

THE HIGH COURT

[2026] IEHC 564

[2023/4263P]

BETWEEN

JOSEPH DAVIS

AND

IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

Judgment of Mr Justice Cregan delivered on 30th July 2026.

Introduction

1. The application before the court is the plaintiff's motion seeking an exemption from paying stamp duty on court documents.
2. The relevant statutory instrument on this issue is statutory instrument 492/2014 – the Supreme Court, Court of Appeal and High Court (Fees) Order 2014 (which came into effect in October 2014).
3. Section 3 of S.I. 492/2014 provides as follows:

“There shall be charged in the offices attached to the Supreme Court, the Court of Appeal, the High Court and the President of the High Court and in District probate registries, in respect of each item set out in column (1) of each Part of Schedule 1, the fee set out in column (2) of the Part concerned opposite the mention of the item.”
4. Section 5 of the statutory instrument provides for exceptions and provides as follows:

"No fee shall be payable under this Order in connection with

(a) proceedings under Article 40.4 of the Constitution." (Emphasis added.)

5. The question therefore which this court has to consider is whether Mr. Davis' proceedings are "*proceedings under Article 40.4 of the Constitution.*"

Article 40.4

6. Article 40.4 of the Constitution provides as follows

"1° No citizen shall be deprived of his personal liberty save in accordance with law.

2° Upon complaint being made by or on behalf of any person to the High Court or any judge thereof alleging that such person is being unlawfully detained, the High Court and any and every judge thereof to whom such complaint is made shall forthwith enquire into the said complaint and may order the person in whose custody such person is detained to produce the body of such person before the High Court on a named day and to certify in writing the grounds of his detention, and the High Court shall, upon the body of such person being produced before that Court and after giving the person in whose custody he is detained an opportunity of justifying the detention, order the release of such person from such detention unless satisfied that he is being detained in accordance with the law.

3° Where the body of a person alleged to be unlawfully detained is produced before the High Court in pursuance of an order in that behalf made under this section and that Court is satisfied that such person is being detained in accordance with a law but that such law is invalid having regard to the provisions of this Constitution, the High Court shall refer the question of the validity of such law to the Court of Appeal by way of case stated and may, at the time of such reference or at any time thereafter, allow the said person to be at liberty on such bail and subject to such conditions as

the High Court shall fix until the Court of Appeal has determined the question so referred to it.

4° The High Court before which the body of a person alleged to be unlawfully detained is to be produced in pursuance of an order in that behalf made under this section shall, if the President of the High Court or, if he is not available, the senior judge of that Court who is available so directs in respect of any particular case, consist of three judges and shall, in every other case, consist of one judge only.

5° Nothing in this section, however, shall be invoked to prohibit, control, or interfere with any act of the Defence Forces during the existence of a state of war or armed rebellion.

6° Provision may be made by law for the refusal of bail by a court to a person charged with a serious offence where it is reasonably considered necessary to prevent the commission of a serious offence by that person.”

7. It is clear that Mr. Davis is not currently in detention and therefore the habeas corpus procedure set out under Article 40.4.2 and Article 40.2.3 is not relevant.

8. Likewise, it is clear that Article 40.4.4, Article 40.4.5 and Article 40.4.6 are not at issue in this application.

9. The sole issue is whether the proceedings issued by the plaintiff are “proceedings under” Article 40.4.1 of the Constitution which, as set out above, states that “*No citizen shall be deprived of his personal liberty save in accordance with law.*”

10. In order to consider whether Mr. Davis’ proceedings are proceedings under Article 40.4.1 of the Constitution, it is necessary to consider the nature of his claim.

The nature of the plaintiff’s claim

11. The plaintiff in this case issued a plenary summons on 30th August 2023. He has also filed a statement of claim and an amended statement of claim.

12. In his claim, the plaintiff pleads that, on 4th April 2021, he was quietly and peacefully travelling through O'Connell Street in Dublin 1 when he was stopped and detained by members of the Garda Siochana for an undefined reason. He pleads that he was arrested and brought to the Bridewell Garda Station where he was detained; he pleads that he was then conveyed to Cloverhill Prison where he was detained for four nights. He says that on his third day in Cloverhill Prison, he could not endure the 24 lock-up any longer and he provided his name to prison authorities. He pleads that to secure his release from prison he had to sign a bail bond under duress. He pleads that the matter was adjourned before the District Court on a number of occasions until it was eventually struck out on 17th May 2023 by a judge of the District Court Dublin Metropolitan District (Judge Grainne Malone).

13. In his amended statement of claim, the plaintiff pleads as follows:

“3. The plaintiff will rely upon

(a) Article 38.1, 40.3.1, 40.3.2 and 40.4.1 of the Constitution of Ireland

(...)

(j) The common-law torts of false imprisonment, assault, battery, malicious prosecution, misfeasance in public office and defamation;” (Emphasis added.)

14. At paragraph 15, the plaintiff pleads:

“15. The plaintiff has suffered

(a) unlawful deprivation of liberty;

(...)

(c) false imprisonment.” (Emphasis added.)

15. And in his prayer for relief, the plaintiff has claimed:

“Damages (including aggravated and exemplary damages) for breach of constitutional rights, false imprisonment (...)” (Emphasis added.)

16. In the plaintiff's notice of motion, brought on 14th November 2025, the plaintiff sought exemption from all court fees "*pursuant to Article 40.4 of the Constitution and SI number 492 of 2014*" and also relied on my judgment in *McGreal v. Concannon and Brown* [2025] IEHC 425.

17. Moreover, in Mr. Davis' grounding affidavit for this application he states at paragraph 2:

"These proceedings seek damages for multiple unlawful arrests and detentions carried out by members of an Garda Siochana, acting as servants or agents of the defendants including but not limited to my arrest on 4 April 2021 on O'Connell Street Dublin, my subsequent detention of Bridewell Garda Station and Cloverhill Prison and associated assaults, malicious prosecution and breaches of my constitutional rights."

18. He also states at paragraph 3 of his grounding affidavit:

"The substance of my claim is that I was deprived of my personal liberty otherwise than in accordance with law in breach of Article 40.4.1 of the Constitution."

19. I am satisfied therefore, that the plaintiff's claims, in substance, are that he was deprived of his liberty otherwise than in accordance with law. They are therefore "*proceedings under Article 40.4.1 of the Constitution.*"

20. He says, at paragraph 4, that when he issued these proceedings in 2023 he was unaware that they qualified for exemption from court fees under Article 40.4. He says that he recently became aware of my judgment in *McGreal v. Concannon* [2025] IEHC 425 and when he considered that judgment, and his claim, he realised that his claim was also a claim under Article 40.4.1 of the Constitution.

The defence

21. A defence was filed in this matter on 20th March 2024 in which the defendants deny all of the matters pleaded by the plaintiff. However, the defendants plead that on 4th April 2021 at Lower O'Connell Street, Dublin 1, two members of an Garda Siochana were on patrol in the city centre, during the level 5 covid-19 restrictions which were in place at this time; the plaintiff was noted to be loitering outside Dr Quirky's Arcade on O'Connell Street; one of the gardai approached the plaintiff and attempted to engage in conversation with him but the plaintiff refused to interact with either member of the gardai; the plaintiff was then requested to provide his name pursuant to Article 31(a)(9) of the Health Act 1947 (as amended), but he refused; following further conversations with the plaintiff in which he refused to provide his name, the gardai proceeded to caution the plaintiff in the usual manner and the plaintiff was then arrested for offences contrary to section 31(a)(10) and (12) of the Health Act 1947, (as amended), and he was conveyed to Bridewell Garda Station.

22. The defendants plead that on arrival at Bridewell Garda Station, the plaintiff again refused to give his full name or address but referred to himself simply as "Joe". The defendants plead that the plaintiff refused to engage with the gardai and responded to gardai in a manner which was hostile, abusive and uncooperative.

23. It is further pleaded that at 21.20 hours on 4th April 2021, the plaintiff was charged by Sergeant Garda O'Leary for the following offences:

(1) Failing or refusing to state a name and address

(2) Refusing to allow a member of An Garda Siochana to take a photograph.

24. It is pleaded that the plaintiff was then detained overnight in Bridewell Garda Station and was conveyed to District Court 2 in the Criminal Courts of Justice the following morning on 5th April 2021. The plaintiff refused to give his name and address to the presiding District Court judge.

25. It is stated in the defence that the plaintiff was then remanded in custody to Cloverhill Prison. During his time in custody, attempts were made by a nurse in Cloverhill Prison to carry out a medical assessment of the plaintiff but the plaintiff refused to engage with the nurse in question. It was therefore not possible to carry out any medical assessment.

26. The offences with which the plaintiff was charged were adjourned on five occasions. On 30th May 2022, the Office of the Director of Public Prosecutions was unable to provide the required representation for this hearing and both charges were struck out with liberty to re-enter.

The plaintiff's submission

27. The plaintiff's submission is quite straightforward. He says that his proceedings are proceedings under Article 40.4.1 of the Constitution. Therefore, he says that he is entitled to an exemption from stamp duty under section 5 of the 2014 S.I.

28. His case is that he was deprived of his personal liberty, otherwise than in accordance with law. The defendant's case is that he was deprived of his personal liberty in accordance with law. That is the dispute. These therefore are proceedings brought under Article 40.4.1 of the Constitution.

The defendants' submissions

29. The defendants submit that Mr. Davis is not entitled to the exemption sought and that his application should be refused.

30. They submit that my decision in *McGreal v. Concannon* was incorrect as a matter of law and that I should revisit that decision.

31. For reasons set out below, I do not believe that my decision in *McGreal v. Concannon* was incorrect, and I will therefore decline the invitation by the defendants to revisit that decision.

32. However, in deference to the arguments made by counsel, I will address their main arguments.

33. The defendants submit that section 5 of S.I. 492 of 2014 provides as follows:

“No fee is payable in connection with proceedings under:

- 1. Article 40.4 of the Constitution*
- 2. The Extradition Acts 1965 – 2012*
- 3. The European Arrest Warrant Acts 2003 and 2012*
- 4. Bail proceedings*
- 5. Applications for judicial review under Order 84 rule 18 (Criminal Matters).”*

34. In summary, the defendants’ submissions are that when section 5 of S.I. 492 is read as a whole, the meaning of the first exemption - Article 40.4 of the Constitution - should be read in conjunction with the exemptions at 2, 3, 4, and 5.

35. The defendants submit that all applications under the Extradition Acts, the European Arrest Warrant Acts, bail proceedings and criminal judicial review applications all relate to situations in which a person is in custody or are related to criminal proceedings. They submit that the exemption from stamp duty for Article 40.4 proceedings should be interpreted as meaning only habeas corpus proceedings (where a person is in detention) and should not refer to civil proceedings brought by a plaintiff under Article 40.4.1 of the Constitution after he has been in detention.

36. The defendants submit that *“if one proceeds on the basis that the reference to “Article 40.4” relates to habeas corpus proceedings then all of the proceedings have the following shared characteristics”* and they set out four shared characteristics.

37. However, these shared characteristics are crucially dependent upon the phrase *“if one proceeds on the basis that the reference to Article 40.4 relates to habeas corpus*

proceedings” - an assumption which I do not accept. In other words, the defendants are assuming the very point at issue in this application.

38. The defendants submit that the first characteristic all five types of proceedings in section 5 have in common is that each relate to situations where an individual is currently being detained or their liberty is currently at risk as a result of ongoing proceedings.

39. However, this is to ignore entirely the actual context in the present case where the plaintiff was deprived of his personal liberty for a short number of days and was then released before any due process of law took place, i.e. he was released without a trial and without being convicted. So I do not accept the defendant’s submission on this point.

40. The second characteristic the defendants say each of the proceedings referred to in section 5 have in common, is that they relate to a person being detained, or whose liberty is at risk, as a result of the criminal process and the person who is the subject of the proceedings is entitled to legal representation paid for by the State. That is a similar argument to the first. Again, however, it ignores entirely the factual circumstances which arise in this case where a person was arrested and detained for a short number of days and is then released without any trial or without any conviction. In those circumstances, the question of legal representation does not arise.

41. The third characteristic, according to the defendants, of each of the matters set out in section 5, relate to circumstances in which an individual is at risk of measures being imposed on them on the application by the State - either the DPP or the Minister for Justice - and these individuals are therefore the subject of a court process in which they are at risk of losing not only their liberty but also other rights. This point is essentially a repetition of the first and second points. I do not accept this submission for reasons set out above. The present case concerns a person who has been in detention and who has now been released, who wishes to

seek a declaration that he was deprived of his personal liberty otherwise than in accordance with law.

42. The fourth characteristic relied on by the defendants is that in each of the proceedings in section 5 of the S.I; *“their detention or risk of detention is both a pre-requisite and an established matter-of-fact.”* However, in this case there is no doubt that Mr. Davis was detained for a number of days and was then released. Therefore, Mr. Davis was undoubtedly deprived of his personal liberty.

43. The defendants also submit (at paragraph 18 of their submissions) that *“those who are the subject of criminal proceedings have enhanced rights and protections afforded to them which do not exist in civil law. This is a long-standing legal principle which reflects the enormity of the consequences which pertain to the taking of criminal proceedings against an individual.”* I agree with this submission but it does not mean stamp duty is payable in this case. In this case, Mr. Davis was subjected to a deprivation of his personal liberty and he is entitled to bring civil proceedings under Article 40.4 of the Constitution seeking damages that he was deprived of his personal liberty otherwise than in accordance with law. Such proceedings fall within the exemption under section 5 as currently drafted.

44. The defendants submit at paragraph 20 of their submissions that *“all of the proceedings under section 5 of the statutory instrument – criminal judicial review, habeas corpus, bail proceedings and extradition matters – are corollary to criminal prosecutions.”* However that is also the case here. The plaintiff has brought civil proceedings subsequent to his arrest, and detention.

Review of case-law

45. The defendants referred to *Shaw v. Minister for Justice* [2018] IEHC 288, in which the applicant sought to challenge a variety of matters subsequent to his detention, including his right to temporary release and alleged unlawfulness in relation to the processing of his

applications for parole. As part of his application for leave to seek judicial review, the applicant challenged his obligation to pay stamp duty.

46. However, as the defendants accept in their legal submissions, the case of *Shaw* is not a direct comparator to the present case. In that case, the applicant had been convicted, sentenced after a full trial, and also had the benefit of an appeal. In the circumstances, therefore, the plaintiff *had* been deprived of his personal liberty in accordance with law and the applications in that case related to how he had been treated (or how he should be treated) after he had been deprived of his personal liberty in accordance with law. In my view, therefore, it is not relevant to any of the issues which I have to consider in this case.

47. I was also directed by the defendants to *McGreal v. the Minister for Housing* [2024] IEHC 728, a decision of Humphries J. on 20th December 2024. I considered this case in my decision in *McGreal v. Concannon* [2025] IEHC 425 and my decision in this case should be read in conjunction with that case where I set out my reasons in full for arriving at the decision I did.

48. The defendants referred me to various paragraphs of Mr. Justice Humphreys decision and, in particular, paragraph 32 onwards.

49. At paragraphs 32 and 34, Humphreys J. states:

“32. However when the order [i.e. the relevant statutory instrument SI 492 section 5] uses the phrase “proceedings under Article 40.4 of the Constitution” it is not referring to personal liberty in a broad sense.”

“34. When the order refers to proceedings under Article 40.4 it means proceedings under the jurisdiction created by that section, specifically under subsections 2 to 4.”

50. However, I do not agree with that interpretation of Article 40.4 of the Constitution for reasons set out in my decision in *McGreal v. Concannon*.

51. At paragraph 11 of their submissions, the defendants submit as follows:

“Following the decision of Humphreys J. on 6 February 2025, Cregan J delivered a judgment in Murphy v. Gloucester [2025] IEHC 171 considering the section once more . Therin the court cites a number of paragraphs from the judgment of Humphries J in McGreal. Ultimately Cregan J did not go so far as to make a determination as to the correct definition of the section but did adopt the comments of Humphries J in paragraph 7 of this judgment indicating that merely referring to Article 40 in one’s pleadings is not sufficient to secure an exemption under section 5”. (Emphasis added.)

52. I think this is a correct assessment of my decision in *Murphy v. Gloucester* as far as it goes. However, as I stated, merely referring to Article 40.4.1 is not sufficient; the court must be satisfied that the claim, as a matter of substance, is a claim under Article 40.4.1. However, it is clear that in *McGreal v. Concannon*, I did “*make a determination as to the correct definition of the section*” (i.e. section 5 of the relevant S.I.), as I set out in more detail below.

53. Mr. McGreal appealed part of my decision to the Court of Appeal. The Court of Appeal rejected this appeal (*McGreal v. Concannon and Others* [2026] IECA 9.) However, the issue in that appeal was that I had considered Mr. McGreal’s case against Ms. Concannon and Ms. Brown and I had concluded that, on a proper analysis, those proceedings were not Article 40.4.1 proceedings and therefore stamp duty was payable. So the decision of the Court of Appeal was limited to that point – although the court did consider Article 40.4 at paragraphs 4-25 of its decision.

Assessment

(i) Interpretation of Article 40.4

54. Article 40.4.1 of the Constitution is an important constitutional guarantee of the personal liberty of citizens. It provides clearly and unequivocally:

“No citizen shall be deprived of his personal liberty save in accordance with law.”

55. If there is an alleged breach of that constitutional provision, then a person can issue proceedings under that constitutional provision. For example, a person could issue proceedings seeking a declaration that they have been deprived of their personal liberty, otherwise than in accordance with law, and/or seeking damages.

56. Article 40.4.2 and Article 40.4.3 set out the habeas corpus procedure. However, there is nothing in Article 40.4 to suggest that the *only* remedy available to someone who complains of a breach of Article 40.4.1 is the habeas corpus procedure. There are no words in Article 40.4.1 which provide that if a citizen complains of a deprivation of his personal liberty otherwise in accordance with law, he can only bring an application for habeas corpus and/or that he is limited to the bringing of an application for habeas corpus.

57. Likewise, there is nothing in Article 40.4.2 and/or Article 40.4.3 which states that habeas corpus provisions are the only provisions which can be relied upon by a citizen who seeks to make a complaint under Article 40.4.1.

58. Article 40.4.1 is a constitutional provision which guarantees every citizen that they shall not be deprived of their personal liberty save in accordance with law. It would be a wholly unjustified restriction in the important constitutional protection which this Article provides to all citizens, were it to be interpreted in such a way that if a citizen complains of being deprived of his personal liberty otherwise than in accordance with law, his sole remedy would be a habeas corpus application. That is not what is stated in Article 40.4 of the Constitution and it is not what is stated in section 5 of the statutory instrument S.I. 492.

59. In other words, the submission of the defendants would have the adverse consequence that in seeking to protect a source of revenue, it has the unintended consequence of imposing

a restrictive interpretation of Article 40.4.1. There is nothing to suggest that Article 40.4 of the Constitution should be read in such a way that it excludes civil proceedings for a declaration (and damages) that one has been deprived of one's personal liberty, otherwise than in accordance with law – after the detention has occurred.

(ii) Interpretation of 2014 S.I. in light of previous S.I.

60. It is a matter for the Executive and the Legislature to decide what proceedings attract stamp duty and what proceedings are exempt from stamp duty. They do so through the statutory instruments. It is a matter for the courts to interpret those statutory instruments. In *McGreal*, this court interpreted S.I. 492 of 2014, both on its own terms and in the light of the previous statutory instrument (i.e. S.I. 341 of 1989). The previous S.I. expressly exempted from court fees, any documents filed “*in connection with habeas corpus proceedings, extradition matters bail et cetera*” whereas the phrase in S.I. 492 of 2014 uses the broader phrase “proceedings under Article 40.4 of the Constitution.”

61. As I stated at paragraphs 127 - 132 of my decision in *McGreal v. Concannon*:

“127. I do not agree with this submission. In my view, it ignores entirely any other proceedings which might be brought in respect of Article 40.4.1° — which might seek declaratory or other relief in which the plaintiff claims that he has been deprived of his liberty save in accordance with law, in circumstances where it is neither necessary nor appropriate to bring a habeas corpus application. There is nothing in the wording of Section 5 of the Statutory Instrument 492 of 2014 which would justify a reading of “proceedings under Article 40.4” to restrict it to habeas corpus proceedings and to exclude any declaratory or other proceedings brought in respect of Article 40.4.1°.

128. Much of the defendants' submissions proceeded on the assumption that it was clear that Article 40.4 referred just to the habeas corpus provisions. It is clear

however from Article 40.4.1° that this is not so. One can imagine all sorts of cases in which a plaintiff might seek a declaration – even after he had been released - that he had been deprived of his liberty otherwise than in accordance with law. There is clearly an analytical distinction between Article 40.4.1° – which encompasses habeas corpus proceedings and non-habeas corpus proceedings in respect of personal liberty – and Article 40.4.2° and Article 40.2.3° which relate solely to habeas corpus applications. I am satisfied therefore that the defendant’s submissions in this regard are not well founded.

129. It is also of note that the previous statutory instrument dealing with fees – S.I. 341 of 1989 – expressly exempted from court fees any documents filed in “connection with habeas corpus proceedings, extradition matters, bail, etc” (emphasis added), whereas the phrase in S.I. 492 of 2014 uses the broader phrase, “proceedings under Article 40.4 of the Constitution” (emphasis added).

130. In my view, whereas the 1989 statutory instrument limited exemptions from fees to habeas corpus applications, the revised statutory instrument, 492/2014, by using the phrase “proceedings under Article 40.4 of the Constitution” meant, and was intended to mean, all proceedings under Article 40.4 of the Constitution, including, but not limited to, habeas corpus proceedings. In other words, the new statutory instrument is more broadly worded and includes an exemption from fees for any proceedings in which persons might issue proceedings in relation to their personal liberty – including seeking declarations that their personal liberty had been infringed contrary to Article 40.4.1°.

131. Counsel for the defendants relied on *Cahill v. Governor of Curragh Military Detention Barracks* [1980] ILRM 191 and indeed *Re Application of Gallagher* [1996] 3 IR 10 and submitted that these decisions drew attention to the danger of debasing

the informal procedure allowed under habeas corpus. I have read and considered these decisions and, in my view, they are not relevant to this application. It is an agreed fact that the plaintiff is not bringing an application for habeas corpus. He is not in detention, let alone unlawful detention. However he says that he was unlawfully arrested, he was unlawfully detained, he was unlawfully deprived of his liberty, otherwise than in accordance with law, and he seeks declarations to that effect and damages in respect of these alleged constitutional breaches.

132. There is no reason, from first principles, to restrict the meaning of “proceedings under Article 40.4” only to proceedings under Article 40.4.2° and Article 40.4.3° (i.e. habeas corpus proceedings). There is nothing in the statutory instrument which would justify such an interpretation.”

62. I am satisfied therefore, despite the arguments of counsel in this case, that the 2014 S.I. exempts a broader category of proceedings under Article 40.4.1 and is not limited to habeas corpus proceedings.

(iii) The “floodgates” argument

63. The defendants finally argue that, if my interpretation of *McGreal v. Concannon* is correct, “it would entitle all persons who allege that they have been unlawfully detained confined or imprisoned to an exemption from court fees without there being any findings of the fact that same has occurred; this would amount to a vast expansion of the exemption set out at section 5 and would be a significant departure from the law which existed pre-2014. It is submitted that this cannot have been the intention of the legislature and the reference to Article 40.4 simply the correct and proper manner in which habeas corpus proceeding should be referred.”

64. I do not accept the submission that my interpretation would amount to a “vast expansion of the exemptions” set out at section 5. That is hyperbole. In all the cases before

this Court, to my recollection, Mr. Davis is the only plaintiff who has brought such an application, since my decision in *McGreal*. Moreover, as Humphreys J. said in his decision in *McGreal*, and, as I accepted in my decision in *McGreal*, a plaintiff cannot simply plead Article 40.4.1 and then demand an exemption from stamp duty. What the court has to do is to look at the pleadings as a whole and see if they raise, in a bona fide and substantive manner, an allegation or a plea that the plaintiff was deprived of his liberty otherwise than in accordance with law. If so, then those proceedings are exempt from stamp duty.

65. There is, in my view, a very good reason why the Legislature decided to exempt all Article 40.4.1 proceedings (and not just habeas corpus proceedings) from the requirement to pay stamp duty, which is, that in a democratic society, governed by the rule of law, the liberty of the individual citizen is of paramount importance. If an individual wishes to issue proceedings seeking a declaration that they were deprived of their liberty, otherwise than in accordance with law, it makes perfect sense that the Legislature would decide that no stamp duty should be payable in respect of those proceedings. Indeed, the Legislature itself amended the previous stamp duty regime to the current stamp duty regime, as I pointed out in my decision in *McGreal*. In the previous stamp duty regime, the exemption was limited to persons who issued habeas corpus proceedings; in the 2014 S.I. this has now been broadened to all proceedings under Article 40.4.1.

Conclusion

66. It is a matter for the Legislature and/or the Executive to prescribe the types of proceedings for which stamp duty is paid. The role of the courts is simply to interpret that statutory instrument and come to a view as to whether stamp duty is payable or not payable in respect of a particular set of proceedings.

67. I set out in my judgment in *McGreal* my reasons for believing that stamp duty was not payable for proceedings issued under Article 40.4.1, (i) as a matter of principle and

constitutional interpretation; (ii) having regard to the wording of the previous statutory instrument which did limit it to habeas corpus proceedings; and (iii) as a matter of statutory interpretation of the wording of the 2014 statutory instrument which is broader in scope.

68. Again, I would reiterate what I said in *McGreal*, that this Court is not concerned with the merits or otherwise of the plaintiff's case in this application. That is a matter for another day. The only issue this court has to consider is whether the plaintiff has to pay stamp duty.

69. In conclusion, I am of the view:

1. that the plaintiff's proceedings are, in substance, proceedings under Article 40.4.1 of the Constitution;
2. therefore under section 5 of SI 492 of 2014, they are exempt from the payment of stamp duty (and the plaintiff is entitled to a refund of stamp duty already paid.)