Denis Riordan, Intended Plaintiff v. **An Taoiseach, An Tánaiste, Minister for Finance, Government of Ireland, Attorney General, Chief Justice of Ireland, President of the High Court** and **Ireland (No. 5)** Intended Defendants [2001 No. 45 I.A.]

High Court 11th May, 2001

Practice and procedure – Isaac Wunder order – Leave to issue proceedings – Whether claim frivolous or vexatious – Whether intended plaintiff had locus standi – Courts (Establishment and Constitution) Act, 1961 (No. 38), ss. 1(3) and (4), 2(3), (4) and (5) – Finance Act, 2001 (No. 7), s. 33 - Constitution of Ireland, 1937, Articles 34 to 36.

Constitution – Locus standi – Right of access to courts – Restriction of right – Whether claim vexatious – Whether claim abuse of process of court.

By order of the High Court, the intended plaintiff had been restrained from issuing proceedings against a number of parties, including the first, second, fourth and fifth intended defendants without prior leave of the court. The intended plaintiff sought leave from the High Court to institute proceedings against the intended defendants.

The intended plaintiff sought a declaration that ss. 1(3) and (4), 2(3), (4) and (5) of the Courts (Establishment and Constitution) Act, 1961, together with s. 33 of the Finance Act, 2001, were repugnant to the Constitution. The intended plaintiff also claimed that the division of the Supreme Court which purported to hear the appeal in *Riordan v. An Taoiseach* [2000] 4 I.R. 537, was operating unconstitutionally and that the appointment of a minister of state to the Government was and is illegal and was therefore unconstitutional.

Held by the High Court (Ó Caoimh J.), in refusing the leave sought, 1, that the making of a restriction on the right of access to the courts had to be examined in the context of a constitutional right and a right under article 6(1) of the European Convention on Human Rights to such access.

Macauley v. Minister for Posts and Telegraphs [1966] I.R. 345 and *The State (McEldowney) v. Kelleher* [1983] I.R. 289 applied.

2. That the intended plaintiff had not shown the necessary *locus standi* to impugn the constitutionality of ss. 1(3) and 2(3), (4) and (5) of the Courts (Establishment and Constitution) Act, 1961.

Cahill v. Sutton [1980] I.R. 269 applied.

3. That the proposed constitutional claim against the division of the Supreme Court which heard earlier proceedings, was vexatious as it sought to determine an issue previously determined by a court of competent jurisdiction, was one which obviously could not succeed and was an action from which no reasonable person could reasonably expect to obtain relief.

Re Lang, Michener and Fabian (1987) 37 D.L.R. (4th) 685 approved. *Dykun v. Odishaw* (Unreported, Alberta Court of Queen's Bench, 3rd August, 2000); *Keavney v. Geraghty* [1965] I.R. 551; *Wunder v. Hospitals Trust (1940) Ltd.* (Unreported, Supreme Court, 24th January, 1967); *O'Malley v. Irish Nationwide* (Unreported, High Court, Costello J., 21st January, 1984) considered.

4. That the intended plaintiff had not shown any *locus standi* to impugn the appointment of a minister of state to the Government and that in any event, the claim was vexatious.

5. That where insufficient information was available with regard to an intended challenge to s. 33 of the Finance Act, 2001, the intended plaintiff should serve a draft statement of claim on the intended defendants and the matter then further considered by the court.

Cases mentioned in this report:-

Cahill v. Sutton [1980] I.R. 269.

Dykun v. Odishaw (Unreported, Alberta Court of Queen's Bench, 3rd August, 2000).

Keavney v. Geraghty [1965] I.R. 551.

Re Lang, Michener and Fabian (1987) 37 D.L.R. (4th) 685.

Macauley v. Minister for Posts and Telegraphs [1966] I.R. 345.

O'Malley v. Irish Nationwide (Unreported, High Court, Costello J., 21st January, 1984).

Riordan v. An Taoiseach [2000] 4 I.R. 537.

The State (McEldowney) v. Kelleher [1983] I.R. 289; [1985] I.L.R.M. 10.

Wunder v. Hospitals Trust (1940) Ltd. (Unreported, Supreme Court, 24th January, 1967).

Intended action.

The facts have been summarised in the headnote and are more fully set out in the judgment of Ó Caoimh J., *infra*.

By *ex parte* motion, the intended plaintiff sought leave to institute proceedings against the intended defendants.

The matter was heard by the High Court (Ó Caoimh J.) on the 27th April, 2001.

The intended plaintiff appeared in person.

Cur. adv. vult.

Ó Caoimh J. 11th May, 2001

The intended plaintiff has applied to this court for leave to institute proceedings seeking relief in the form of declarations as follows that:-

1. s. 1(3) of the Courts (Establishment and Constitution) Act, 1961, is repugnant to the Constitution;
2. s. 1(4) of the Courts (Establishment and Constitution) Act, 1961, is repugnant to the Constitution;
3. s. 2(3) of the Courts (Establishment and Constitution) Act, 1961, is repugnant to the Constitution;
4. s. 2(4) of the Courts (Establishment and Constitution) Act, 1961, is repugnant to the Constitution;
5. s. 2(5) of the Courts (Establishment and Constitution) Act, 1961, is repugnant to the Constitution;
6. the division of the Supreme Court, which purportedly heard the appeal in *Denis Riordan v. An Taoiseach (Bertie Ahern), Government of Ireland, Minister for Finance, Hugh O'Flaherty and the Attorney General* [2000] 4 I.R. 537, was operating unconstitutionally;
7. the appointment of Robert Molloy T.D. as minister of state to the Government was and is illegal and is therefore unconstitutional;
8. s. 33 of the Finance Act, 2001, is repugnant to the Constitution.

The necessity for the intended plaintiff to apply to this court arises from the fact that on the 25th March, 1999, the High Court (O'Sullivan J.) made an order in proceedings between the intended plaintiff, as plaintiff and An Taoiseach, An Tánaiste, the Government, the Oireachtas, Seanad Éireann, Dáil Éireann, the Attorney General and Ireland as defendants that the intended plaintiff be restrained from instituting proceedings against the office holders of the posts of the defendants in those proceedings without prior leave of the court.

The order of O'Sullivan J. was made by him in exercise of the inherent jurisdiction of the High Court. Where the court is satisfied that a person has habitually or persistently instituted vexatious or frivolous civil proceedings it may make an order restraining the institution of further proceedings against parties to those earlier proceedings without prior leave of the court. In assessment of the question whether the proceedings are vexatious, the court is entitled to look at the whole history of the matter and it is not confined to a consideration as to whether the pleadings disclose a cause of action. The court is entitled in the assessment of whether proceedings are vexatious to consider whether they have been brought without any reasonable ground. The court has to determine whether the proceedings being brought are being brought without any reasonable ground or have been brought habitually and persistently without reasonable ground.

Dykun v. Odishaw (Unreported, Alberta Court of Queen's Bench, Judicial District of Edmonton, 3rd August, 2000) referred to a decision of the Ontario High Court, in *Re Lang Michener and Fabian* (1987) 37 D.L.R. (4th) 685 at p. 691 where the following matters had been indicated as tending to show that a proceeding is vexatious:-

"(a) the bringing up on 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 can 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, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
(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."

The making of a restriction on the right of access to the courts has to be seen in the context of the constitutional right of access to the courts which has been recognised in this jurisdiction in a number of authorities including *Macauley v. Minister for Posts and Telegraphs* [1966] I.R. 345; *The State (McEldowney) v. Kelleher* [1983] I.R. 289 and, in the context of the European Convention on Human Rights, the provisions of article 6(1) of the Convention which is in effect a recognition of the same right protected by the terms of the Irish Constitution.

The exercise by courts in this jurisdiction of the inherent jurisdiction referred to is generally referred to as the making of "an *Isaac Wunder* order" arising from the fact that such an order was made by the Supreme Court many years ago involving a persistent litigant of that name who instituted many proceedings against the Irish Hospital Trust alleging that he had won prizes in the sweepstakes promoted by it without any evidence to sustain same.

In Mr. Wunder's case, the Supreme Court made an order on the 1st April, 1966, in a claim against the Irish Hospitals Trust [1940] Limited dismissing Mr. Wunder's appeal against several orders made by the High Court. It appears that an order was made by the Supreme Court against Mr.

Isaac Wunder on the 24th January, 1967, directing that no further proceedings in the action in the High Court be taken without leave of that court being first obtained, and that if any such proceedings be taken in the action without such leave being first obtained, the defendant was not required to appear to or take any steps in relation thereto and such proceedings so taken were to be treated as void and of no effect. This was not the first exercise by the Supreme Court of the inherent jurisdiction in question as that court had made a similar order in the previous case of *Keavney v. Geraghty* [1965] I.R. 551, where it ordered that there be no further proceedings in the action in question in the High Court without leave of the High Court being first obtained and that if any such proceedings be taken in the action without such leave being obtained, the defendant should not be required to appear or take any steps in relation thereto and such proceedings so taken be treated as void and of no effect. It appears that on the 6th February, 1967, the High Court (Murnaghan J.) made an order that no further proceedings should be taken in a further action between the same parties without leave of that court being first obtained and that if any such proceedings be taken in the action without such leave the defendant should not be required to appear and take any steps in relation thereto and that such proceedings so taken should be treated as void and of no effect. This order was affirmed by the Supreme Court on the 11th April, 1967.

A number of such orders have been made in proceedings since that time. A more recent example is that made by Costello J. in *O'Malley v. Irish Nationwide* (Unreported, High Court, 21st January, 1984). In that case the plaintiff and his wife had instituted nine actions in the High Court and one action in the Western Circuit Court against the defendants. In those proceedings the High Court (Costello J.) in exercise of its inherent jurisdiction of the High Court struck out the plaintiff's claim in the first proceedings having concluded that the action in question was a vexatious action, that there was no reasonable basis for it and that it would be an abuse of the process of the court to allow the proceedings to continue. Costello J. allowed some of the several proceedings or parts of same to proceed but in regard to six of the cases he found that the proceedings in question constituted an abuse of the process of the court. He concluded that six of the proceedings in question amounted to abuse of the process of the court. He then dealt with an application made by the defendant that he should make an order restraining the plaintiff from instituting further proceedings without the leave of the court. He stated *inter alia* at p. 10 of his judgment:-

> "This is now colloquially being called an *Isaac Wunder* order. Such an order is made in very rare circumstances but it is one which

the court should make when it comes to the conclusion that its processes are being abused."

He stated further at the same page of the judgment:-

> "The phrase used, which has a somewhat antique ring to it, is that the party against whom the order is made is a vexatious litigant, and I think that I must come to the conclusion that for the reasons which it is not for me to analyse but for some body from a different discipline to do so, the plaintiff has instituted a great number of proceedings against a great number of persons without any justification."

Costello J. stated that to maintain further claims which were being threatened was in his view vexatious. He stated that what the plaintiff had done was without justification. The plaintiff had sought to sue the barristers and solicitors appearing for the defendant, officials and directors of the defendant and the auctioneer who was employed by the defendant. The plaintiff then took steps to institute proceedings for judicial review of an order of the Circuit Court. This came before Costello J. He concluded that the plaintiff could not justify the institution of these proceedings. He stated that it was his view that it would be an abuse of the process of the court to allow such proceedings to be instituted. In the circumstances he concluded that he should make an order that no proceedings be instituted by either the plaintiff or his wife on their own behalf or on behalf of their children against the defendant and its directors and officials or any of its employees, past or present and that no proceedings be instituted against any of the defendant's professional advisors without the leave of the court and that, in particular, no proceedings be instituted claiming an order for judicial review without the leave of the court and that the leave of the court be obtained by a motion on notice to the proposed defendant, the motion to be heard by a judge appointed by the President of the High Court for that purpose.

In the instant case I am asked simply on the basis of a draft plenary summons and without the benefit of any accompanying draft statement of claim to assess whether the intended plaintiff should be given leave to commence these proceedings. In these circumstances I invited oral submissions from the intended plaintiff in support of his claim. It is necessary for this court to assess the draft plenary summons to see whether the claims sought to be litigated are vexatious or frivolous or otherwise. I have, however, heard the intended plaintiff in regard to the basis upon which he seeks to advance these claims.

The relief sought in the general endorsement of claim in the draft plenary summons relates to three distinct areas. The first relates to an order of the Supreme Court made on an appeal taken by the intended plaintiff against An Taoiseach and others being Supreme Court appeal Nos. 175

and 181 of 2000. It is the intended plaintiff's case that the Supreme Court was operating unconstitutionally at the time of dismissing his appeal. The basis of his claim appears to be an attack on the constitution of the court by reason of the fact that one of the judges who sat on that court was ordinarily a member of the High Court. The second area of relief sought by the intended plaintiff relates to the appointment of Mr. Robert Molloy T.D. as minister of state to the Government. It is the intended plaintiff's case that the law as it stands does not permit the appointment of any individual as a minister of state to the Government as opposed to a minister of state at a Department. It is to be noted that Mr. Molloy was appointed on the 26th June, 1997, to be minister of state to the Government and minister of state at the Department of the Environment. The intended plaintiff does not seek to impugn the appointment of Mr. Molloy as minister of state at the Department of the Environment.

The third area of relief sought by the intended plaintiff is a declaration that s. 33 of the Finance Act, 2001, is repugnant to the Constitution. This section provides for a special savings scheme introduced under the Finance Act, 2001.

In the context of the intended plaintiff's claims that certain provisions of Acts of the Oireachtas are repugnant to the Constitution, the Attorney General is a necessary party to those proceedings. The relevant provisions of the Courts (Establishment and Constitution) Act, 1961, which are sought to be impugned in the intended proceedings are s.1(3) and (4) and s. 2(3), (4) and (5). These sections provide as follows:-

"1. (3) The President of the High Court shall be *ex officio* an additional judge of the Supreme Court.

(4) Where, owing to the illness of a judge of the Supreme Court or for any other reason, a sufficient number of judges of the Supreme Court is not available for the transaction of the business of that Court, the Chief Justice may request any ordinary judge or judges of the High Court to sit on the hearing of any appeal to or other matter cognisable by the Supreme Court, and any judge so requested shall sit on the hearing of such appeal or other matter and be an additional judge of the Supreme Court for such appeal or other matter.

2. (3) The Chief Justice shall be *ex officio* an additional judge of the High Court.

(4) The President of the Circuit Court shall be *ex officio* an additional judge of the High Court.

(5) (a) Where, owing to the illness of a judge of the High Court or for any other reason, a sufficient number of judges of the High Court is not available for the transaction of the

business of that Court or, on account of the volume of business to be transacted in the High Court or for any other reason arising from the state of business in that Court, it is expedient to increase temporarily the number of judges available for the purposes of the High Court, the Chief Justice, at the request of the President of the High Court, may request any ordinary judge of the Supreme Court to sit in the High Court as an additional judge thereof, and every ordinary judge of the Supreme Court so requested shall sit in the High Court.

(b) Whenever an ordinary judge of the Supreme Court sits in the High Court in pursuance of this subsection, he shall be an additional judge of the High Court for all the purposes of that Court."

Articles 34 to 36 of the Constitution relate to the courts and the appointment of judges. The relevant provisions of these articles can be quoted as follows:-

Article 34

"1. Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.

2. The Courts shall comprise Courts of First Instance and a Court of Final Appeal.

3. 1° 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.

4. 1° The Court of Final Appeal shall be called the Supreme Court.
2° The president of the Supreme Court shall be called the Chief Justice."

Article 35

"1. The judges of the Supreme Court, the High Court and all other Courts established in pursuance of Article 34 hereof shall be appointed by the President."

Article 36

"Subject to the foregoing provisions of this Constitution relating to the Courts, the following matters shall be regulated in accordance with law, that is to say:-

i. The number of judges of the Supreme Court, and of the High Court, the remuneration, age of retirement and pensions of such judges,
ii. The number of the judges of all other Courts, and their terms of appointment, and
iii. The constitution and organisation of the said Courts, the distribution of jurisdiction and business among the said Courts and judges, and all matters of procedure."

While it is to be noted in the context of these Articles that no reference is made to the President of the High Court if one has regard to the provisions of the Constitution dealing with the composition of the Presidential Commission as referred to in Article 14, it is to be seen that specific mention is made of the President of the High Court in Article 14.2.2°. Further mention of the President of the High Court is made in Article 31.2 of the Constitution, referring to the Council of State.

In his judgment in *Cahill v. Sutton* [1980] I.R. 269, Henchy J. with whom the other members of the court concurred, addressed the issue of *locus standi* of a plaintiff to seek to impugn the constitutionality of an Act of the Oireachtas. In the course of his judgment at p. 284, Henchy J. stated:-

> "There is also the hazard that, if the Courts were to accord citizens unrestricted access, regardless of qualification, for the purpose of getting legislative provisions invalidated on constitutional grounds, this important jurisdiction would be subject to abuse. For the litigious person, the crank, the obstructionist, the meddlesome, the perverse, the officious man of straw and many others, the temptation to litigate the constitutionality of a law, rather than to observe it, would prove irresistible on occasion."

Henchy J. continued:-

> "In particular, the working interrelation that must be presumed to exist between Parliament and the Judiciary in the democratic scheme of things postulated by the Constitution would not be served if no threshold qualification were ever required for an attack in the Courts on the manner in which the Legislature has exercised its law-making powers. Without such a qualification, the Courts might be thought to encourage those who have opposed a particular Bill on its way through Parliament to ignore or devalue its elevation into an Act of Parliament by continuing their opposition to it by means of an action to have it invalidated on constitutional grounds. It would be contrary to the spirit of the Constitution if the Courts were to allow those who were opposed to a proposed legislative measure, inside or outside Parliament, to have

an unrestricted and unqualified right to move from the political arena to the High Court once a Bill had become an Act. It would not accord with the smooth working of the organs of State established by the Constitution if the enactments of the National Parliament were liable to be thwarted or delayed in their operation by litigation which could be brought at the whim of every or any citizen, whether or not he had a personal interest in the outcome."

At Part VI of his judgment Henchy J. continued as follows at p. 284:-

> "The Constitution has given Parliament the sole and exclusive power of making laws. The Courts normally accord those laws the presumption of having been made with due observance of constitutional requirements. If a citizen comes forward in court with a claim that a particular law has been enacted in disregard of a constitutional requirement, he has little reason to complain if in the normal course of things he is required, as a condition of invoking the court's jurisdiction to strike down the law for having been unconstitutionally made (with all the dire consequences that may on occasion result from the vacuum created by such a decision), to show that the impact of the impugned law on his personal situation discloses an injury or prejudice which he has either suffered or is in imminent danger of suffering."

At Part VII of his judgment Henchy J. stated as follows at p. 286:-

> "The primary rule as to standing in constitutional matters is that the person challenging the constitutionality of the statute, or some other person for whom he is deemed by the court to be entitled to speak, must be able to assert that, because of the alleged unconstitutionality, his or that other person's interests have been adversely affected, or stand in real or imminent danger of being adversely affected, by the operation of the statute."

Later at the same page of the judgment, having referred to the particular facts of the plaintiff in that case, Henchy J. stated as follows:-

> "Were the Courts to accede to the plaintiff's plea that she should be accorded standing merely because she would indirectly and consequentially benefit from a declaration of unconstitutionality, countless statutory provisions would become open to challenge at the instance of litigants who, in order to acquire standing to sue, would only have to show that some such consequential benefit would accrue to them from a declaration of unconstitutionality - notwithstanding that the statutory provision may never have affected adversely any particular person's interest, or be in any real or imminent danger of doing so. It would be contrary to precedent, constitutional propriety and the common good for the High Court, or this Court, to proclaim itself an open house for the reception of such claims."

In light of these stated principles of law I consider it appropriate to access the claims sought to be advanced by the intended plaintiff to see whether he has established any basis of *locus standi* to attack the provisions which he seeks to impugn, and whether the proposed actions are vexatious or frivolous.

With reference to the proposed claim that s. 1(3) of the Act of 1961 is repugnant to the Constitution, the intended plaintiff has advanced no basis upon which he has any *locus standi* to attack the provision. Furthermore, I am satisfied that the proposed action seeking this relief can only be considered to be vexatious as it is clear that the provisions of the section are enabled by the provisions of the Constitution itself and in particular Article 36. With regard to the second heading of claim, namely that s. 1(4) of the Act of 1961 is repugnant to the Constitution, the purpose of this attack is clearly to assist the intended plaintiff in his sixth area of proposed claim, namely to reopen the proceedings which were the subject matter of a decision of the Supreme Court on the appeals being record nos. 175 and 181 of 2000. In relation to this heading of claim for relief it is obvious that the action cannot succeed having regard to the provisions of Article 36 of the Constitution. Furthermore, I believe that the action can lead to no possible good and that no reasonable person could reasonably expect to obtain relief. I am further of the view that the purpose for which this proposed action is sought to be brought is an improper purpose, namely the harassment and oppression of the various parties referred to in the proceedings already determined by the Supreme Court and that the proposed action is other than the assertion of a legitimate right. Accordingly, I consider the bringing of this claim would be vexatious.

Insofar as the proposed action is one seeking to impugn the provisions of s. 2(3), (4) and (5) of the Act of 1961, no basis has been shown by the intended plaintiff whereby he can advance any claim under sub-s. 3 as no facts have been indicated by him to support the bringing by him of any such claim whereby he can demonstrate any *locus standi*. I am also satisfied that the provision in question is such as to be enabled by the Constitution and therefore that the proposed action in this regard cannot succeed and that no reasonable person could reasonably expect to obtain relief under this heading. I take the same view in relation to the proposed action impugning the provisions of s. 2(4) and furthermore of s. 2(5).

With regard to the intended action to have declared unconstitutional the operation of the Supreme Court in the proceedings previously taken by the intended plaintiff already referred to herein, I am satisfied that this proposed cause of action is vexatious as it is one seeking first of all to bring one or more actions to determine an issue which has already been determined by a court of competent jurisdiction. Secondly it is one which it is

obvious cannot succeed and it is one from which no reasonable person could reasonably expect to obtain relief. Furthermore, I am satisfied that this proposed action if brought would be brought for an improper purpose, namely the harassment and oppression of the parties to the earlier proceedings and not for the purpose of the assertion of legitimate rights.

With reference to the proposed action impugning the appointment of Mr. Robert Molloy T.D. as minister of state to the Government, the intended plaintiff's essential claim is that the law as it stands provides for the appointment of ministers of state to be ministers of state at departments of state. The intended plaintiff asserts that there is no department of state of the Government. The intended plaintiff has not indicated any possible good that can stem from this proposed action and furthermore he has not indicated to this court any basis upon which he would have *locus standi* to impugn the appointment in question. Aside from this there may be an arguable case to be made in relation to the contention put forward by the intended plaintiff but I am satisfied that I should refuse him the leave which he seeks on the basis indicated that this amounts to the bringing of a claim which can only be described as vexatious in the circumstances, where the intended plaintiff has shown no *locus standi*.

Finally, with reference to s. 33 of the Finance Act, 2001, this relates to the introduction of the new special savings scheme by the Minister for Finance. The intended plaintiff contends that the legislation in question is unfair and unjust. He submits that it involves an invidious form of discrimination in favour of wealthy members of society and it is against him as a tax payer. He submits that every tax payer is affected by the legislation. In light of the fact in regard to this aspect of the intended claim that all that has been stated in writing is in the form of the draft plenary summons and is confined to a claim that s. 33 of Finance Act, 2001, is repugnant to the Constitution, and notwithstanding entertaining oral submissions from the intended plaintiff, I believe that it is impossible to make any clear determination as to whether the proposed action is vexatious or otherwise without regard to a statement of claim and in the circumstances I will request the intended plaintiff to furnish to this court a draft statement of claim in regard to this particular aspect of his proposed action.

With regard to the remaining heads of claim which he advances in the draft plenary summons, I am refusing the intended plaintiff leave to institute proceedings for those reliefs for the reasons already stated by me herein. With regard to the draft statement of claim, I will request the intended plaintiff to serve a copy of this and the draft plenary summons on the Chief State Solicitor for and on behalf of the Attorney General and the Minister for Finance and I will be disposed to hearing any observations that they may wish to make to me at the stage when the draft statement of claim

has been prepared. I will hear the intended plaintiff in relation to the time which he wishes to have to prepare such draft statement of claim.

[*Reporter's note*: Following service of the draft statement of claim, leave to challenge the constitutionality of s. 33 of the Finance Act, 2001, was refused by the High Court (Ó Caoimh J.) on the 20th July, 2001.]

Rosemary Hickey, Barrister
