



## GLOSSARY

“Who is standing up to speak for freedom of speech?”  
 “This bill needs to be amended. It isn’t in good shape. It emerged from Dail Éireann on a wave of generalised support and it has come before us in a state where it can be a charter for freezing genuine free speech, and prevent people from articulating unpopular views such as J. K. Rowling’s views, or whoever they are.” **Senator Michael McDowell, Seanad Éireann. (NUI, Independent), speaking on the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022. (13/6/23).**

**The Zalewski case, p10**  
 The Zalewski Case (Tomasz Zalewski v Adjudication Officer, WRC & Ors [2021] IESC 24) saw a challenge to the constitutionality of the adjudicative process established under the Workplace Relations Act 2015. A Supreme Court decision held that the exercise of powers by Workplace Relations Commission adjudication officers was an administration of justice within the meaning of Article 37 of the Constitution (Article 37 permits bodies, other than courts, to exercise “limited

functions and powers of a judicial nature, in matters other than criminal matters”) adding that the standard of justice administered under Article 37 “cannot be lower or less demanding than the justice administered in courts under Article 34” (The administration of justice is a function usually reserved for the courts under Article 34 of the Constitution). The Court found the WRC process fell short of the standard of justice required and two sections of the 2015 Act were deemed incompatible with the Constitution. The April 2021 ruling by the Supreme Court has considerable implications for administrative, adjudicative and regulatory bodies who exercise quasi-judicial powers, in particular if those matters are decided in private or contested facts are not addressed through evidence given under oath.

### **Double Construction Rule p11**

The Double Construction Rule is a principle of the presumption of constitutionality of acts of the Oireachtas. Where two or more interpretations of a legislative provision are reasonably open, the courts will favour a construction which is in accordance with the Constitution. The Double Construction Rule is outlined by Walsh J in the case of

*McDonald v. Bord na gCon* [1965] I.R. 217 as follows: “being an act of the Oireachtas, is presumed to be constitutional until the contrary is clearly established. One practical effect of this presumption is that if in respect of any provision or provisions of the Act two or more constructions are reasonably open, one of which is constitutional and the other or others are unconstitutional, it must be presumed that the Oireachtas intended only the constitutional construction and a Court called upon to adjudicate upon the constitutionality of the statutory provision should uphold the constitutional construction. It is only when there is no construction reasonably open which is not repugnant to the Constitution that the provision should be held to be repugnant.”

### **Irish Financial Services Appeals Tribunal, p10**

The Irish Financial Services Appeals Tribunal (IFSAT) was established by the Central Bank and Financial Services Authority of Ireland Act 2003. IFSAT is a quasi-judicial body with statutory powers to hear and determine appeals from certain “appealable decisions” of the Central Bank of Ireland as defined in Section 11 of the Central Bank and Financial Services Authority of Ireland

Act 2004. IFSAT is an independent tribunal which will hear and determine appeals from aggrieved parties against certain decisions of the Central Bank of Ireland. It aims to provide an accessible, efficient and effective method of appeal in an informal and expeditious manner. An appeal to the Tribunal is initiated by filing a Notice of Appeal with the Tribunal. The Central Bank then has fourteen days within which to deliver its Response to the appeal. Once the papers have been exchanged between the parties and any preliminary issues have been addressed, three Tribunal Members designated by the Chairperson as the panel assigned to the case, will hear the appeal and make a determination. IFSAT delivered its first decision on 31st August 2007 and by end 2023 had delivered 21 decisions, the most recent in February 2020. The members of the Tribunal are nominated by the Government and appointed by the President. The chair is The Hon. Mr Justice John MacMenamin.

*Photos (L-R) Senator Michael McDowell; logo of The Irish Financial Services Appeals Tribunal; Mr Justice John MacMenamin.*