



(Draft)

**“ASSEVERATION”**

I-I/FCA/009

## NOTICE &amp; LAWFUL DECLARATION

**In the matter of the question as to:** Do Orders of the High Court have to be obeyed?

*This matter being brought to the Integrity Ireland Findings Committee ('I-IFC') for consideration and assessment according to; (i) the Rule of Law; (ii) to existing positive (written) law; and (iii) as per the respective rights, authorities and jurisdiction granted under Irish & international law, as laid out in the I-IFC foundation publications quoted in I-I/FCA/001/3; the Integrity Ireland Association hereby finds and determines as follows:*

**1. S.I. No. 37/1971 - The Rules of the Superior Courts (No. 1) 1970.**

"Every judgement or order made in any cause or matter requiring any person to do an act thereby ordered, shall state the time, or the time after service of the judgement or order, within which the act is to be done; and upon the copy of the judgement or order which shall be served upon the person required to obey the same, other than an order directing a mortgagor to deliver possession to a mortgagee, or an order under section 62 subsection (7) of the Registration of Title Act, 1964 , there shall be endorsed a memorandum in the words or to the effect following, viz.:—

*If you the within named A.B. neglect to obey this judgment or order by the time therein limited, you will be liable to process of execution including imprisonment for the purpose of compelling you to obey the same judgment or order."*<sup>1</sup>

**2. Irish High Court 14/02/2014.** "A SENIOR High Court judge has warned that if "mob rule" is allowed to prevail by people refusing to obey court orders, then Ireland is on "a slippery slope to anarchy".<sup>2</sup>

"Court orders have to be obeyed, it's as simple as that," said High Court Judge Brian McGovern. Judge McGovern said it is very important that the message goes out that court orders must be obeyed.<sup>3</sup>

**3. "Contempt of Court:** (i) a failure to comply with an order of the court or an act of resistance to the court or its judges; also conduct liable to prejudice the fair trial of an accused person. *Criminal* contempt is punitive, to punish for the offence; *civil* contempt is coercive, to compel compliance." *Murdoch & Hunt's Dictionary of Irish Law* ['MHDIL']

(i) A charge of *criminal contempt* amounts to a criminal offence; it entitles, prima facie, the defendant to a trial with a jury where it consists of a major such offence: *de Rossa v Independent Newspapers Ltd* [1998 HC] 2 ILRM 293. ('MHGDIL')

<sup>1</sup> [www.irishstatutebook.ie/eli/1971/si/37/made/en/print](http://www.irishstatutebook.ie/eli/1971/si/37/made/en/print)

<sup>2</sup> <https://www.independent.ie/irish-news/judge-court-orders-must-not-be>

<sup>3</sup> [Judge: court orders must not be defied by 'mob rule' - Independent.ie](http://www.independent.ie/irish-news/judge-court-orders-must-not-be-defied-by-mob-rule-1.1111111)

(ii) The law of criminal contempt is founded not only on the interests of the parties to litigation, which in a criminal trial, includes the constitutional right of an accused to a trial in due course of law, but upon the wider public interest in the administration of justice. *Kelly v O'Neill & Brady* [2000 SC] 1 ILRM 507; [2000 SC] 1 IR 354.

(iii) Where the interests of the public in general is engaged or where there is a gross affront to the court it would be appropriate for the court to proceed of its own motion in respect of an alleged contempt of court to ensure that its orders are not set at naught. *Dublin City Council v McFeely* [2012] IESC 45; [2013 SC] 1 ILRM 40.

(iv) Committal by way of punishment should only be engaged in where there had been serious misconduct and in such circumstances it could be engaged in order to vindicate the authority of the court. *Shell E & P (Ireland) Ltd v McGrath* [2006] IEHC 108; [2007 HC] 1 IR 671; [2006] ITLR (1 May). It was also held in that case that where it was in the interests of the general public, or where there was a gross affront to the court, the court had an inherent jurisdiction to proceed of its own motion, without a request by the plaintiff, to commit by way of punishment for contempt of court." ('MHDIL')

**4. Failure to obey a Court Order is contempt of court.** Contempt of Court is punishable by fine or imprisonment. 05/04/2018 (UK)<sup>4</sup>

**5. Court Orders Must Be Obeyed.** "Public confidence in the civil justice system would collapse if court orders were not rigorously enforced – however agonising complying with them may be. The point was made by a case in which a divorcee who refused to move out of her home of 25 years came within an ace of being sent to prison for her defiance." (And) "Those who choose the court process to resolve their differences are entitled to expect that obedience to judicial orders will be enforced to the hilt and, if necessary, by imprisonment." (UK)<sup>5</sup>

**6. Enforcement:** "In this instance, it is especially significant that I am dealing with court orders that have been breached. I observe, I hope fairly, that when members of the public choose the court process as a means of resolving their differences, litigants are entitled to have confidence in the orders and their enforcement. Therefore, when applications are made to the court to enforce them, it is the court's function to do so. As I say, in accordance with principle, guidance and the particular facts." (UK)<sup>6</sup>

**7. Compliance:** "It is well-established (see *Johnson v Walton* [1990] 1 FLR 350 at 352D) that orders are to be obeyed and that arguments about whether they should or should not have been granted are no excuse for disobedience." (UK)<sup>7</sup>

**8. The Judge looked at the history of not obeying court orders.** [22] Justice Quinn in *Gordon v. Starr*, [2007] W.D.F.L. 4107, [2007] (Ont. S.C.), expressed that: "One of the

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<sup>4</sup> <https://raydensolicitors.co.uk/blog/what-happens-if-you-breach-a-court-order>

<sup>5</sup> [https://www.wellerslawgroup.com/library\\_pt/court-orders-must-be-obeyed](https://www.wellerslawgroup.com/library_pt/court-orders-must-be-obeyed)

<sup>6</sup> Judge Bromilow, (UK) Case No: BS14D00702/E01BS442

<sup>7</sup> Royal Courts of Justice (UK) Neutral Citation Number: [2018] EWCA Civ 1714. Case No: B4/2018/1315

reasons that many family proceedings degenerate into an expensive merry-go-round ride is the all-too-common casual approach to compliance with court orders.” (Canada)<sup>8</sup>

**9. Disobeying a court order.** A prosecutor must prove the following to convict a person of contempt of court for violating a court order: (i) a judge issued a legal order; (ii) the accused knew about the order; (iii) the accused had the ability to comply with the order, yet; (iv) the defendant wilfully failed to do so.

As to a defendant **knowing** of a court order, a prosecutor must prove that: (v) the defendant **knew of the valid court order**, and that; (vi) he had the **opportunity** to read a copy of the order. USA (California) 21/02/2013. <sup>9</sup>

**10. “Manifestly Illegal Orders”:** As regards military forces, a soldier acting under orders of his superior officer, is justified (in obeying those orders) unless the order be manifestly illegal: *Keighley v Bell* [1868] 4 F & F 773. (M & H DOIL) (UK) (‘MHDIL’)

**11. Compliance with Unlawful Orders:** “Members of the public are NOT obliged to comply with unlawful, unconstitutional or criminal directions from any statutory authority figure such as a member of An Garda Síochána, by Courts Service staff or by members of the Judiciary.”<sup>10</sup>

**12. Facilitation of Unlawful Orders:** “That any knowing compliance, assistance or facilitation of any such improper or unlawful acts by any other person would constitute direct complicity with any such unlawful acts.

That as per the respective Irish and EU legislation, it remains unlawful for any resident or citizen of this State to knowingly participate in unlawful, corrupt or criminal activities.”<sup>11</sup>

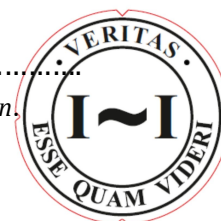
### Finding / Determination:

1. High Court Orders must be obeyed on pain of penalty of a fine or imprisonment.
2. “Manifestly illegal” orders from any quarter should not be obeyed.

Reg No. Pages & P	I-I/FCA/009/3/12	Committee	JH/NM/WN/KD/SM/CM/JM
Date of Approval	01.03.2021	Served by	

I hereby declare that this is a true copy of the original PDF version.

Submitted / served by.....  
The signed and sealed original of this Asseveration is on file at the Integrity Ireland Association.



<sup>8</sup> <https://www.shankarlawoffice.com/post/effect-of-not-obeying-court-orders> (Canada)

<sup>9</sup> 166 PC - Can I go to jail for "contempt of court" in California? (shouselaw.com)

<sup>10</sup> I-I 'QTC 1 Notice of August 2016, para 6.

<sup>11</sup> I-I 'QTC' 2 Notice of May 2019, paras 7 & 8.