yet another hypothetical date for the termination of her employment. She contends that she was removed from office in 2013 rather than 2015 *“I was removed from Office on the 1<sup>st</sup> July 2013 by the Education and Training Board Act 2013... I ceased to be an officer and I became teaching staff of KWETB. It is an error of law to assert that I was removed from office on the 15<sup>th</sup> June 2015 by a Ministerial Order. I had not held office since the 30<sup>th</sup> June 2013.”*

**Ground of Appeal 7 against the Board/Ground 8 against the Minister**

76. Ground 7 in the notice of appeal against the Board is replicated as ground 8 in the notice of appeal against the Minister. *“Mr. Justice Ferriter’s account of my conduct is important in terms of equality before the law.”* The appellant now asserts that during the physical hearings that took place on 22 and 23 March 2022 *“I was too ill to attend physically. I did everything possible to let the court know that I was too ill from the start of the 2<sup>nd</sup> day and thereafter.”* She asserts in this ground of appeal that *“during lunch on the 3<sup>rd</sup> day members of the public were allowed into the locked courtroom. My Iphone went missing and my ipad was moved. I had child abuse evidence on my icloud to which my phone and tablet were connected. This is a worry for me.”* She contends *“Things became worse then because the Air Corp started flying jet planes and helicopters overhead in centenary celebrations. I lived in Belfast during the Troubles and I had a bad incident with helicopters.*

*My requests to leave and have the door open were seen as disruptions but they were meant to ease my illness.”*

### **The Appellant’s Written Submissions in this Court**

77. The appellant’s submissions are dated 2 March 2023. They emphasise the fact that an Equality Officer made a determination in 2012 ordering that the Board pay her €500. She maintained the stance that the order had not been complied with. Her submissions are rendered more incomprehensible by reason of her deployment of an unorthodox lexicon whereby she purports to advance her arguments. For example, page 1: *“My yellow complaint of sexual harassment and yellow complaint of different and less favourable ongoing treatment based on my rejection of X’s conduct has never been investigated under the Employment Equality Act.”* The concept “yellow complaint” is incomprehensible. The “conduct” under reference appears to have been an allegation of misconduct made by her against a child who was a pupil at the relevant school. She twice withdrew that complaint. She appeared in the course of the hearing to suggest that she was entitled to advance or withdraw the complaint at will. She claims to be *“the owner of a digital hedge school”*. Deploying spinning and weaving lexicon, she alleges there is *“inherent error woven into the judgment fabric of all cases before the Court of Appeal is useful”* (sic). She alleges that the High Court *“used its inherent jurisdiction to weave two strands of words that I spoke that it had adduced from me as being warp woven into the weft of three originating statutory appeals and Judicial review, thereby making judicial fabric. One strand being my answer to the striking out of 2021/37MCA the other being my answer to the question that the High Court asked me – That fabric is an error... I want to show the Court proof of the weaving.”* She asserts that *“the High Court threading statutory appeal 2020/37MCA into what it calls “impermissible” and other threading weaving ... into the green victimisation issues and*

*pension issues ...*". She goes on to suggest that the High Court had referred to "woven fabric". She asserts (para. 6) "I then asked the Court to consider that that woven fabric error being a much bigger error than the Judicial shut down of function in the 2 appeals. By the weaving of my responses to that Court's questioning of me regarding the striking out of 2021/37/MCA pages 8 to13 of the transcript and pages 25 to28, into the fabric of all the judgments that are before this Court on appeal... including the striking out all my cases and the restraining order that Court built error into every single word written by the High Court". She repeatedly asserts "I asked the court to consider that the line of questioning about green victimisation that proceeded that statement by the High Court ... can the judicial fabric that has been woven that is so green, be now used by the Court of Appeal for the purpose in which my answer to the Judge's questioning of me on the meaning of green victimisation?" (para. 8). The phrase "green victimisation" is deployed throughout her submissions though it is not possible to properly understand what exactly is meant by that phrase in each of the varied contexts in which it is deployed. "I submit that the procedural waft weaving issue from waft to weft and vice versa, is consistent across all the judgments of these cases. That these written judgments and orders renders green victimisation in the form of fabric." She alleges of the High Court judgment "... that the fabric it wove has so much tension, that it is not actually capable of being unpicked." (para. 9) At para. 13 she makes reference to "implosion of domestic laws", "exponential perpetual discrimination and victimisation of teachers" and "... reason for all this is the blue reason". This is all presented in a telegrammatic style as a "headnote".

**78.** She cites from various international measures including the European Charter, various EU Directives and Articles of the Union Treaties. She also invokes Article 45.4.2 of the Constitution and cites case law of the European Court of Justice. She asserts "*Blanket Isaac Wunder type orders may well be appropriate to other type of disputes that come before the*

*courts. In my case there seems to be no consideration for the orderly administration of justice. For example, everything that has been written with green words in a high court is now subject to enforcement in the lower court but I have to get the permission of the higher court before I can approach the lower court. Yet I am not permitted to actually file anything in the High Court so that that access to the remedy is totally deprived.”(p.11 of submissions). At p.12 she asserts “High Court and Equality Tribunal failures to comply with the Code of Practice”. Her assertions include the following: “the High Court’s focus on green victimisation caused it not to focus on my yellow sexual harassment complaint. Due to the fact that my yellow complaint was not allowed to go before the Equality Tribunal, what the Equality Officer saw in relation to what was being presented to him as being my sexual harassment complaint by the Board, was not my complaint of sexual harassment but because my complaint was not before them, he was not to know that. My own dignity issues in my own harassment complaint was, and will always be yellow. ...there is no focus on my yellow complaint in any word written by the High Court.”*

**79.** At p.13 she disputes the fact that she withdrew her complaint of sexual harassment against the student. These matters were conclusively dealt with years ago yet she seeks to relaunch the complaint and selectively advance elements of it and discard others and her presentation of her arguments are entirely incoherent and unintelligible. At p.14 she states “*The error that the High Court makes is that green victimisation only dates back to 2015 whereas blue treatment/victimisation dates back to 2009. My yellow complaint that Mr. O’Doherty never focused upon and which was not before him was made five years before green victimisation ever started. The blue victimisation/treatment/regime that started in 2009 was not before mr O’Doherty...*”. And she continues “*By focusing on green victimisation the High Court is in error. ... The blue regime impacted upon my work during 2009 and 2010 and I have to protect all the students that the High Court knows nothing*

*about and which are very serious. These matters have yet to be investigated under the EE Act. Those issues cannot be hallucinogenetically investigated backward through the weaver of the High Court's woven fabric. Blue also relates to my injury in 2012 and It is a bodily integrity concern, and interference with my right to life that my blue injury would have to be extruded through the weave of the High Court fabric on green victimisation."* (Sic).

**80.** At p. 14 the appellant further introduces a heading "*The biggest Error of All – the High Court wove fabric of the impermissible colour rather than the permissible one*". At p. 15 she states "*This is where the High Court had to postpone dealing with blue until the Hearing of the case in March 2022 ... The restrictions under S97 acted to block my capacity to build my case based on the Blue Regime dating back as far as March 2009.*" She alleges that there was a departure from fair procedure by the High Court insofar as she had asked to file an issue paper "*but I was refused...The High Court's refusal to give me the opportunity of a comment on the issues before that court was detrimental to the chance of having a fabric of blue woven in which to filter or extrude the issues before that court, or the yellow issue. Rather than that – a distressing green fabric has been woven, unnecessarily.*" (p. 15). She then pursues an argument under the heading "*Getting beyond the pale*" in which she contends "*there is no weighbridge anywhere near the High Court or anywhere near the Court of Appeal or anywhere near the Supreme Court. It is not balanced for courts within the pale to rule European law without an adjacent weighbridge. If the Court of Appeal were in Nenagh for example. (sic) The weighbridge is right beside you on Wolfe Tone Terrace. You have a direct access through a little gate to your right else you can step in Banba Square and walk around the corner.*" None of this is comprehensible.

**81.** She continues, "*The volume of the blue regime and blue treatment needs to be weighed. Blue is very distressing for me. It is also a shame, and unlawful for blue treatment and blue regime to be blocked access to justice and have to be filtered or viewed through the weave*



*of green victimisation.” (p.16) At p.17 she contends “I submit that the collective and shared responsibility for green victimisation and the individual responsibility is something that the enforcement of it in the circuit court should be able to remedy. However that Zaleski (sic) case referred to by the High Court was not made in a case under European law. Trying to extend the Pale further than Zalewski is not permissible under European law. The woven fabric of green victimisation is extended beyond the gates at Morgan Place.” She then references a medical certificate regarding the Equality Tribunal and a doctor’s report. “You will see my injury is ideas of reference to peoples’ names. ... I would never have brought any case to the High Court had I known that “Morgan” was written on the gates. Seeing “Morgan” for the first time, with jet places (sic) and helicopters ...on... 23<sup>rd</sup> March 2022 was beyond distressing.” This seems to suggest that she would not have brought the two judicial review applications and the three appeals on points of law from the Labour Court had she been aware that one of the addresses adjoining the Four Courts is “Morgan Place” and that the said words appear on signage. This is not understood in any intelligible way and the submissions do not explain to any extent what rationale underpins this stance. It is noteworthy that the appellant’s own surname is “Morgan”. She appears to suggest that observing the public signage at “Morgan Place” triggered her behaviour outlined above which seriously undermined the High Court hearing as outlined above.*

**82.** The above is offered merely to illustrate the bewildering nature of the verbose arguments which the High Court and this court had to contend with over several days, none of which makes rational sense. She then advances arguments concerning something she characterises as “*intersectional discrimination*”, “*I submit that looking through the weave of the woven fabric of green victimisation that my injury/disability of ideas of references about peoples names including my own, intersect with my gender. I also say that the inquisition of 2020/123/MCA with 2020/787JR further that intersectionality of the graphic that was being*

*underscored by that court in relation to the criminal matters of the precious graphic book “Tales of Abbey life” containing children graphics on simulation of date rape drugging.”* (p.18). She also cites the case of *B.S. v. Spain* 24<sup>th</sup> July 2012 ECtHR<sup>3</sup>, offering no rational or coherent basis for aligning any aspect of her appeal with any element of that case insofar as can be understood from a perusal of both. She proceeds to assert *“It may be the case that it was the High Court itself that disturbed the book and not the Board or the Minister. If so, the High Court would be disturbed, graphically by the content of the book. If so, then the court would not be able for the video of Child F and the colours referred to in that video in terms of the non consensual acts of sex being referred to.”* She concludes *“I must underscore the High Court’s underscore in para. 162 to protect myself and everyone was/is/may in the future/impute by the blue regime ongoing since March 2009.”* (p.18).

**83.** Her submission runs to 7,149 words. Nowhere does she engage in any coherent way with the judgment of the High Court, nor does she identify how all the questions of law considered and evaluated by the trial judge were erroneous or the manner in which they could be said to have been erroneously dealt with. She does not in any coherent sense engage with questions of substantive law, procedural law or the processes adopted by the High Court judge. The chromatic lexicon and terminology being used is objectively meaningless. It may have some cabalistic construction in her mind, or it may not. Her contentions are substantially irrational and illogical. They are unmoored from conventional principles of rationality, law or logic. They do not engage at all with the actual legal correctness of the judge’s methodology, the legal appropriateness of the procedures he adopted, his assessment of the evidence before him or how precisely he said to have erred or misapplied the relevant legal principles or authorities. Many of the arguments made by the appellant were whimsical.

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<sup>3</sup> ECLI:CE:ECHR:2012:0724JUD004715908

In the course of the appeal hearing, she was resistant to any suggestion that any aspect of her appeal was unmeritorious.

**84.** When confronted with evidence such as that the €500 had been paid she generated a blizzard of propositions purporting to “*disprove*” same notwithstanding the affidavit of Paula Shine furnished on behalf of the Board sworn on 9 May 2023 exhibiting evidence of payment by prepaid registered post. The exhibits demonstrate that it was signed for by “*D. M*” on 13 May 2022 at 11.24 am. I am satisfied that the payment was received by the appellant ahead of the delivery of the High Court judgment.

### **The Board’s Submissions**

**85.** The Board raises the following arguments:

- (1) There was ample evidence before the High Court demonstrating the appellant’s ongoing campaign to relitigate matters previously finally determined in favour of the Board. This encompassed:
  - (i) all her complaints to the WRC including pending complaints.
  - (ii) all her appeals to the Labour Court including those that were pending.
  - (iii) all her application to the Equality Tribunal.

The Board emphasised the three statutory appeals she had brought to the High Court, her High Court summary proceedings and the Circuit Court proceedings.

**86.** No Irish authority was identified extending *Isaac Wunder*-type orders made pursuant to the inherent jurisdiction to administrative bodies. The High Court noted (para. 120) that the WRC has no statutory power to make an *Isaac Wunder*-type order. It noted decisions of the English courts that such orders could be made restraining parties from initiating proceedings in “*non-court proceedings*” by invoking its inherent jurisdiction (paras. 129-136). The High Court was correct in concluding that it had jurisdiction to make orders

preventing abuses of the administration of justice including statutory applications and appeals such as to the WRC and the Labour court since their respective jurisdictions enjoy “*a constitutional footing*” in light of Article 37 of the Constitution and the supervisory role of the High Court to ensure proceedings of statutory tribunals are conducted in accordance with law (para.137-142).

**87.** The Board submitted that there was clear evidence before the High Court that the appellant had engaged in habitual and persistent litigation before the WRC and the courts in relation to her removal from office as a teacher “*notwithstanding that those issues have been the subject of binding and conclusive .... determinations*”. She had engaged in vexatious re-packaging of claims previously conclusively determined against her and she had made it clear that she intended to continue her campaign of proceedings. Her “*obsessive campaign of litigation*” had occasioned an enormous drain of resources on the Board.

#### **The Minister’s Submissions**

**88.** The Minister contends that the High Court in exercising its inherent jurisdiction to strike out the complaints pending before the WRC and the Labour Court did so to “*protect the administration of justice, of which both bodies are part from an abuse of process.*” The High Court was satisfied that all of the appellant’s complaints which had not yet been finally determined were attempts to relitigate matters which had been conclusively determined and that the Circuit Court proceedings sought a series of orders against the Minister which were outside any relief that could be sought from that court.

**89.** The Minister separately emphasises that no evidence had been led in the appellant’s absence nor was any legal argument made when she was not present in court. She had been afforded multiple opportunities to make written submissions and several extensions of time were afforded to her for delivery of same. The physical hearing before the High Court had

to be abandoned solely by reason of her own disruptive behaviour. She was physically present in court when the Minister moved the application seeking *Isaac Wunder* orders. Subsequently she left the courtroom for part of the hearing which ultimately had to be abandoned by the judge “*when she snatched the mobile telephone of counsel for the respondent as a result of which An Garda Síochána attended the scene.*”

### **The Appellant’s Arguments at the Appeal Hearing**

90. At the hearing, the appellant contended that the Labour Court had not upheld any of her appeals because they had been touched by “*green victimisation*”. She declined to accept that conclusive determinations had been made in respect of all issues and that it was not open to her to repeatedly relaunch the same claims. She appeared to assert entitlement to renew claims every six months or so. She made it very evident that she has no intention of refraining from attempting to pursue same in perpetuity against the Board and the Minister notwithstanding that she is clearly a highly intelligent individual and must at some level rationally understand that her complaints have long since been conclusively determined and all further complaints/appeals are now entirely vexatious, devoid of merit and legally doomed. It is worthy of repetition that in her arguments she appeared to suggest that, despite twice withdrawing the allegation of sexual harassment against a pupil, she remained free to revive it at will in aid of her litigation campaign against the Board and the Minister.

### **The Standard of Review by this Court**

91. As to the standard of review by this Court, the Board relied on the decision in *Greenwich Project Holdings Ltd. v. Cronin* [2022] IECA 154 which held (at para.35) that in cases of this nature “*a somewhat deferential approach ought to be taken by this Court to the exercise engaged in by the trial judge*” and also placed in the decision of Murray J. in *A.K. v. U.S.* [2022] IECA 65 (para. 53).

## **The Law**

**92.** The true origin of the inherent power is disputed by academics. It is analogous in material respects to the inherent jurisdiction of the common law courts to punish for contempt the exercise of which is increasingly recorded from the second half of the thirteenth century. Wilmot C.J.'s judgment in *R. v. Almon* [1765] 97 ER 94 is illustrative of its operation. It concerned the inherent power of the King's Bench to make an order requiring Mr. Almon, to "*shew cause*" why a writ of attachment should not issue against him for his contempt and offers an early example of the King's Bench considering the nature of its inherent power under the common law. Baron Alderson in *Cocker v. Tempest* [1841] 7 M & W 502 observed that "... *the power of each court over its own processes is unlimited; it is a power incident to all courts, inferior as well as superior; were it not so, the court would be obliged to sit still and see its own process abused for the purpose of injustice.*" In *R. v. Lefroy* 1872-73, L.R.8 Q.B. 134, Cockburn C.J. emphasised the limitations of the inherent power as being vested in the superior court in the context of committal for contempt. Quain J. (concurring) observed;

*"The power is therefore not inherent in the county courts as courts of record, and it is not given by the statutes, which only makes them courts of record and gives them limited power over contempts in court."*

**93.** *Isaac Wunder* Orders are broadly similar to *Grepe v. Loam* (reported at [1887] 37 Ch. D. 168) Orders. Same was made under the inherent power by Lindley L.J. in the English Court of Appeal on evidence that the claim was "*wholly unfounded*" brought for the purpose of impeaching a prior judgment in litigation between the same parties. The order provided;

*“That the said Applicants... be not allowed to make further applications in these actions or either of them to this Court or to the Court below without the leave of this Court being first obtained. And if notice of any such application shall be given without such leave being obtained, the Respondents shall not be required to appear upon such application, and it shall be dismissed without being heard.”* (p.169).

**94.** Lord Diplock in *Bremer Vulcan et al. v. South India Shipping Corporation Ltd*

[1981] A.C. 909, [1981] 1 All ER 289 analysed the inherent jurisdiction as follows;

*“The High Court's power to dismiss a pending action for want of prosecution is but an instance of a general power to control its own procedure so as to prevent its being used to achieve injustice. Such a power is inherent in its constitutional function as a court of justice. Every civilised system of government requires that the state should make available to all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access in the role of plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the defendant. Whether or not to avail himself of this right of access to the court lies exclusively within the plaintiff's choice; if he chooses to do so, the defendant has no option in the matter; his subjection to the jurisdiction of the court is compulsory. So, it would stultify the constitutional role of the High Court as a court of justice if it were not armed with power to prevent its process being misused in such a way as to diminish its capability of arriving at a just decision of the dispute.*

*The power to dismiss a pending action for want of prosecution in cases where to allow the action to continue would involve a substantial risk that justice could not*

*be done is thus properly described as an "inherent power" the exercise of which is within the "inherent jurisdiction" of the High Court. It would I think be conducive to legal clarity if the use of these two expressions were confined to the doing by the court of acts which it needs must have power to do in order to maintain its character as a court of justice.”* (p.977) (emphasis added).

This analysis reaffirms the very clear demarcation to be borne in mind between the inherent jurisdiction and the inherent power of the High Court. Inherent jurisdiction encompasses the general original jurisdiction of the High Court to hear and determine any matter at first instance. It is constitutionally copper-fastened and mandated now by Article 34.3.1 of the Constitution. The inherent powers have been identified and applied historically so that a court can ensure procedurally that the import of the exercise of any aspect of its jurisdiction is effectively enforced. Of relevance in the instant case are the inherent powers to prevent abuse of process and to act in aid of inferior courts (such as the Circuit Court) and whether the latter power extends to the WRC and the Labour Court.

**95.** In an academic article<sup>4</sup> by I.H. Jacob he contended that the inherent jurisdiction was; “...*a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.*” (p.51).

Arguably conflating inherent powers with inherent jurisdiction, he said the latter derived:

“... *not from any statute or rule of law, but from the very nature of the court as a superior court of law ... This description has been criticised as being “metaphysical” ... but I think nevertheless that it is apt to describe the quality of this jurisdiction. For the essential character of a superior court of law necessarily*

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<sup>4</sup> I.H. Jacob “*The Inherent Jurisdiction of the Court*”, 1970 C.L.P. p.23



*involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused. Such a power is intrinsic in a superior court; it is its very life-blood, its very essence, its immanent attribute. Without such a power, the court would have form but would lack substance. The jurisdiction which is inherent in a superior court of law is that which enables it to fulfil itself as a court of law.”<sup>5</sup>*

He characterised the inherent jurisdiction, *inter alia*, as a;

*“... peculiar concept ... so amorphous and ubiquitous and so pervasive in its operation that it seems to defy the challenge to determine its quality and establish its limits.”* (p.51).

**96.** Jacob’s article found favour with superior courts in the common law world including Canada, Australia and New Zealand. It is of assistance but needs to be considered subject to the pre-eminence of our constitutional order. The Canadian Supreme Court cited it with approval in over a dozen judgments. In *MacMillan Bloedel Ltd v. Simpson* [1995] 4 SCR 725 Chief Justice Lamer, citing Jacob, characterised the inherent jurisdiction as core to a superior court’s inherent jurisdiction and beyond the reach of Parliament and provincial legislatures *“in the absence of constitutional amendment”* (para.8). He considered that it encompassed *“The full range of powers which comprise the inherent jurisdiction of a superior court are, together, its ‘essential character’ or ‘immanent attribute’ . To remove any part of this core emasculates the court, making it something other than a superior court.”* (para. 30) and *“those powers which are essential to the administration of justice and the maintenance of the rule of law.”* (para. 30). Justice Binnie in *R. v. Caron* [2011] SCC 5, quoting Jacob, opined that the inherent jurisdiction could be invoked in *“an apparently inexhaustible variety of circumstances and may be exercised in different ways*

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<sup>5</sup> p.27, footnote 20

... even in respect of matters which are regulated by statute or by rule of court, so long as it can do so without contravening any statutory provision”- (in an Irish context this could only hold true provided the impugned statutory measure was not struck down as unconstitutional). Suggesting that a “*categories approach*” to the inherent jurisdiction was inapposite, he cautioned that its “*very plenitude*” required that the “*inherent jurisdiction be exercised sparingly and with caution*” (paras 29/30).

**97.** The principles governing the exercise of the inherent jurisdiction in the post-1937 era were first considered in *Keaveny v. Geraghty* [1965] IR 551, a libel suit between a member of Boyle Town Commissioner and the acting County Roscommon County Secretary. Lavery J. considered the “*wider jurisdiction inherent in the Court, apart from Rules, to control the administration of justice in the Courts. Independently of the Rules, the Court has an inherent jurisdiction to strike out a pleading, to stay proceedings or to dismiss an action on the grounds that no cause of action is shown, that the proceedings are frivolous or vexatious or are an abuse of the process of the Court.*” Relying on the decision in *Lawrance v. Lord Norreys* [1888] 39 Ch. D. 213 (which was subsequently affirmed by the House of Lords [1890] 15 App. Cas 210), Lavery J. cited Bowen L.J who at p.234 had stated; “*I have known many actions stayed which would have been maintainable if the allegations of fact, which were upon the face of them absurd and outrageous, could by any possibility be proved. I quite agree that this power ought to be exercised with the very greatest care, that it is not for the Court on a motion of this kind to discuss the probabilities of the case which is going to be made, except so far as to see whether the case stands outside the region of probability altogether, and becomes vexatious because it is impossible.*” O’Dálaigh C.J. delivered a rather trenchant dissenting judgment in *Keaveny* remarking: “*I see nothing in this action that could be designated frivolous. Is it, then, vexatious?... while stale suits are bothersome they are not by reason only of delay necessarily vexatious.*”

**98.** Better known is the later Supreme Court *ex tempore* decision in *Wunder v. Hospitals Trust (1940)* (Unreported, Supreme Court, 24<sup>th</sup> January 1967) long established as authority for the proposition that the purpose of the making of such an order is to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue claims which are groundless or vexatious and also to protect other parties from oppressive litigation.

**99.** In *Riordan v. Ireland (No. 4)* [2001] 3 IR 365, the rationale informing exercise of the inherent jurisdiction was succinctly described by Keane C.J.:

*“There is in the High Court, an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious. The court is bound to uphold the rights of other citizens including their right to be protected from unnecessary harassment and expense, rights which are enjoyed by the holders of public offices as well as by private citizens.”*

In *Ewing v. Ireland and the Attorney General* [2013] IESC 44, MacMenamin J. at para. 28 cited *Riordan v. Ireland (No.5)* [2001] 4 I.R 463 where O’Caoimh J. had considered decisions from the Canadian Courts including *Dykun v. Odishaw* [2000] ABQB 548 (Unreported, Alberta Court of Queen's Bench, 3<sup>rd</sup> of August 2000) which had relied on the decision of the Ontario High Court in *Re Lang Michener and Fabian* (1987) 37 D.L.R. (4<sup>th</sup>) 685. O’Caoimh J. had identified the following factors as tending to show that proceedings were vexatious which MacMenamin J. considered “*a helpful summary which is now frequently applied*”: -

“(a) *the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;*

- (b) *where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person could reasonably expect to obtain relief;*
- (c) *where the action is brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;*
- (d) *where issues tend to be rolled forward into subsequent actions and repeated and supplemented...*
- (e) *where the person instituting the proceedings has failed to pay the costs of unsuccessful proceedings;*
- (f) *where the respondent persistently takes unsuccessful appeals from judicial decisions.”*

In *Lopes v. Minister for Justice* [2014] IESC 21, [2014] 2 I.R. 301 Clarke J. outlined the ambit of the inherent jurisdiction reiterated in *Ewing v. Ireland* [2013] IESC 44, observing:-

*“An application under the RSC is designed to deal with a case where, as pleaded, and assuming that the facts, however unlikely that they might appear, are as asserted, the case nonetheless is vexatious... If, even on the basis of the facts as pleaded, the case is bound to fail, then it must be vexatious and should be dismissed under the RSC. If, however, it can be established that there is no credible basis for suggesting that the facts are as asserted and that, thus, the proceedings are bound to fail on the merits, then the inherent jurisdiction of the Court to prevent abuse can be invoked.*

*It is important to keep that distinction in mind. It is also important to note the many cases in which it has been made clear that the inherent jurisdiction of the court should be sparingly exercised. This was initially recognised by Costello J. in *Barry v Buckley* ... and by the Supreme Court in *Sun Fat Chan v Osseous Ltd* [1992] 1 I.R. 425. In the*

*latter case, McCarthy J. stated at 428 that “generally, the High Court should be slow to entertain an application of this kind”. This point has been reiterated more recently in Kenny v Trinity College Dublin [2008] IESC 18 (Unreported Supreme Court 10<sup>th</sup> April 2008) at para. 35 and in Ewing v Ireland and the Attorney General [2013] IESC 44 (Unreported Supreme Court 11<sup>th</sup> October 2013) at para. 27...” at pp. 309/310.*

**100.** Bingham L.C.J. in *AG v. Barker* [2000] 1 FLR 759 noted that the term “vexatious” could be used widely and encompass anything that constituted an abuse of process. In *Bennett v. Southwark London Borough Council* [2002] EWCA Civ 223, Sedley L.J. counselled that in the context of litigation the concept “scandalous” should not be accorded its colloquial meaning and is not synonymous with “shocking” but rather encompasses both “*the misuse of the privilege of legal process in order to vilify others*” and “*giving gratuitous insult to the court in the course of such process*”. (para. 27).

### **Restraining a Litigant from Instituting as well as Continuing Legal Proceeding**

**101.** It is well settled that the power of the High Court to restrain a litigant from continuing existing legal proceedings is equally available with the power to restrain the commencement of such proceedings where the evidence warrants same. An example is the decision of Staughton L.J. in *Attorney General v. Jones* [1990] 1 WLR 859 where he observed:

*“The power to restrain someone from commencing or continuing legal proceedings is no doubt a drastic restriction of his civil rights, and is still a restriction if it is subject to the grant of leave by a High Court judge. But there must come a time when it is right to exercise that power, for at least two reasons. First, the opponents who are harassed by the worry and expense of vexatious litigation are entitled to protection; secondly the resources of the judicial system are barely sufficient to*

*afford justice without unreasonable delay to those who do have genuine grievances, and should not be squandered on those who do not.”* (p.865)

**102.** The principles governing an application to strike out, *inter alia*, pursuant to the inherent jurisdiction was considered in some detail in *Kearney v. Bank of Scotland* [2020] IECA 92. It concludes that the jurisdiction is to be exercised sparingly since it impacts on the Constitutional right of access to the courts. It is incumbent on the applicant to establish that the pleadings do not disclose a reasonable cause of action or that the claim is bound to fail or that it is an abuse of process. Reliance was placed on Murray C.J. in *Vantive Holdings* [2009] IESC 69, [2010] 2 IR 118 at para. 20 where he observed that:

*“...The courts have always had an inherent jurisdiction to stay or dismiss proceedings which abuse the due process of the administration of justice where to do otherwise would seriously undermine its effectiveness or integrity. In addition under the Rules of Court the courts have, in civil proceedings, the power to dismiss proceedings on the grounds that they are ‘frivolous’ or ‘vexatious’....”*

This court in *Kearney* (at para 127) had cited *Kelly: The Irish Constitution* (Hogan et al, 5<sup>th</sup> Ed. Bloomsbury Professional 2018) at para 7.3.194, which had outlined (at 7.3.194) options available to the Superior Courts when dealing with vexatious litigants:

*“The right to litigate must be read subject to the judicial power to strike out an action so as to prevent an abuse of the judicial process. If it is clear that the plaintiff’s claim must fail or that he can derive no tangible benefit from the litigation, a court has an inherent jurisdiction to stay the action (in addition to a similar jurisdiction conferred by the Rules of the Superior Courts relating to frivolous or vexatious proceedings), though this jurisdiction must be exercised sparingly and only in clear cases. The court may also strike out an action if it has been taken for a purpose that the law does not recognise as a legitimate use of the remedies sought, if there has been egregious*

*misconduct in the manner in which the proceedings have been conducted, if there has been an inordinate and inexcusable delay in pursuing a claim and the balance of justice requires dismissal of the action, or even where the plaintiff is not culpable, if the passage of time means that there is a real or substantial risk of an unfair trial or an unjust result. Moreover, any court may restrain a person from instituting legal proceedings without first obtaining the consent of the court where this is necessary in order to prevent the abuse of court processes or the pursuit of vexatious litigation, a so-called 'Isaac Wunder' order".*

**103.** The judgment in *Kearney* at para. 131 also states:

*"The power of a superior court to attach such restraint to the institution or continued prosecution of civil litigation extends to existing proceedings and to new proceedings and also to proceedings before any of the lower courts. In the case of new proceedings, such restraint may, in an appropriate case, include an order restraining the institution of proceedings against present, former or anticipated legal representatives of parties to the litigation."*

The High Court can make orders staying or striking out extant proceedings or restraining parties from instituting further proceedings without prior leave of the court, as the case may be, depending on the exceptionality of the facts established. There is force in the observations of Ferriter J. at para. 159 emphasising that such facts must be "*sufficiently exceptional for the court to intervene in exercise of its inherent jurisdiction*". Whilst access to justice must be assured, the principle of finality of litigation and the finite resources of courts as well as the requirement to afford fair procedures to all parties to proceedings must also be properly considered. The court must assess whether the making of such an order is a proportionate response to an individual's proven abuse of process.

**104.** In *Kearney* this court noted, *inter alia*, at para. 132;

*“Isaac Wunder orders now form part of the panoply of the courts’ inherent powers to regulate their own process. In light of the constitutional protection of the right of access to the courts, such orders should be deployed sparingly and only be made where a clear case has been made out that demonstrates the necessity of the making of the orders in the circumstances:*

- i. Regard can be had by the court to the history of litigation between the parties or other parties connected with them in relation to common issues.*
- ii. Regard can be had also to the nature of allegations advanced and in particular where scurrilous or outrageous statements are asserted including fraud against a party to litigation or their legal representatives or other professionals connected with the other party to the litigation.*
- iii. The court ought to be satisfied that there are good grounds for believing that there will be further proceedings instituted by a claimant before an Isaac Wunder type order restraining the prosecution of litigation or the institution of fresh litigation is made.*
- iv. Regard may be had to the issue of costs and the conduct of the litigant in question with regard to the payment and discharge of costs orders incurred up to the date of the making of the order by defendants and indeed by past defendants in applications connected with the issues the subject matter of the litigation.*
- v. The balancing exercise between the competing rights of the parties is to be carried out with due regard to the constitutional rights of a litigant and in general no legitimate claim brought by a plaintiff ought to be precluded from being heard and determined in a court of competent jurisdiction save in exceptional circumstances.*
- vi. It is not the function of the courts to protect a litigant from his own insatiable appetite for litigation and an Isaac Wunder type order is intended to operate*



*preferably as an early stage compulsory filter, necessitated by the interests of the common good and the need to ensure that limited court resources are available to those who require same most and not dissipated and for the purposes of saving money and time for all parties and for the court.*

- vii. *Such orders should provide a delimitation on access to the court only to the extent necessitated in the interests of the common good.*
- viii. *Regard should be had to the fact that the right of access to the courts to determine a genuine and serious dispute about the existence of a right or interest, subject to limitations clearly defined in the jurisprudence and by statute, is constitutionally protected, was enshrined in clause 40 of Magna Carta of 1215 and is incorporated into the European Convention on Human Rights by article 6, to which the courts have regard in the administration of justice in this jurisdiction since the coming into operation of the European Convention on Human Rights Act 2003.*
- ix. *The courts should be vigilant in regard to making such orders in circumstances where a litigant is unrepresented and may not be in a position to properly articulate his interests in maintaining access to the courts. Where possible the litigant ought to be forewarned of an intended application for an Isaac Wunder type order. In the instant case it is noteworthy that the trial judge afforded the appellant the option of giving an undertaking to refrain from taking further proceedings which he declined.*
- x. *Any power which a court may have to prevent, restrain or delimit a party from commencing or pursuing legal proceedings must be regarded as exceptional. It appears that inferior courts do not have such inherent power to prevent a party from initiating or pursuing proceedings at any level...etc.”*

**105.** Collins J. in *Údarás Eitlíochta na hÉireann, the Irish Aviation Authority and DAA plc v. Monks & Anor.* [2019] IECA 309 (*Monks*) emphasised the exceptional nature of the *Isaac Wunder* jurisdiction and that same should only be made where appropriate and necessary:

*“...that a court asked to make an Isaac Wunder order should anxiously scrutinise the grounds advanced for doing so. It should not be seen as some form of ancillary order that follows routinely or by default from the dismissal of a party's claim, whether on its merits or on a preliminary strike-out motion.”*

He succinctly signalled where the focus of the court ought to lie noting:

*“The court must in every case ask itself whether, absent such an order, further litigation is likely to ensue that would clearly be an abuse of process. Unless the court is satisfied that such is the case, no such order should be made. It is equally important that, where a court concludes that it is appropriate to make such an order, it should explain the basis for that conclusion in terms which enable its decision to be reviewed. It is also important that the order made be framed as narrowly as practicable (consistent with achieving the order's objective).”*

He noted that in addition to the private rights of persons to be protected from vexatious claims there are important public interests in avoiding waste of limited court resources with such claims and the desirability of finality of litigation in the public interest.

**106.** Collins J. reiterated that position in *Houston v. Doyle* [2020] IECA 289, at para. 64, further emphasising that courts were “*rightly reluctant to make such orders and the circumstances in which it is appropriate to do so will be “very rare”, given the important constitutional value attaching to the right of access to the courts. But that right is not absolute and other rights and interests are also engaged in this context, including the right of citizens “to be protected from unnecessary harassment and expense”.*

**107.** Apart from the stress of being sued, defendants may incur significant costs in defending themselves against wholly unmeritorious claims. As Keane C.J. noted in *Riordan v. Ireland (No. 4)*, courts would be failing in their duty if they allow their processes “to be repeatedly invoked in order to reopen issues already determined or to pursue groundless and vexatious litigation”. Having cited *Kearney* (para. 132(xi)) with approval that the jurisdiction is one to be exercised cautiously, Collins J. (para. 66) in *Houston* indicated that no order should be made unless the relevant court is satisfied that, in its absence, further litigation is likely to follow which would clearly be an abuse of process. He also indicated that before an *Isaac Wunder* Order is made, the subject of the intended order must be given an opportunity to be heard.

### **The Right of Access to the Courts**

**108.** Any *Isaac Wunder* Order potentially trenches on the constitutionally protected right of access to the courts, a personal right contained in Article 40.3 which, although not absolute, is of core importance, as observed by Kenny J. in *Macauley v. Minister for Posts and Telegraphs* [1966] IR 345;

*“If the High Court has this full original jurisdiction to determine all matters and questions (and this includes the validity of any law having regard to the provisions of the Constitution), it must follow that the citizens have a right to have recourse to that Court to question the validity of any law having regard to the provisions of the Constitution or for the purpose of asserting or defending a right given by the Constitution for if it did not exist, the guarantees and rights in the Constitution would be worthless.”*

**109.** The Supreme Court in *Tormey v. Ireland* [1985] I.R. 289 had held concerning the “full original jurisdiction” of the High Court referenced in Article 34.3.1:

*“... must be deemed to be full in the sense that all justiciable matters and questions (save those removed by the Constitution itself from the original jurisdiction of the High Court) shall be within the original jurisdiction of the High Court in one form or another.”* (Henchy J.)

Henchy J. also observed:

*“If there has not been a statutory devolution of jurisdiction on a local and limited basis to a court such as the District Court or the Circuit Court, the High Court will hear and determine the matter or question, without any qualitative or quantitative limitation of jurisdiction. On the other hand, if there has been such a devolution on an exclusive basis, the High Court will not hear and determine the matter or question, but its full jurisdiction is there to be invoked – in proceedings such as habeas corpus, certiorari, prohibition, mandamus, quo warranto, injunction or a declaratory action – so as to ensure that the hearing and determination will be in accordance with law. Save to the extent required by the terms of the Constitution itself, no justiciable matter or question may be excluded from the range of the original jurisdiction of the High Court.”*

Finlay C.J. in *Tuohy v. Courtney* [1994] 3 IR 1 at p.45 adumbrated the ambit of the constitutional right to litigate thus:

*“...the right to achieve by action in the courts the appropriate remedy upon proof of an actionable wrong causing damage or loss as recognised by law...”*

**110.** An *Isaac Wunder* order does not exclude the appellant’s access to the courts but merely sets parameters requiring a formal step of her making an application before the institution of proceedings. Such a proportionate limitation does not restrict or reduce the access available to the appellant in such a manner or to such an extent that the very essence of her rights

under Article 6 of the ECHR are objectively unreasonably impaired. As Lord Woolf M.R. in *Ebert v. Ventvil* [2000] Ch 484 observed: -

*“[The European Convention on Human Rights], Article 6 does no more than reflect the approach of the common law indicated by Laws J. in R v. Lord Chancellor, Ex parte Witham [1998] QB 575. As long as the inherent power is exercised only where it is appropriate for it to be exercised, no contravention of Article 6 or common law principle is involved.”* (at p.497).

As outlined above in this case the appellant has to date launched in excess of fifty applications to administrative bodies or courts, all issues arising have long since been conclusively determined (including the exhaustion of appellate remedies).

**Workplace Relations Act 2015 Section 42(1) - “frivolous or vexatious”**

**111.** The WRC Adjudication Officer is empowered by s.42(1) of the 2015 Act to “*dismiss a complaint or dispute referred to him or her under section 41 if he or she is of the opinion that it is frivolous or vexatious.*” Those concepts were considered by the Supreme Court in jurisprudence including *Fay v. Tegral Pipes Ltd* [2005] 2 I.R. 261 (at p.265) where McCracken J. observed “... *the real purpose of the jurisdiction is to ensure that there will not be an abuse of the process of the courts. Such abuse cannot be permitted for two reasons. Firstly, the courts are entitled to ensure that the privilege of access to the courts, which is of considerable constitutional importance in relation to genuine disputes between parties will only be used for the resolution of genuine disputes, and not as a forum for lost causes which, no matter how strongly the party concerned may feel about them, nevertheless has no basis for a complaint in law...*”.

### **Rationale for Extending *Isaac Wunder* Orders to Administrative Bodies**

112. Article 34.3.1. provides: “*The Courts of First Instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal.*”

Article 34.3.4. provides: “*The Courts of First Instance shall also include Courts of local and limited jurisdiction with a right of appeal as determined by law.*”

Article 37.1 provides: “*Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such powers and functions, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.*”

Article 37 enshrines the power of the Oireachtas to establish administrative tribunals by legislation for “*the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters...*”. On establishment they are subject to the supervisory jurisdiction of the High Court – as exemplified by public law remedies such as judicial review.

113. Of assistance is an excerpt of *Kelly* (above) at 6.2.08 “*Recent case law has stressed that Article 34.3.1 is a part of a system of interlocking constitutional guarantees along with provisions such as Article 40.3 which individually and collectively ensure that ‘litigants are guaranteed an effective remedy in respect of all justiciable controversies’*”. In *S (a minor) v. Minister for Justice, Equality and Law Reform* [2011] IEHC 31 as Hogan J. observed: -

“... *the courts will ensure the remedies available to a litigant are effective to protect the rights at issue and that our procedural law (including all legislation restricting or regulating access to the courts) respects basic fairness of procedures and is neither arbitrary or unfair. Article 34.3.1, Article 40.3.1 and Article 40.3.2 thus*

*reflect the same basic premise as that contained in Article 13 ECHR, i.e., the guarantee of an effective remedy. That, after all, is the central premise of what the express words of Article 40.3 - the vindication of rights in the case of injustice done - are all about.”*

As the authors in *Kelly* (above) observe at 6.2.08 “... *there must be not ex ante rules of judicial practice which effectively prevented the grant of such relief.”*

**114.** There is force in the observations of the English House of Lords in *Anyanwu v. Southbank Students Union* [2001] UKHL 14, [2001] IRLR 305 “... *The time and resources of the employment tribunals ought not to be taken up by having to hear evidence in cases that are bound to fail.*” (per Lord Hope of Craighead at para. 39).

**115.** Analysis by the trial judge of the basis for his exercise of the inherent jurisdiction to extend *Isaac Wunder* orders to administrative bodies included a consideration of relevant domestic legislation and the constitutional order. He concluded that there was arguably a greater constitutional footing for extending such orders to non-court statutory tribunals in light of Articles 34.3.4 and 37 Constitution and the established broad original supervisory role of the Superior Courts over not only the lower courts but also administrative bodies to prevent abuse of process. He placed reliance on the decision of the Supreme Court in *Zalewski v. Workplace Relations Commission* [2021] IESC 24.

**116.** The observation (the accuracy of which cannot be doubted) in the dissenting judgment of McKechnie J. in *Zalewski* is noteworthy where he observed “*all inferior courts and bodies are subject to the supervisory jurisdiction of the High Court, whether by way of certiorari, mandamus, injunction or other remedy, now for the greater part all moved by way of judicial review: this is a constitutional imperative as is evident from Article 34.3.1.*”

**117.** The pivotal Supreme Court (majority) decision of O’Donnell J. (as he then was) in *Zalewski* is that the WRC and (by logical extension) the Labour Court on appeal is each engaged

in administering justice as a body within Article 37 of the Constitution. Thus, by virtue of Article 37 the general supervisory role of the High Court over the conduct of the respective functions of the WRC and the Labour Court is located within the architecture of the Constitution as the jurisprudence including the decision in *Tormey v. Ireland* (ante) illustrates. In *Zaleski* the Supreme Court determined unanimously that the adjudicative process of the WRC constitute the administration of justice pursuant to the Constitution.

**118.** O'Donnell J. (as he then was) in *Zaleski* observed at para. 44 citing the essay of Dr. Marshall on justiciability that: *"There is no clear definite test capable of being constructed to distinguish the administration of justice from an administrative decision-making function bound to act judicially, but the Constitution assumes the distinction, asserts its importance, and requires the legislature to respect it and the courts to uphold it. In Ireland and in any other jurisdiction which mandates the separation of powers, the characterisation of issues as justiciable, and falling within the province of the administration of justice, is, unavoidably, a judicial task. Even if it is true that there is no dispute that is inherently justiciable, the constitution provides and requires that there be an area known as the administration of justice to be carried out by judges, subject only to Article 37."*

At para 76 he noted; *"...the development of the law in relation to the nature of the judicial power must be seen against the background of the increasing extent to which the law found that, even if the procedure fell outside the area of the administration of justice, the actions of administrative bodies in question were subject to judicial review which, over the succeeding decades, has become increasingly searching."*

Reviewing the development of administrative bodies in this jurisdiction he observed: -

*"The question, therefore, of how the proliferation of administrative agencies, which required bodies to resolve disputes was to be reconciled with the fact that the administration of justice was to be carried out in courts and, at least by implication,*



*nowhere else was something that had to be resolved as a matter of law rather than abstracts theory.”*

O’Donnell J. considered Article 37 of *Bunreacht na hÉireann* as “*providing for the exercise of limited functions and powers of a judicial nature in non-criminal matters by persons other than judges or courts.*” (para. 63). It will be recalled that all seven judges in the Supreme Court in *Zalewski* agreed that the process before the WRC did amount to the administration of justice, albeit that a majority of four judges found that it was “*saved*” by Article 37.1.

**119.** The academic Tom Hickey observes in his comprehensive paper<sup>6</sup> on the *Zalewski* judgment “*O’Donnell J. ... transformed how Irish courts would approach the question as to how to determine whether an impugned process counted as the administration of justice. He reined in the check-list/empirical approach that had prevailed for more than half a century under which a judge would consider whether the process had each of the five components that had been identified in McDonald v. Bord na gCon (McDonald) as “characteristic features” of the administration of justice.*”

**120.** Hickey notes that O’Donnell J. “*also transformed Article 37.1.*” noting “*In Re Solicitors Act, another landmark judgment from the mid 20<sup>th</sup> century, the key word in that provision - “limited” - had been interpreted in a manner that all but eliminated this “saver” clause as a consideration in Irish public law. It was taken to refer to the “effect of the assigned power on the lives, liberties, fortunes and reputations” of persons who were the subject of its exercise.*” However, “*...in Zalewski O’Donnell J. redirects that key word such that the saver now affords constitutional protection to non-judicial bodies that administer justice in ways that have far-reaching effects on the fundamental interests of people who appear before them. It means that Article 37.1 is now back in the Irish constitutional sun, after seven decades in the shade.*”

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<sup>6</sup> “*Zalewski and the Future of Irish Public Law*” *The Modern Law Review* 2024 87(2) pp 466

**121.** The decision in *McDonald v. Bord na gCon* [1965] IR 217 was deployed by the Supreme Court in *Zalewski* in the majority reaching their conclusion that the Adjudication Officers of the WRC were engaged in the administration of justice in the sense contemplated by Article 34.1. O'Donnell J. considered five different ways whereby the jurisdiction of the WRC might be considered “*limited*” in the jurisdictional sense under consideration in Article 37 of the Constitution. As Tom Hickey observes:

*“The notion of “limited” in Article 37.1 need not be understood in opposition to the notion as it applies in respect of the District and Circuit Courts (i.e. the notion of “limited” as captured by Article 34.3.4.”*

**122.** Reliance was placed by the Minister on the decision of *Murphy v. Canada Life Assurance (Ireland) Ltd* [2016] IECA 128 to support the proposition that the High Court had the power to make the orders sought. Hogan J. observed (Irvine and Mahon JJ. concurring):

*“8. In my view, it is perfectly clear, both as a matter of principle, statute and authority that, broadly speaking, a claimant cannot advance a complaint to the FSO and then, should that claim prove unsuccessful, re-litigate the same matter before the High Court under the guise of separate proceedings. There is a clear public interest in the finality of litigation, coupled with a requirement that a litigant should advance the entirety of a claim and not endeavour to litigate matters in a piecemeal basis. The potential for the abuse of the litigious process by repeated applications is manifest.*

*9. These principles are reflected in the doctrine of res judicata, so that a matter which has been finally judicially decided cannot generally be re-opened. The principles of res judicata serves not only to protect these important public interests, but also to safeguard the legitimate interests of litigants to ensure that they are not harassed by the unnecessarily burdensome litigant who endeavours to re-open matters which have already been judicially determined.”* (emphasis added)

Hogan J. also observed “*the doctrine does not apply simply to judicial findings, but also to administrative determinations which, in the nature of things, are final.*”

That decision is not inconsistent with the proposition that the High Court’s inherent jurisdiction extends to the power to make orders to protect the processes of statutory bodies engaged in the administration of justice within Article 37 from vexatious claims and abuse of process.

**123.** Hogan J. considered the relevant provisions of the Central Bank Act 1942 (as amended) observing: - “... *the Oireachtas intended that adjudications by the FSO would have a binding character, subject only to an appeal. It would be quite inconsistent with that legislative intent if these statutory provisions could be effectively circumvented by issuing new High Court proceedings which attempted in effect to re-litigate the same matters that were already determined by the FSO in the course of the adjudication upon the earlier complaint.*” He considered the decisions in *Murray v. Trustees and Administrators of the Irish Airlines Superannuation Scheme* [2007] IEHC 27, [2007] 2 I.L.R.M. 196, *O’Hara v. ACC Bank plc* [2011] IEHC 367 and *Crowley v. Zurich Life Assurance* [2015] IEHC 197 noting: -

“*All three decisions are unanimously of the view that a disappointed litigant cannot re-litigate a matter which has been the subject of an adverse decision from either the Pensions Ombudsman (in the case of Murray) or the FSO (in the cases of O’Hara and Crowley) by reason of the principle of res judicata.*”

He cited Kelly J. in *Murray* where he had observed:

“*In my view it would be contrary to the policy of the legislature as gleaned from the relevant statutory provisions that it should be open to a party to avail himself of the statutory machinery but when dissatisfied with the result seek, not merely to exercise the statutory right of appeal, but also to commence in this court proceedings of a*

*substantive nature which seek to, in effect, set aside the determination of the Ombudsman.”*

**124.** English authorities are of assistance such as *Nursing and Midwifery Council v. Harrold* [2015] EWHC 2254 QBD, [2016] IRLR 30 which built on the existing common law position exemplified by decisions such as *Grepe v. Loam* [1887] 37 Ch.D.168 as having established that the English High Court had inherent jurisdiction to make an order equivalent to a statutory civil restraint order (CRO) - broadly analogous to an *Isaac Wunder* order - extending to proceedings brought or in being before and Employment Tribunal.

**125.** It is instructive that Hamblen J. in *Harrold* drew an analogy with the functions and powers of the High Court in the context of contempt in arriving at his conclusion:

*“As is common ground, an inferior court, such as the [Employment Tribunal] has no power itself to make a CRO or equivalent order. It is entirely consistent with the High Court’s jurisdiction in matters of contempt for it to be able to make orders to protect the inferior courts in such circumstances. It can be regarded as another example of the High Court’s power ‘to prevent any person from interfering with the due course of justice in any inferior court’.”*

**126.** There is force in the respondents’ position in placing reliance on the checklist outlined in the *Kearney v. Bank of Scotland* [2020] IECA 92, in asserting that the threshold for making an *Isaac Wunder* order in the exercise of the inherent jurisdiction had been reached not only in relation to the courts but also in relation to the WRC and the Labour Court. It was shown that that a significant number of the factors were proven including:-

- (a) there had been very protracted litigation between the appellant and both the Board and the Minister (over 50 instances) outlined above.
- (b) the proceedings related to matters which had been the subject of final and conclusive determinations. Further the appellant had advanced very serious

allegations wholly (or substantially) unrelated to her dismissal including an apparent allegation of child sexual abuse.

- (c) There were good grounds for believing that there would be further proceedings if the *Isaac Wunder* order was not made. The appellant had so confirmed.
- (d) Significant costs had been incurred in defending a large number of unmeritorious proceedings.
- (e) The balancing exercise involved in weighing the competing rights of the parties warrant the making of the order sought so as to protect the interests of the respondents.
- (f) The order was necessitated in the interests of the common good/public interest and the need to ensure that limited court and tribunal resources are available to those who require them most and that such an approach should extend to statutory non-judicial bodies engaged in the administration of justice within Article 37.

**127.** To the principles set out at para. 132 of *Kearney* one might usefully add:

- “...*there is vested in this court... an inherent jurisdiction to restrain the institution of proceedings by named persons in order to ensure that the process of the court is not abused by repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious.*” Keane C.J.) in *Riordan v. Ireland (No 4)* [2001] 3 IR 365.
- *Such orders should only be made where a clear case has been made out that demonstrates the necessity of the making of the orders in the circumstances.*” As noted by Keane C.J. in *Riordan v. Ireland (No 5)* [2001] 4 I.R. 463.

A number of noteworthy observations by Collins J. in *Monks* include;

“...a court asked to make an *Isaac Wunder* order should anxiously scrutinise the grounds advanced for doing so. It should not be seen as some form of ancillary order that follows routinely or by default from the dismissal of a party’s claim, whether on its merits or on a preliminary strike-out motion.”

That “the pursuit of vexatious litigation has wider implications in terms of the use of limited court resources.”

The order should be “...framed as narrowly as practicable (consistent with achieving the order’s objective).” (para 7)

A court should only accede to the making of an *Isaac Wunder* order where satisfied that it is proportionate and necessary to do so. In balancing the rights of parties to litigation, courts must have regard to the interest of all parties and are bound to uphold the rights of other litigants and to protect them from unnecessary harassment and expense.

**128.**Where the court is satisfied (which Costello J. in *O’Malley v. Irish Nationwide* (Unreported, High Court, 21<sup>st</sup> January 1994) considered would only arise “in very rare circumstances”) on a review of the evidence and conduct of the parties that the processes of the court are being abused then an *Isaac Wunder* order should be made in terms and to the extent necessary to prevent same. However, the court should be careful to ensure that the terms of the order are proportionate. The making of an *Isaac Wunder* order does not exclude the litigant from access to the courts and is never absolute in its effect. The affected party can always apply to the court for leave to issue proceedings. That is a significant protection for the litigant concerned but, the court making such an order should keep foremost in mind that, as Collins J. observes in *Monks* at para.6 “...the order nonetheless imposes on that person a restriction on their access to the courts that is not applicable to the general body of litigants.”

**129.**The likelihood of further abusive litigation being brought in the event that the order is not made should be carefully assessed prior to making the order. It is particularly important that in making an Isaac Wunder Order wherever possible that the decision is given in writing and clear reasons are identified which in the opinion of the court warrant its making.

**130.***Zalewski* puts beyond doubt that such power extends to administrative bodies such as the WRC and the Labour Court as bodies engaged in the due administration of justice. I am satisfied that there was compelling evidence here that an *Isaac Wunder* order was necessitated in regard to the proceedings both before the High Court and the Circuit Court to ensure that the court's resources were not squandered or that specious claims were not allowed to be repeatedly advanced in an ongoing re-litigation of the core issues all of which have been conclusively determined in favour of the Board and the Minister.

**131.**In the application to strike out proceedings and restrain further claims, the Board invoked O.19, r.28 RSC as well as the inherent jurisdiction of the High Court. The Minister primarily relied on the inherent jurisdiction. In my view, the inherent jurisdiction is more appropriate for all the reasons identified by Clarke J. (as he then was) in decisions including, *Salthill Properties Ltd v. Royal Bank of Scotland plc* [2009] IEHC 207 where he reviewed the material distinctions between each. As he makes clear, the inherent jurisdiction is substantially wider in its ambit than relief pursuant to O.19 r.28 RSC. In exercise of the former, it is open to the High Court to consider factors outside the ambit of the pleadings and have regard to all evidence, particularly affidavit evidence and exhibits put before the court in support of the application for the exercise of the inherent jurisdiction to strike out.

**132.** Adjudicatory tribunals and bodies such as the WRC and the Labour Court lack inherent powers equivalent to the inherent powers of the High Court to make *Isaac Wunder* orders. Decisions such as *McDonald v. Bord na gCon* [1965] 2 I.R. 217, *O’Connell v. The Turf Club* [2015] IESC 57, [2017] 2 I.R. 43 and *Zalewski* (above) make that clear. The powers of the WRC and the Labour Court derive from their respective statutory foundations. The ambit of the powers conferred on the WRC is set by s.42(1) of the WRA 2015 and empowers dismissal of a complaint if the AO “*is of the opinion that it is frivolous or vexations*”. As observed by Lord Morris in *Connelly v. Director of Public Prosecutions* [1964] AC 1254 (UKHL):

*“There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.”* (p.1301)

The decision in *Lopez* indicates the approach which the AO is entitled to take where a respondent seeks dismissal of a complaint pursuant to s. 42(1) of the WRA 2015, as amended.

### **Abuse of Process and High Court and Circuit Court**

**133.** As the Supreme Court made clear in *Re Vantive Holdings* [2009] IESC 69 “*abuse of process may take many forms according to the context or the nature of the proceedings...*” (per Murray C.J.). Regarding the exercise by the High Court of the inherent jurisdiction to stay or strike out proceedings before the High and Circuit Courts, the starting point must be that the appellant enjoys a right of access to the courts. Article 40.3.1 of the Constitution guarantees that the State will “*by its laws ... defend and vindicate the personal rights of the citizen*” which encompass the right



to litigate and access to the courts. Such a right is not absolute. A balancing of rights requires that it must be exercised with due regard to the rights of others and to the public interest. In that context Collins J.'s observation in *Houston v. Doyle* [2020] IECA 289 (para. 67) is to be recalled: "... *in principle, it will be a breach of constitutional justice to make an Isaac Wunder order without affording the affected person a right to be heard in relation to the proposed order.*" He emphasised that the affected party is to be given "*adequate opportunity to be heard before any decision is made.*" (para. 69)

### **Proportionality**

**134.**Proportionality arises in the context of the guarantee afforded by the Constitution and Article 6 of the ECHR to the right to a fair trial. No such issue arises here since the appellant has exercised her right to a fair trial, on many issues in up to three separate fora the WRC, the Labour Court and the High Court. The end of the road has long since been arrived at as far as litigation of these issues is concerned.

**135.**As Sedley L.J. observed in *Blockbuster Entertainment Ltd. v. James* [2006] EWCA Civ 684, the striking out of proceedings is a "*draconian power not to be readily exercised*". Abiding that observation, sight must never be lost of the fact that even though the conduct of proceedings has been unreasonable and scandalous or vexatious, that in itself is not *per se* an absolute ground to strike out the proceedings. In my view, it is also important that regard be had to the principle of proportionality in light of Article 6 of the ECHR and having due regard to the provisions of the European Convention on Human Rights Act 2003 s. 2.

**136.**It is important that other less "seismic" options be considered to assess whether they are capable of addressing the issues such as, if appropriate, deleting part of

proceedings or making directions in light of the issues arising and so forth. However, no such considerations fall to be determined in this case. All issues are *res judicata* and no intervention by the court could salvage any maintainable claim that could benefit the appellant. It is highly relevant also that claims in one shape or form have been in being for over a decade.

### **Burden of Proof**

137. The onus is on the respondents to satisfy the court that the making of the orders was warranted both in relation to all future proceedings and those pending before the WRC and Labour Court and the Courts in general. It was not for the litigant to demonstrate why her proceedings should not be struck out (per *Department of Education and Science v. Taylor* [1992] IRLR 308). I am satisfied that the respondents established a clear case and readily satisfied the High Court of their entitlements to the orders in their own personal interest and in the public interest to bring this futile litigation to an end in respect of which there is not even the remotest prospect of success.

### **Lawfare**

138. “Lawfare” might be described as availing of legal processes, remedies, applications and litigation to harass, delegitimise, harm, interfere with or damage the reputation of another. A review of all pending applications/appeals before the WRC, and the Labour Court – as well as the High Court, Circuit Court and Court of Appeal confirms that each is futile and bound to fail. Each constituent complaint is demonstrably *res judicata*, having been litigated to a final determination on prior occasions and cannot be reopened or revisited. Payment of €500 due to the appellant by the Board was proven to have been made.

**139.**All the complaints and issues being advanced by the appellant have already been conclusively determined and the rule of *res judicata* articulated in *Henderson v. Henderson* applies. The appellant's employment ceased over 9 years ago. She did not appeal or challenge that decision at the time. Her sundry applications, complaints, claims and appeals extant and pending before the WRC and the Labour Court are threadbare and improper efforts to re-open the circumstances which led to her removal from office and collaterally attack the Ministerial Order of June 2015 as well as relitigating a slew of work and pension-related claims to sustain her ongoing futile and doomed campaign by means of waging improper *lawfare* against the Board and the Minister.

#### **Analysis**

**140.**It evident from the High Court proceedings and the sundry claims pending before the WRC and appeals to the Labour Court, that in substance what the appellant endeavours to do is collaterally attack the 2015 Ministerial Order removing her from post notwithstanding that she never appealed same at the time.

**141.** To date she has instituted at least 28 distinct complaints against the Board. Fifteen were brought to the WRC (or its predecessor body), one claim brought to the Equality Tribunal, five appeals from the WRC to the Labour Court, three High Court statutory appeals, one High Court summary summons, two High Court judicial review applications, one Circuit Court civil action. There has been at least one application for leave to appeal to the Supreme Court culminating in a determination refusing leave in 2023. Her complaint made on 22 March 2011 to the Rights Commissioner by adjournment and otherwise she managed to keep alive until 2022 (High Court Record No. 2021/123/MCA).

142. Following the orders made by Ferriter J. her appeal to the Labour Court was struck out. Aspects of her claim appear to encompass what she now characterises as “*green sexual victimisation*” a phrase she was unable to meaningfully explain to the court.

143. Her summary proceedings (Record No. 2021/404S) claimed unpaid salary from 1 July 2015 to 31 October 2018 in the sum of €210,255. Perversely, despite the Ministerial Order of 15 June 2015, she persists in asserting that her employment with the Board continues. Additionally, for good measure, in the Circuit Court proceedings (record no. 2021/00033 County Kildare) she also sought salary from 1 July 2015 and annulment of her “*unwanted resignation imposed on me in 2019*” and “*levelling up of my pension contributions*”. As the trial judge correctly observed at para. 8, this litigation illustrates that the appellant “*has persisted with a barrage of identical or materially equivalent claims purporting to challenge her removal.*” There was no justification for same as the Circuit Court lacked jurisdiction.

#### **Practical Consequences if Order not extended to WRC and Labour Court**

144. Highly relevant in the context of the proportionality and exceptionality considerations to be weighed in the exercise of the inherent jurisdiction by the court, the trial judge presciently noted of the appellant’s pending complaints before the WRC that “*any...dismissals would inevitably be appealed...to the Labour Court given her approach to date.*” (para. 157). Such appeals to the Labour Court are dealt with *de novo* on the merits.

145. This brings one to observe that had the High Court declined to extend the orders it made to strike out the complaints/appeals pending before the WRC and the Labour Court and restraining the institution of all further applications to either body to the limited extent ordered, such an omission could dilute or render nugatory the *Isaac Wunder* order restraining applications to the courts. Given the appellate structure in

place under the scheme of the WRC legislation including ss. 44, 46 and 53, the appellant would be in a position to seek to continue her campaign of futile claims to the WRC and baseless appeals therefrom to the Labour Court. This would potentially open the door for her to attempt to launch s.46 appeals to the High Court on a point of law – no matter how devoid of merit it might be. Excluding the WRC and Labour Court from the scope of the *Isaac Wunder* type relief being sought here risks creating a fundamental mismatch between the level of protection afforded to the courts under the inherent jurisdiction from wholly abusive claims and administrative bodies administering justice pursuant to statute. Such an outcome risks undermining the practical benefit of the orders made by the High Court in the exercise of its inherent jurisdiction and would not be in the public interest.

**Pending and Future Applications to WRC on Concluded Issues: An Abuse of Process**

146. Whether or not the appellant has insight into the practical consequences of her litigation conduct, it is very clear that she intends to continue to pursue the concluded claims by the repeated institution of substantially identical applications and complaints to the WRC. Inevitably, such complaints have no prospect of succeeding because they are not genuine or *bona fide*. Inevitably she will appeal each such outcome to the Labour Court – as she has done in all cases subsequent to 2015. Such appeals have no prospect of success either. In the context of the exceptionality of the proven facts in this case the *Isaac Wunder* order in respect of the WRC and Labour court was proportionate and warranted. Key factors included the long duration of the litigation and frequency and multiplicity of claims, their adverse outcomes, the repeated and always unsuccessful appeals, and the very severe burden which the appellant places on the administrative tribunals, the WRC and the Labour Court which must divert their limited resources, expertise and hearing-time away

from *bona fide* claims. I am satisfied that all pending repeat claims to the WRC and appeals to the Labour Court amount to abuse of process by the appellant since same can only ever be brought now for improper or ulterior motives such as causing oppression, annoyance, harassment and indeed oppression on the Minister and the Board, together with ongoing substantial costs, expenses and entirely wasteful diversion and dissipation of limited resources inevitably incurred in the defending of the claims.

**147.** To succeed in an appeal to the High Court on a point of law pursuant to s.90(1) EEA 1998 one must establish either an identifiable error of law or an unsustainable finding of fact<sup>7</sup>. Section 98(7)(a) of the EEA 1998 and Order 106 of the RSC governs the procedures involved. Similar provisions operate under the Pensions Act 1990, as amended.

**148.** Detailed consideration was given to the operation of s.46 WRA 2015 by Collins J. in this court in *Irish Prison Service v. Cunningham & Anor* [2021] IECA 19 which concerned a claim pursuant to the EEA 1998 (as amended) allegedly discrimination on grounds of disability. This Court had directed that the issue of jurisdiction be heard as a preliminary one. Collins J. noted the clear jurisprudence of the Supreme Court expounding the “*well-established principle that any exception to the right of appeal conferred by Article 34.4.1 must be set out in clear and unambiguous terms...*” (para. 12). Following a comprehensive review of the Supreme Court jurisprudence including, in particular, *Stokes v. Christian Brothers High School Clonmel* [2015] IESC 13, [2015] 2 IR 509, Collins J. noted that Court’s unanimous affirmation that “*any statutory restriction of the right of appeal to the Supreme Court must be “clear and unambiguous”...*” having regard to Article 34.3.3 (para. 17). He

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<sup>7</sup> See *Dunnes Stores v. Doyle* [2014] E.L.R. 184) which concerned S.7(4) of the Payment of Wages Act 1991.

noted that the jurisprudence “*addressing the Supreme Court’s former appellate jurisdiction under (former) Article 34.3.3. of the Constitution applies also to this Court’s appellate jurisdiction under Article 34.4.1.*” Collins J. observed in *Stokes* (para.20) that the said point had been established in *Law Society of Ireland v. Tobin* [2016] IECA 26 which noted that “*the principles established by Article 34.3.3 jurisprudence applies with equal force to this Court’s jurisdiction under the new Article 34.4.1.*” As Collins J. observed “*as regards those proceedings to which it applies, section 46 [of the 2015 Act] provides for an appeal to the High Court on a point of law and excludes any further appeal to this Court.*” The measure applies to the range of statutory provisions and enactments specified in Schedule 5 of the WRA 2015. Collins J. noted in *Stokes* (para. 43):

*“Section 90(1) of the 1998 Act governs appeals from the Labour Court to the High Court in claims made under the 1998 Act. Its terms do not impose any limitation on a further appeal from the decision of the High Court. In enacting the 2015 Act, it was open to the Oireachtas to bring claims under the 1998 Act within the scope of section 46 by including the relevant provisions of the 1998 Act in Schedule 5. It did not do so. It could have amended the 1998 Act, as it amended the Unfair Dismissals Act 1977, to include a provision equivalent to section 46. Again, however, it did not do so.”*

**149.** Given the scheme of the legislation and s.46 enabling appeals on a point of law from determinations made under the various statutes she invokes, the appellant might well be encouraged to attempting to circumvent an *Isaac Wunder* order which did not extend to the WRC or the Labour Court. As the High court judge correctly observed, even if the Director of the WRC dismisses a complaint as frivolous or vexatious pursuant to s.42(1) of the WRA 2015 and/or s.77A of the EEA 1998, as the case

may be, all such dismissals will inevitably be appealed by her to the Labour Court as her conduct to date attests.

### **Proportionality**

**150.**The legal regimes established under the WRC and the Labour Court are significant pillars of the employment rights compliance machinery and industrial relations in the State and ought to be protected from abuses. It is in the public interest that they be afforded protection by the High Court from abuse of process by the proportionate exercise of its constitutional and inherent jurisdiction to invigilate the operation of administrative bodies.

**151.**Whatever the underlying motives of the appellant were in repeatedly instituting the same or substantially identical claims, none of these now have any discernible basis in law nor any prospect of success since all are entirely *res judicata*. The detriment of the repeated litigation on the respondents is wholly disproportionate when considered that the claims in each instance are entirely doomed. It has a deleterious impact on the court processes given the inevitable delays that occur, the constant extensions of time and the inability of the appellant to stay within time parameters or adhere to allocations of time specified by the court. The trial judge was entirely proportionate and reasonable in his approach and, in particular, afforded the appellant every opportunity to engage with the *Isaac Wunder* application. She declined to file an affidavit opposing the *Isaac Wunder* order and failed to put in written legal submissions notwithstanding repeated opportunities and extensions of time over a very appreciable period. Not only were the orders made by the High Court entirely proportionate, they were also necessary and appropriate since the claims are entirely groundless and vexatious. It was evident from the transcripts and evidence that the appellant lacked the capacity to restrain her behaviour. The



continued launching of further complaints before the WRC and/or on appeal to the Labour Court or to other analogous bodies engaged in the administration of justice can confer no benefit upon the appellant and in all circumstances will operate to cause injustice and hardship to the respondents.

**152.** The conduct of the appellant was significant in so far as she was well aware that the application for *Isaac Wunder* type relief was in contemplation for a very appreciable period of time before the hearing date in the High Court. She was given ample opportunity to furnish replying affidavits, file written legal submissions and engage with the issues by advancing arguments. She was afforded repeated opportunities to deliver written submissions and several extensions of time, but she elected not to avail of those opportunities. The defence of the appellant's myriad claims has resulted in the respondents incurring staggering legal costs together with the wastage of the time of public servants in contending with the endless procession of claims which require to be engaged with on a continuing basis. Moreover, there is the squandering of limited court resources on pointless, incoherent and unstateable claims and appeals. The allegation at the heart of all her claims is serious in the extreme as outlined above. The accusations directed towards the respondents in that context is reputationally injurious. In addition, the litigation causes prejudice and injury to the appellant herself. She repeatedly is exposing herself to orders for costs. Her well-being suffers. She indicated during the hearing that the litigation adversely impacted on her health.

**153.** Her unorthodox litigation behaviour outlined above is to be weighed in the balance and is illustrative of the capricious methodology deployed by her throughout the litigation. She appears to want to maintain a ceaseless avalanche of claims against the Minister and the Board. When one such claim is resolved unfavourably against

her, she responds by deluging the successful respondent with further claims substantially identical to those conclusively disposed against her or variants of same.

**154.**The unreliability of her averments under oath is illustrated by High Court proceedings (record no. 2020/787JR) seeking leave by way of judicial review to seek an order compelling the Minister to provide her with an opportunity to respond to written submissions made in January 2015 by the Board to the s.105 Ministerial Inquiry based on an untrue averment in her affidavit that she had not been provided with a copy of same until 7 August 2020.

**155.**The recital above of the key proceedings instituted by the appellant over the years and the extent to which they are identical, overlap or are repetitive discloses a clear intention on the part of the appellant to indefinitely re-litigate the same set of issues against the Board and the Minister. She has demonstrated by her conduct unwillingness to accept the finality of un-appealed orders of the WRC, the Labour Court and the High Court and repetitively submits grievances without any reference to the prior conclusive determinations.

### **Have the Respondents Suffered a Legal Wrong?**

**156.**It is noteworthy that *Kelly: The Irish Constitution* (Hogan et al) (above) the authors consider that “*the object and purpose of Article 34.3.1 to allow access to the High Court for any legal wrong and is part of the constitutional system designed to provide an effective remedy in the case of all justiciable controversies*”.

**157.**In the instant case, the legal wrong established is the continuous and persistent making, reformulating, and prosecution of complaints/appeals by the appellant against the Minister and the Board before the WRC and the Labour Court which the appellant does not indicate willingness to discontinue or desist from pursuing indefinitely into the future. All such claims are bound to fail having been previously

conclusively litigated to finality. All are *res judicata* or amount to an abuse of process under the principle in *Henderson v. Henderson*.

**158.** From the court's perspective the issue is whether the Constitutional order in light of Articles 34.3.1, 37 and 50 in conjunction with the auxiliary parallel stream of jurisdiction derived from the common law and encompassed by the inherent power is sufficiently resilient to provide an effective remedy in the shape of a power to frame a binding but limited order, which can be made by the High Court in the context of its inherent jurisdiction, conditionally restraining this appellant from instituting further complaints or appeals before the WRC or the Labour Court and striking out all pending applications before both bodies, in order to protect the respondents from vexatious repetition of such claims and uphold the principle of finality. I am persuaded that it is. If such orders are not so extended the appellant's statutory right of appeal from the Labour Court to the High Court on a point of law under s.46 WRA 2015 may present a mechanism to the appellant capable of undermining orders properly made under the inherent jurisdiction confined to court proceedings.

### **Conclusions**

**159.** I conclude that a sufficient legal basis has been shown to exist which entitled the High Court in the exercise of its inherent power to exert a supervisory function over the WRC and the Labour Court as statutory tribunals /administrative bodies charged with the adjudication of rights pursuant to Article 37 to ensure that their proceedings are conducted in accordance with law. To that end the High Court was empowered to make all necessary orders to prevent continuing abuse of process where such claims were vexatious, not properly maintainable because all issues were *res judicata*, the claims were shown to amount to *Henderson v. Henderson* abuse, and

where the making of proportionate orders considered necessary to protect the integrity of the due process of the administration of justice, and to uphold the principle of finality of judicial decisions - which extends to administrative tribunals - in light of Articles 34 and 37 of the Constitution and *Zalewski*.

**160.**I find *Zalewski* to be persuasive and not inconsistent with the proposition that the High Court's inherent jurisdiction extends to making orders to protect the processes of statutory bodies engaged in the administration of justice within Article 37 from vexatious claims and abuse of process. Crucially for present purposes, Hogan J. observes in *Murphy v. Canada Life*: "*The doctrine [of res judicata] does not apply simply to judicial findings, but also to administrative determinations which, in the nature of things, are final.*" (para. 10) He noted: "*It would be quite inconsistent with that legislative intent if these statutory provisions could be effectively circumvented by issuing new High Court proceedings which attempted in effect to re-litigate the same matters that were already determined... in the course of the adjudication upon the earlier complaint.*" (para. 11)

**161.**The impact of the decision in *Zalewski* is that statutory bodies, such as the WRC, engaged in adjudications and determinations as to rights are to be treated as engaged in the administration of justice for the purposes of Article 37 of the Constitution. The reasoning in *Zalewski* is logically harmonious with the inherent power of the High Court being exercisable where necessary to ensure that such limited functions and powers are conducted by Article 37 bodies in accordance with law. It extends exceptionally, if found necessary for the proper administrative of justice or to protect innocent parties from abusive conduct or where egregious litigious conduct beyond the norm has been established, to restrain conduct that is oppressive or contrary to

the public interest or where claims are abusive or have no prospect of succeeding.

On the basis of the evidence, this is such a case.

**162.** Thus, I conclude that the High Court has power in the exercise of its inherent power to make *Isaac Wunder* orders restraining abuses of processes occurring within the legislative regimes, under which both the WRC and the Labour Court function. Such a conclusion is entirely consistent with the principles expounded by O'Donnell J. in *Zalewski*. To find otherwise would be to undermine the core determination whereby the Supreme Court held unanimously that the adjudicative processes of the WRC (and, it follows, the Labour Court) constitute the administration of justice. It follows, as the High Court correctly observed, that the provisions of Articles 34 and 37 of the Constitution, together with the well-established principle that the High Court has a broad jurisdiction to ensure that the proceedings of lower courts and tribunals are conducted in accordance with the law, confirm that the High Court does enjoy jurisdiction in an appropriate case to prevent abuses of process before tribunals engaged in the administration of justice by the making, where necessary, of *Isaac Wunder*-type orders to prevent the institution of further proceedings before such tribunals without the High Court's prior permission where the criteria set out in the authorities referred to above for the making of same are met. Such a measure must always be proportionate and necessary and in the public interest to prevent oppressive abuses of process. Sight is not to be lost of the fact that such an order is always exceptional, must not be lightly made and always must be framed in the narrowest terms consistent with achieving the order's objective.

**163.** The court was entitled to have regard to the entire spectrum of conduct of the appellant throughout the litigation, not merely at the hearing alone. In her conduct before the High Court, as outlined above, she was unruly and disruptive. The judge

exhibited significant levels of restraint and forbearance towards her. She failed to comply with any of the directions of the High Court in regard to case management and the furnishing of written submissions. She refrained from submitting any affidavit although expressly afforded the time to do so in relation to the *Isaac Wunder* applications.

**164.**By any measure, her behaviour was unreasonable and the order made by the High Court was entirely proportionate. She failed to identify a single credible or stateable basis which would have justified the continuation of any of the pending litigation before the WRC or the Labour Court or that might potentially warrant refusal of the reliefs sought by the Board and the Minister. The respondents discharged the burden of proof that her conduct was vexatious, unreasonable and scandalous and that their application was brought as a proportionate and reasonable response. The Circuit Court proceedings were unwarranted with claims pursued *ultra vires* that court and doomed.

**165.**The appellant appears incapable of restraining herself from repeatedly launching the same claims, sometimes re-packaged with overlays of fresh assertions always in substance repetitions of concluded complaints. She appears to consider it her entitlement to renew the main complaints every six months or so. This imposes on public bodies and State entities, such as the Minister and the Board, ongoing hardship and expense endeavouring to meet the avalanche of repetitive claims along with the incomprehensible submissions and arguments. Such conduct imposes severe pressure on the courts system given that the appellant self-represents and conducts herself in a highly unorthodox fashion, willing to repurpose her claims in myriads of creative ways including deploying an unorthodox behaviour and an

incomprehensible lexicon of unexplained chromatic concepts. Though clearly highly intelligent she refuses to accept that all these claims are *res judicata*.

**166.** The principles enunciated by Hogan J. in *S.(a Minor)* (above) cut both ways. They ensure access to courts and tribunals for claimants such as the appellant pursuant to various statutes referred to above in respect of which she has repeatedly pursued claims. By the same token, the constitutional order must be deemed to encompass the provision of an effective remedy to protect respondents and defendants confronted with repeated ongoing claims which have been previously conclusively determined against the claimant not alone in the appropriate statutory forum (be it the Equality Tribunal, the WRC or otherwise) but also on appeal to the Labour Court and thereafter on appeal on a point of law to the High Court such that there has been a conclusive and final determination adverse to the claimant on every salient issue. I am satisfied that the inherent jurisdiction of the High Court extends to the making of *Isaac Wunder* orders in respect of administrative bodies and is but a logical extension of the *dictum* of Hogan J. cited above.

**Henderson v. Henderson**

**167.** On the basis of the evidence, I conclude that the rule in *Henderson v. Henderson* is applicable insofar as the parties to the litigation are in each case the appellant and either the Board or the Minister, or both. The appellant is precluded from advancing claims that her employment came to an end at any date other than June 2015 in light of the formal order signed by the Minister of which the appellant was fully aware at all material times over the ensuing nine years and more. All her claims have been conclusively determined against her.

**168.** Viewed objectively, all the proceedings pursued by the appellant before the High Court and the Circuit Court are bound to fail on the merits. It is undoubtedly a fact

that the pursuance of same can have no material benefit for the appellant because each issue has been definitively and conclusively determined against her previously. Notwithstanding that fact she has pursued repetitively each substantively concluded claim. Perusal of the voluminous documents convince that there is no credible basis for the appellant's assertions that the material facts are as she asserts them to be. There is probative evidence that payment of €500 was made prior to delivery of the High Court judgment.

**Was there Jurisdiction to Extend Orders to the WRC and the Labour Court?**

**169.** It was proportionate and necessary for the High Court to grant the limited orders sought in light of the exceptionality of the facts and intensity of the litigation so as to restrain the bringing of complaints by the appellant to the WRC or appeals to the Labour Court. Had the High Court not extended the *Isaac Wunder* orders to the WRC and the Labour Court, the appellant would continue to vexatiously relaunch the same futile claims with the WRC.

**170.** In my view, the analysis of the Supreme Court (O'Donnell J.) in *Zalewski* is powerfully persuasive. In light of the nuanced reasoning in that judgment, the question ultimately is whether, the respondents having established a clear case demonstrating the necessity for the making of an *Isaac Wunder* order, there is any valid basis identified precluding the High Court from exercising its inherent jurisdiction to extend the orders to the said administrative bodies engaged in adjudicative functions within Article 37. On the evidence in this case, the respondents have clearly and cogently proven that there is an absence of any genuine dispute or *lis* between the parties and that the loss, expense and waste of resources being needlessly caused to the respondents in defending these unstateable claims and hopeless appeals before the WRC and the Labour Court constitute an abuse of



process. There is an obvious dissipation of the resources of the said bodies - both of which are publicly funded - in processing such baseless claims/appeals. The appellant has made clear that she considers herself entitled to launch claims at approximately six-monthly intervals for the purpose of “*keeping them alive*”. This promises a continuing avalanche of claims over time - all of them lost causes. To exclude the WRC and the Labour Court from the ambit of the *Isaac Wunder* order risks undermining its efficacy. The respondents have demonstrated that in the exceptional and very unusual circumstances of this case it was proportionate to extend the order to the WRC and the Labour Court and is necessitated by the interests of the common good. The trial judge was correct in doing so.

**171.** I am satisfied that the approach of the High Court in extending the orders to the WRC and the Labour Court is compliant with the Article 6 jurisprudence of the ECtHR as decisions such as *Tolstoy Miloslavsky v. UK*<sup>8</sup> [1995] 20 E.H.R.R. 442 at para. 449 illustrate. The order made in the High Court pursues a legitimate aim and the restriction it imposes demonstrates a reasonable relationship of proportionality both in the means employed and the aim sought to be achieved. The *Isaac Wunder* order made in the High Court merely requires her to seek leave of that Court before proceeding to bring any application. To date she has never identified a stateable ground in any appeal and it is improbable that she ever could.

### **Conclusions Regarding Adjudicatory and Administrative Bodies within Article 37**

**172.** The WRC and the Labour Court, as creatures of statute, lack any inherent jurisdiction. The ambit of their respective powers is delimited by the relevant governing legislation. The appellant has repeatedly exhibited the conduct identified by Keane C.J. in *Riordan v. Ireland (No. 4)* (above): -

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<sup>8</sup> ECLI:CE:ECHR:1995:0713JUD001813991

“...repeated attempts to reopen litigation or to pursue litigation which is plainly groundless and vexatious.”

There is clear authority for the exercise of the inherent jurisdiction by the High Court to restrain a sustained onslaught of unmeritorious litigation in the Circuit and District Courts, as decisions such as Hardiman J. in *Shannon v. Judge Moran* (Unreported, Supreme Court, 9th December 2004) makes clear. I am satisfied, in light of the decision of O’Donnell J. in *Zalewski* in regard to Article 37, that where the high threshold (and it is a high threshold) for doing so has been met the said jurisdiction extends to the WRC, the Labour Court and analogous adjudicative tribunals and bodies. They fall within the ambit of the High Court’s general jurisdiction which empowers it to make *Isaac Wunder* orders to restrain or prevent vexatious litigation and abuses of process. Thus, the approach adopted by Ferriter J., particularly at paras. 140-142 of the judgment, is entirely correct.

**173.** In my view, the approach of the English courts in *Law Society of England and Wales v. Otopo* (above), *Nursing and Midwifery Council v. Harrold* (above) and *R.(Ogilvy) v. Secretary of State* [2022] UKUT 00070, align to an extent with the established ambit of the *Isaac Wunder* jurisdiction – subject always to the constitutional considerations and in light of *Zalewski*. In the discharge of their statutory functions, the WRC and the Labour Court are engaged in the administration of justice within Article 37, as O’Donnell J. makes clear at paras. 109-117, 138 of *Zalewski*.

**174.** To the extent that all of the claims were dealt with conclusively in earlier proceedings, the principle of cause of action estoppel is also established. That principle is engaged in regard to all unconcluded applications before the Labour Court and WRC. So that the *Isaac Wunder* order to restrain abusive litigation before the Courts could be made effective, it was necessary for it to be extended to circumvent the repeated deployment of WRC complaints which created a pathway

for futile appeals to the High Court to reopen issues already conclusively determined against her – lest s.46 WRA 2015 provide a *cheval de frise* to circumvent the *Isaac Wunder* order.

**175.** This conclusion is arrived at since all issues have previously been litigated to a final conclusion. No part of the assessment is based on assumptions as to what the claimant may be able to establish if given an opportunity to lead evidence since she has already been afforded those opportunities in respect of each distinct claim before the WRC and on a full *de novo* appeal to the Labour Court and on appeal on points of law to the High Court.

**176.** I am satisfied that the trial judge approached the respondents' applications and each discrete issue with a high degree of caution and was only satisfied to strike out pending claims when satisfied that all issues had been fully heard previously, comprehensively considered on their merits at that such applications were futile.

**177.** In all cases, but particularly in the employment context, it is important that a balancing exercise is carried out to consider the respective impact on each party of the granting or refusal of the proposed order. As the English Court of Appeal observed in *Blockbuster* (above) the courts are open to the difficult as well as the compliant, and in the employment sphere the loss of employment may precipitate existential consequences for an individual. That said however, once the court carries out the balancing exercise, weighing up the adverse effect on the plaintiff/appellant and any detrimental consequences on the respondents, the overwhelming preponderance of the evidence confirms that the trial judge was correct. The most proportionate response was to make the *Isaac Wunder* orders on the terms made by the High Court to disallow the appellant from being permitted to pursue further the pending proceedings before the WRC and the Labour Court and in addition that she

be restrained from instituting any fresh proceedings seeking to reagitate these claims which have been litigated to a final conclusion without prior leave of the High Court..

**178.**Both respondents demonstrated to the High Court a high level of prejudice being visited on each, including in terms of the deployment of staff to address the repeated claims and in terms of costs. The diversion of resources from the Board and the Department to finance the legal cost of doomed claims was contrary to the public interest. These appeals ought to be dismissed.

**Conclusions on Ground 1 of Appeal against the Minister**

**179.**All her substantive appeals and applications invoking the jurisdiction of the High Court failed as have her appeals to this court. In regard to the exercise of the inherent jurisdiction, I conclude for all the reasons outlined above, in light of the jurisprudence and Article 37 of the Constitution that the High Court has inherent power to protect the processes and procedures of the WRC and the Labour Court from repetitive meritless claims by where necessary making *Isaac Wunder* Orders as occurred in this case. Such is entirely necessary to ensure the effective operation of the legal machinery put in place by the legislature in establishing the said respective bodies. Each operates under statute as a non-judicial body engaged in the administration of justice within Article 37. They provide for the swift, effective, efficient, accessible and fair resolution of disputes between workers and employers. The High Court properly exercised its inherent jurisdiction to extend the *Isaac Wunder* orders to the WRC and the Labour Court . There was extensive evidence before the High Court to demonstrate an ongoing campaign by the appellant “*to relitigate matters*” before both bodies which had already been finally determined.

**Conclusions on Ground of Appeal 1 against the Board/Ground 2 against the Minister**

180. Beyond general and vague assertions, the appellant does not meaningfully engage with the *ex tempore* judgment of Ferriter J. of 22 March 2022 which dismissed her appeal on a point of law from the determination of the Labour Court of 1 April 2020. That determination was final and conclusive by virtue of s.46 of the WRA 2015. If an order of the Labour Court post-dates commencement of s.46 of the WRA 2015 on 15 October, 2015 then no appeal to this court from the High Court is maintainable.

181. The evidence is overwhelming that the appellant repeatedly failed to comply with directions in respect of the case management of High Court proceedings (record no. 2020/123MCA). Her arguments in respect of ground 1 are exceedingly vague and general, fail to identify any specific basis for a contention that she was hampered in her conduct of the hearing by the operation of s.97 of the EEA 1998. Delays in bringing her appeal against the decision of 22 March 2011 of the Rights Commissioner rest entirely with the appellant herself. Same was dismissed on 22 September 2011 by the Rights Commissioner and at her behest her appeal to the Labour Court did not proceed but rather was held in abeyance between January 2012 and 2019 – a delay of over 7 years. The Labour Court determination was made on 1 April 2020 and the appellant's appeal against same was dismissed by Ferriter J. in his *ex tempore* judgment on 22 March 2022. In light of all the above factors, I conclude no aspect of this ground is made out.

**Conclusions on Ground of Appeal 2 against the Board/Ground 3 against the Minister**

182. A perusal of the papers makes clear that this is a misleading and inaccurate proposition based on a highly selective (and self-serving) extrapolation of the material. A full review shows that the trial judge was meticulous and thorough in his

approach. Her appeals on points of law from the Labour Court were dealt with in proceedings 2020/123/MCA, 2021/37/MCA and 2021/38/MCA. In addition, the judicial reviews 2020/787JR and 2021/103JR were all managed by him. It is clear that the appellant was in attendance in the High Court on 22, 23 and 24 March 2022 in the course of the hearings. Her conduct, to put it at its mildest, was highly unorthodox, inappropriate and disruptive. Accusations were made by her of impropriety which were manifestly baseless. As the trial judge records in his judgment at para. 162, he was constrained to abandon the hearing on 24 March 2022 solely by reason of her disruptive behaviour. The matter had to be rescheduled with the appellant attending by a remote hearing on 28 March 2022. It was subsequently adjourned to 29 April 2022 wherein she attended for part of the hearing and then exited the remote link. The hearing had to be adjourned for some time in the course of the morning to encourage her to re-engage remotely. It is evident that the appellant did reconnect and addressed the court on a number of issues and was afforded ample opportunity to make submissions as she saw fit, albeit that the judge encouraged her to confine herself to the points raised by the respondents. She disregarded the directions of the court and availed of the time allocated to advance a series of unrelated serious allegations.

**183.**She was indulged by the judge who afforded her a further week within which to furnish written submissions responding to the various points raised by the respondents as she saw fit. She did not furnish any written legal submissions. The appellant puts forward a variety of explanations for why she exited from the remote hearing during the appeal. She asserted that her computer “froze”, “my battery went dead”, “I could not log into the hearing”, “I also (sic) was very ill on that day.” and “I tried to join by telephone but I could not hear well”. She sought four days within

which to make submissions and the court afforded her one week to do so - but she filed none. I am satisfied that when she was present in court the trial judge afforded her ample opportunity to respond and engage with each and every issue raised by the respondents. Judicial Interventions were minimal and were wholly warranted for the purposes of restraining her from abusing the process of the court since, as the judge noted; *“her erratic behaviour on the morning of the third day of the hearing led to both security and the on-site Garda in the Four Courts having to be called. Matters culminated in particularly disgraceful behaviours by the appellant in the afternoon of the third day of the hearing (Thursday, 24 March) which forced me to abandon the hearing”*.

**184.** The trial judge’s management of the hearing is entirely consistent with the appellant having received a comprehensive and fair hearing. The contention that she did not have a hearing or *“if I had a hearing I would have been able to impress upon the judge how necessary it is for me to have an order to disclose information”* are entirely baseless when viewed in the overall context of the manner in which the appeals proceeded from beginning to end in the High Court. Insofar as she alleges that the trial judge took oral evidence from the Board as to whether it had complied with an aspect of the 2012 order which had directed the payment of €500 to the appellant, the judge merely made an inquiry of counsel who clarified the position. The appellant did not appear to want a resolution of the issue. Counsel for the Board initially established that payment had not been affected and subsequently confirmed that the payment would be made expeditiously which, I am satisfied it was.

**185.** I note that the judgment of the court was delivered electronically on 1 June 2022 and the appellant did not deny that it was emailed to her that day. All parties were

notified by email that if any issues arose in respect of the judgment, written submissions were to be filed in the High Court within fourteen days. The case was listed again for 28 June 2022. In the intervening time, the appellant did not respond to contacts made by the Board's solicitors to her. Neither did she attend the High Court on 28 June 2022. The judge behaved quite properly in proceeding to indicate the orders he was proposing to make to give effect to the terms of the judgment delivered by him on the issues in appeal no. 2020/123MCA and adjourned the making of the orders in respect of both judicial reviews and also in respect of statutory appeals (record nos. 2021/37 MCA and 2021/38 MCA.)

**186.** The appellant did have some health issues around this time, but I am satisfied that the High Court was responsive to same and finalising the orders in respect of those appeals was adjourned to 10 October 2022. She was afforded a further opportunity by the judge to respond to the applications for *Isaac Wunder* orders. Both of these grounds of appeal fail.

#### **Conclusions on Ground 3 against the Board / Ground 4 against the Minister**

**187.**Section 97 of the EEA 1998 affords protection from legal liability in respect of the disclosure of information by any party entitled communicate same pursuant to the Act. It places restrictions on the disclosure of information obtained in the course of an investigation. The appellant does not coherently identify any basis for her novel proposition that the supplementary provisions as to "*information*" were in any sense breached or applied other than in an entirely legitimate manner by the Board. The trial judge was entitled to consider aspects of the appellant's submissions and indeed it was entirely necessary to do so in circumstances where the practical consequences of refraining from doing so risked distorting the material facts. Both grounds fail.

#### **Conclusions on Ground 4 against Board/Ground 5 against the Minister**



**188.** Many of her arguments deploy colour such as “*green victimisation*”. They appear to be part of a chromatic lexicon which she deploys at will and which have no apparent established meaning, save what she may subjectively ascribe to each at any given time. At best one can make out that this ground appears to allege that the payment to her of €500 by the Board directed in 2012 remained unpaid. The Board furnished an affidavit (with exhibits) deposing that payment was sent under cover of registered post on 12 May 2022. The cheque was made payable to the appellant and was signed for on 13 May 2022 at 11.24am. I am satisfied that same constitutes satisfactory proof of delivery of the cheque. Whether she decided to encash it or not is entirely immaterial. Through a fog of obfuscation, when questioned at the appeal hearing, although the appellant contended that she did not “*receive*” the payment, she did not dispute that registered post could have been accepted by a third party at her residence. I am satisfied that no error of law has been identified by her in respect of this payment and this ground encompasses no valid, stateable or coherent basis for interfering with the judgment and orders of the High Court. Both grounds fail.

**Conclusions on Grounds 5 against the Board/ Ground 6 against the Minister**

**189.** Ground 5 appears to be alleging fraud. It is quite incoherent and replete with innuendo and allegation. Paragraph 41 of the judgment quotes from the s.105 Report of 8 May 2015 commissioned by the Minister concerning the fitness of the appellant to hold office. The judgment cited the conclusions on foot of which the Ministerial Order was made removing the appellant from her post on 15 June 2015. It bears repetition that the appellant was fully legally represented throughout the entire process that led to the order removing her from post. She never appealed or challenged same in 2015.

**190.** Contrary to the appellant's contentions, para. 41 does not represent factual findings by the trial judge. Rather it identifies the evidence on foot of which the 2015 Ministerial Order was made ending her employment. Ground 5 is a collateral attempt to challenge the bases of her removal from office in 2015 and is long out of time. As evidenced by the conclusions to the 2015 report, a key factor in her removal was that she failed to honour her responsibilities pursuant to the Child Protection Guidelines. These identical grounds are unstateable disclosing no maintainable or coherent ground of appeal.

**Conclusions on Grounds 6 against the Board/ Ground 7 against the Minister**

**191.** It is not clear what relevance this ground of appeal has to the judgment of the High Court. It exemplifies the persistence of the appellant in endeavouring to devise new arguments and retrofit any arguments to whatever she perceives the exigencies of the moment require. For instance, in his judgment (para. 8) the judge noted that she denied that she was dismissed on 15 June 2015 and contended that she had been dismissed at a WRC hearing on 12 February 2019. I note from a perusal of the papers that elsewhere the appellant had asserted that termination of her employment occurred on 10 April 2019. It is entirely devoid of legal merit for the appellant to contend that she was "*removed from office*" by virtue of the operation of the Education and Training Boards Act 2013, which commenced on 1 July 2013. Rather all teachers who, on the operative date, held post with VEC were statutorily transferred from the VEC to the ETB. It could not avail the appellant to contend that she had been removed from office on 1 July 2013. That assertion is absurd. She failed to appeal the Ministerial Order of 15 June 2015 validly dismissing her from post. She cannot now attempt to pursue grounds of appeal to collaterally attack her said removal. These grounds of appeal fail.

**Conclusions on Ground 7 against the Board/Ground 8 against the Minister**

192. There had been active case management hearings ahead of the hearing. It was open to the appellant to request a remote hearing had she wished. There is no evidence that she ever sought one. She behaved erratically even during the remote hearing which the High Court had directed following her chaotic behaviour on 24 March 2022. Same included when the hearing resumed at 2pm alleging that her personal belongings had been damaged. As the High Court judge observed at para. 162 of the judgment: *“The conclusion of the hearing had to proceed by remote hearing a number of weeks later at further expense to the parties and further use of the Court’s time and resources. The appellant in fact turned up in court for the remote hearing despite me directing that the hearing proceed remotely because of the risks to the other parties and their lawyers presented by a physical hearing. When she did join the remote hearing, she was again disruptive during the hearing”*. She engaged on other conduct which necessitated the Gardaí’s intervention. Notwithstanding the four appeals/applications being pursued by her against the Board and Minister as outlined above and the motions seeking *Isaac Wunder* orders which were listed for hearing, in keeping with her *“shock and awe”* approach to litigation, she unsuccessfully sought leave on 23 March 2022 to file a number of further motions and affidavits seeking declaratory reliefs pursuant to the ECHR Act 2003. She did not at any point seek a remote hearing. She did not furnish a medical report of any kind. Levelling accusations against a public servant in such gratuitous fashion was unseemly and disruptive and is to be deprecated. Regrettably, it appears from ground 7 of the notice of appeal that the appellant is doubling down on her allegation that her iPhone *“went missing”* and her iPad was *“moved”*. This appears to be in keeping

with her propensity to generate and introduce peripheral allegations to buttress substantially baseless assertions.

**193.** The conduct of the appellant added to the delays and difficulties for the trial judge in managing the conduct of the hearing which was extended substantially by reason of her unorthodox behaviour. This ground identifies no basis for interfering with any aspect of the judgment of the High Court. It lacks clarity and is not directed in any meaningful or constructive sense towards identifying any error or oversight on the part of the judge that could reasonably be the subject of a review or reversal by this Court. These grounds of appeal are unsustainable.

**194.** It follows that both of these appeals fail on all grounds.

#### **WRC & Labour Court Liberty to Apply**

**195.** The *Isaac Wunder* order potentially impacts on the operations of the WRC and the Labour Court. I am conscious that neither the WRC nor the Labour Court are represented in this appeal. However, it is clear that both bodies have refrained from making determinations in a variety of applications and appeals brought by the appellant subsequent to the institution of the judicial reviews and appeals from the Labour Court as outlined above. In the circumstances, before the order of this court is perfected, both should be furnished with a copy of this judgment in unapproved form together with a copy of the perfected order of Ferriter J., the subject of this appeal. If either wishes to be heard on their views as to the making or terms of the said order, as it directly concerns them, they should notify the Court of Appeal Office within 14 days and this court will make further directions as appropriate.

#### **Stay in the event of leave to appeal Application A. 34.5.3 Bunreacht na hÉireann**

**196.**Should either party indicate an intention to seek leave to appeal against any aspect of the within judgment or proposed order, it is proposed to grant a stay on the orders in the ordinary way for a period of 21 days from date of perfecting of the said orders to enable the making of an application to the Supreme Court for leave to appeal pursuant to A.34.5.3. If no such application is brought within the said time the said stay shall lapse. If an application for leave to appeal is brought pursuant to A34.5.3 then the said stay shall remain in place until any leave application is determined by the Supreme Court.

**197.** Faherty and Binchy JJ. concur with this judgment.