

Norwich Pharmacal Orders in Ireland: what you need to know

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A Norwich Pharmacal Order is a type of remedial order delivered by the Court which compels a respondent to disclose information of both wrongdoings and wrongdoers "who seek to hide behind the mask of anonymity". [1] They are normally used to help identify a defendant so that legal action may be brought against them. Lord Reid, in *Norwich Pharmacal*, [2] stated that a person who has become mixed up in the wrongdoing of another has a "duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers".

In Ireland, in order to successfully obtain a Norwich Pharmacal Order, an applicant must show that the litigant has a very clear and unambiguous case of wrong. [3] In the *Salesian Secondary College* [4] case, the following general principles for allowing a Norwich Pharmacal Order were:

- that the plaintiff applying has established "very clear proof" of wrongdoing
- the defendant is "mixed up" in the wrongdoing, though may not itself be liable
- the plaintiff seeks the identity of the wrongdoers
- the defendant is in a position to provide the information sought
- the plaintiff has no other means of ascertaining the information sought

It is also noteworthy that the Plaintiff will, usually, be liable for the legal costs of the Respondent. As this procedure is only currently possible before the High Court, it can be an expensive process.

Future in Circuit Court?

It was reported on 28 March 2023 that legislation to introduce reforms to defamation law in Ireland are to be introduced by the end of the year. The proposed bill, General Scheme of the Defamation (Amendment) Bill, has just been approved for publication. One reform of the Bill is to create a new statutory power for the Circuit Court, as well as the High Court, to make a Norwich Pharmacal

Order, making the process less expensive and more accessible.

It is yet to be seen whether this will relate specifically to defamation matters or create a wider jurisdiction. Indeed, even if ultimately specific to defamation, it is likely that this sets the basis of a general approach to facilitate such applications being brought in the Circuit Court.

Use in foreign proceedings

One consideration regarding the obtaining of Norwich Pharmacal Orders in Ireland arises where there is no relationship with the Plaintiff seeking the Norwich Pharmacal Order and Ireland itself. An example is where the Plaintiff is seeking the Norwich Pharmacal Order in respect of proceedings issued outside Ireland. Although there is no Irish case law on this matter, nothing on the face of the test as laid down in *Salesian Secondary College* prohibits the application for a Norwich Pharmacal Order for use in foreign proceedings.

Furthermore, it has been considered in both the Cayman Islands and the British Virgin Islands, and both jurisdictions have provided certainty to claimants that the relief is available in support of foreign proceedings.

The general principles for applying for a Norwich Pharmacal Order in Ireland are set out in the *Salesian Secondary College* case and the Applicant must demonstrate a clear and unambiguous case of wrong. It is likely that legislation will soon provide for Norwich Pharmacal Orders to be sought in the Circuit Court, making them a more accessible tool in litigation. There is currently no legal certainty in Ireland regarding the Court's willingness to grant cross-jurisdictional Norwich Pharmacal Orders, but they have been granted in some other jurisdictions. Furthermore, there appears to be nothing in the *Salesian* test that would prevent the Irish courts from granting a Norwich Pharmacal Order in respect of foreign proceedings.

[1] *Norwich Pharmacal Co v Customs and Excise Commissioners* [1974] AC 133

[2] *Ibid* no.1

[3] *Megaleasing V. Barrett* [1992] Wjsc-Sc 2494

[4] *Board of Management of Salesian Secondary College (Limerick) v Facebook Board of Management of Salesian Secondary School v Facebook Ireland* [2021] IEHC 287

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