The need for nullity in 21st century Ireland*

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I. Introduction.

It was not until 1989 that major reform of family law occurred in Ireland with the introduction of the Judicial Separation and Family Law Reform Act, 1989 (the 1989 Act). Indeed, the dearth of legislative intervention to modernise family law disputes was highlighted by the paucity of activity in the previous 15 years. One has to bear in mind that divorce was only introduced as recently as 1997 and only then after a couple of unsuccessful Supreme Court challenges.[1] The Maintenance of Spouses and Children Act, 1976 (the 1976 Act) statutorily provided for financial support and protection against domestic violence. The 1976 Act was particularly deficient in relation to domestic violence.[2] This along with the Family Home Protection Act, 1976[3] operated as the main legislative framework to deal with marital breakdown. The 1989 Act, as amended by the Family Law act, 1995, modernised judicial separation in providing new no fault grounds[4] for obtaining a decree of judicial

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[1] Family Law (Divorce) Act, 1997 came into effect on 27 February 1997 after two Supreme Court decisions removed the barriers temporarily erected *by McKenna v. An Taoiseach* [1995] 2 IR 10 and *Hanafin v. The Minister for the Environment* [1996] 2 IR 321. The former case involved a constitutional challenge to the government's publicly funded pro divorce campaign in the lead up to the referendum on divorce. A referendum was needed owing to the Constitutional prohibition on the legislature providing law on divorce. The use of public funds was a constitutional wrong capable of restriction by the courts but notwithstanding such unconstitutional behaviour the referendum was held and passed by the slimmest of majorities, 9114 votes in favour out of a total electorate of 1,628576. This slim majority led to the latter case challenging the validity of the referendum result. The challenge was rejected on the basis that while the government's unconstitutionally funded pro divorce campaign fell within the concept "of obstructing or hindering the conduct of a referendum" it was not established as a matter of fact that the pro campaign materially affected the result of the referendum owing mainly to the primacy of the secret ballot.

[2] No interim protection against domestic violence was provided for, a matter which was remedied by the Family Law Act, 1981 but the deficiency whereby only a spouse could apply for protection was only remedied by the Domestic Violence Act, 1996, a piece of legislation not without its own deficiencies as evidenced by *D.K. v Crowley* [2002] 2 I.R. 744 in which the Supreme Court declared unconstitutional Section 4 of the 1996 Act for failing to provide a time limit during which an interim barring order would remain valid.

[3] The Act confers a veto upon a spouse who has no legal interest in the family home. Such a home cannot be sold without the non-owing spouse first consenting in writing to any such sale.

[4] Section 2(1)(a)-(f) of the 1989 Act provides the following grounds: adultery, behaviour, desertion, separation for one year with the consent of the other spouse, separation for three years without the consent of the other spouse, the absence of a normal marital relationship in the preceding twelve months. Under divorce a mensa et thoro, the grounds for a decree were: adultery, cruelty and unnatural practices.

separation as well as revolutionising the ancillary reliefs[5] available on the grant of a decree.

Under the Family Law (Divorce) Act, 1996 the courts can grant ancillary relief orders identical to those available in judicial separation which are determined by reference to a comprehensive list of factors that court must consider.[6] Even though it is only seven years since divorce was introduced, the Supreme Court has recently directed how a particular category of case should be determined. Where a divorce case involves what is described as ”ample resources”, the Supreme Court has decided, notwithstanding Article 42.3.2 of the Constitution and the provisions of the Family Law (Divorce) Act, 1996 which clearly entitle the parties to make multiple applications for ancillary relief, that “clean break” orders in relation to property and financial matter should be ordered by the courts.[7]

Since 1989 therefore it would appear there is a modern basis on which to resolve matrimonial disputes. This basis, however, is not unrelated to significant developments in the law of nullity, in the 1980’s, 1990’s and to a limited extent in the new millennium. It is widely accepted by family lawyers[8] that the judiciary were instrumental in developing grounds upon which a decree of nullity could be granted. The motivation for such development was exclusively due to the absence of a legitimate method[9] of enabling unhappy couples to remarry. Notwithstanding these developments, which will be explained in due course, with the advent of divorce and

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[5] The 1989 Act provides for the following reliefs: pre trial period payments, orders under the Guardianship of Infants Act, 1964 (custody and access), orders under the Domestic Violence Act, 1996, orders under the Family Home Protection Act, 1976, period payment orders, lump sum payment orders, property adjustment orders, orders in relation to the family home (occupation and sale), pension adjustment orders, financial compensation orders and succession rights.

[6] Section 16 of the Family Law Act, 1995 and Section 20 of the Family Law (Divorce) Act, 1996 provide the following matters for the courts’ consideration: earning capacity, financial responsibilities, standard of living, age of the parties and duration of the marriage, physical or mental disability, contribution, effect on earning capacity, statutory benefits or income, accommodation needs, loss of benefit arising from the grant of a decree, the rights of other parties and in the case of divorce the contents of a separation agreement.

[7] *T. v. T.*, [2003] 1 ILRM 321.

[8] See Shatter, *Family Law*, 4th ed (Butterworths, 1997) and O’Connor, Key Issues in Irish Family Law (Round Hall Press, 1988)

[9] During the 1980’a and 1990’s married couples resorted to obtaining divorces in other jurisdictions which are not capable of recognition here unless one of the parties was domiciled in the jurisdiction granting the divorce at the time of the application. This has resulted in many foreign divorces not being capable of recognition under Irish law with consequential difficulties for second marriages entered into on the assumption that the foreign decree of divorce is valid and effective in Ireland.

judicial separation, it would be logical to assume that the number of applications for decrees of nullity would decline or at least remain at the same level. On the contrary however, the number of nullity applications has steadily risen since the introduction of divorce. The table below identifies the increase in three types of application:

Year	Judicial Separation	Divorce	Nullity
	Received	Received	Received
1/8/96 – 31/7/97	1,263	431	48
1/8/97 – 31/7/98	1,586	2,761	75
1/8/98 – 31/7/99	1,597	3,316	91
1/8/99 – 31/7/00	1,624	3,349	98
1/1/00 – 31/12/01	1,673	3,380	92
1/1/01 – 31/12/01	1,923	3,493	117

[10]

There is no real surprise with the judicial separation and divorce application numbers, but clearly a rise in nullity applications in a five year period from 48 to 177, whilst small in number by comparison with the judicial separation and divorce application numbers, is nonetheless a very significant increase. Of interest, however, is not the quantity of nullity applications, but rather the reason or motivation underlying the increase in applications.

II. Nullity in 1980's, 1990's and the new millennium.

As modern the legislative basis is for divorce and judicial, only the opposite can be said concerning nullity petitions. The jurisdiction of the High Court to grant decrees of nullity is based upon a piece of legislation some one hundred and thirty four years in existence, the Matrimonial Causes and Marriage Law (Ireland) Act, of 1870.

Broadly speaking, a decree of nullity may granted where the marriage is either voidable or void. Up until 1984, the only basis upon which a marriage was voidable was where one of the spouses was impotent. In 1984, however, the High Court declared, that by analogy with the impotence ground, a marriage could be

[10] Courts Service website, www.courtservice.ie

invalid where one of the parties was incapable of entering into and sustaining a normal marital relationship owing to the presence of a mental illness.[11] The rational underlying this major development in the law was that in addition to the fact that a physical inter spousal relationship is fundamental to a marriage so too is both an emotional and social one,[12] of which the inability to enter into such at the time of the marriage and sustain such thereafter,[13] rendered the marriage void. Initially the inability ground was established where one of the spouses suffered from a mental illness[14] but other inabilities, such as gross immaturity and homosexual orientation were accepted by the courts as rendering a marriage void. The Supreme Court in *U.F. v. J.C*[15] stated that the inability basis for granting a decree was a correct interpretation of the law. A review of the nullity cases since the 1990's relying on the inability ground identify gross immaturity as the condition constituting the inability.[16] The number of petitions based on immaturity far out number either mental illness claims or homosexual orientation.[17] Indeed the Supreme Court has addressed this ground albeit in vague terms which indicates that generally speaking immaturity cannot constitute an

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[11] In *R.S.J. v. J.S.J.* [1982] ILRM 263 Barrington J. acknowledged in principle that a mental illness could constitute the basis upon which such an inability could arise but declined to grant a decree on the absence of sufficient proof to that effect in the instant case.

[12] *D. v. C.* [1984 ILRM 173, Costello J. The reasoning is as follows *"Marriage is by our Common Law (strengthened and reinforced by our Constitutional Law) a life long union, and it seems to me to be perfectly reasonable that the law should recognise (a) the obvious fact that there is more to marriage than its physical consummation and (b) that the life long union that the law enjoins requires for its maintenance the creation of an emotional and psychological relationship between the spouses. The law should have regard to this relationship just as it does to the physical one. It should recognise that there have been important and significant advances in the field of psychiatric medicine sine 1870 and that it is now possible to identify psychiatric illnesses, such as for example manic-depressive illnesses, which in some cases can be so severe as to make it impossible for one of the partners to the marriage to enter into and sustain the relationship which should exist between married couples if a life long union is to be possible. Extending the law by reasoning by analogy is as old as the common law itself....and so it seems to me...that if the law declares to be null a marriage on the grounds that one spouse is through physical disability incapable of the physical relationship required by marriage it should do likewise where one spouse is through a psychiatric disability unable to enter into and sustain the whole inter-personal relationship which marriage also requires."*

[13] *S.C. v. P.D.* (orse C), Unreported High Court, 14 March 1996, McCracken J.

[14] *D.C. v. D.W.* [1987] ILRM 58, *M.E. v. A.E.* [1987] IR 147, *C.M. v. E.L.* (orse EM), Unreported, High Court, 27 July 1994, Barr J.

[15] [1991] 2 I.R. 348.

[16] *P.C. v. V.C.* [1990] 2 IR 91., *D. v. E.* Unreported High Court 1 March 1989, Barr J. , *G.M. v. T.G.* Unreported, High Court 22 November 1991 Lavan J. , *S. v. K.* Unreported High Court, 2 July 1992 Denham J. , *B.J.M. v. C.M.(C.)* [1996] 2 IR 547., *O.'R. v. B.* , Unreported High Court 6 May 1994 Kinlen J. M.J. v. D.P.M. Unreported Circuit Court, Buckley J. 21/2/97 Irish Law Times No. 8 1998 126-7., *D.K. v. T.H.(T.K.),* Unreported High Court February 25 1998, O'Higgins J. , *D.McC. v. E.C.* Unreported High Court, 6 July 1998, McCracken J., *P.K. v. T.K.*, Unreported, High Court, 14 March 2000, Murphy J., *M.O.C. v. M.O.C.,* Unreported High Court, 10 July 2003, Finlay Geoghegan J.

[17] Decrees based upon immaturity were rejected

inability rendering the marriage void except where the immaturity constitutes a "personality disorder."[18]

The major difficulty with immaturity as constituting the inability ground is the lack of any precise definition of what constitutes immaturity. Uncertainty in this area is unwelcome, simply because there must be certainty as to the marriage contract.

III Defective Knowledge

As unwelcome this particular aspect of the law of nullity is, recent developments, admittedly now curtailed, show the further judicial expansion of the laws of nullity. The ground commonly described as "defective knowledge" is of major concern.

The history of this particular development commences with the seminal Supreme Court decision in *N. v. K.*[19] This decision is widely regarded as the leading modern decision on nullity and relates specifically to the issue of duress in the context of a premarital pregnancy. The facts concerned the petitioning wife who was 19 and the respondent husband who was 20 when the former informed her parents of her pregnancy at Christmas in 1978. Following a meeting at which both sets of parents were present, the petitioner's father stated that the solution to the problem was marriage or a termination of the pregnancy. In light of the ultimatum, the respondent proposed marriage which took place within 6 weeks of the Christmas meeting.

The trial judge established a number of facts which were highly significant as they demonstrate a new approach adopted by the Supreme Court in addressing whether

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[18] *S. v. S.* [1992] 2 Fam LJ 33., Unreported Supreme Court, 3 April 1992 Finlay C.J. at p. 11 stated ".... *neither immaturity in a general sense nor irresponsibility can of itself and to a general degree only, constitute a ground for nullity, though in particular cases personality disorders may effect true consent, or may affect the capacity of a person to maintain a lasting marriage relationship. The capacity to maintain a lasting marriage relationship must, however, be distinguished from an intention that if it was not convenient or successful to try and do so that the attempt could be abandoned.*"

[19] [1986] ILRM 75

a valid consent to marriage has been given.[20] In short, the petitioning wife was a submissive and obedient child entirely confused by an unplanned pregnancy with an uncertain future who acceded to her parents' views on marriage in the circumstances. Of particular significance was the absence of any real independent advice on her alternatives to marriage, such as adoption and single parenting. It must be remembered that children born out of wedlock to use the phraseology at the time was a particularly heinous social stigma. The trial judge refused a decree of nullity but that decision was reversed on appeal to the Supreme Court and in so doing handed down a modern formulation of what constitutes a valid consent to marriage. A valid marriage is entered into where there is "a fully free exercise of the independent will of the parties"[21]

The need for a consent of this nature was based upon two important factors. Firstly, marriage as an institution attracts Constitutional status and protection by virtue of Article 41 of the Constitution.[22] and was then but is now no longer an absolutely irrerovocable union.. The consent necessary to enter such a union must thus reflect the Constitutional nature of the legal relationship the parties intended to enter and the nature of the consent must be commensurate with the status that marriage attracts. In adopting a purely subjective assessment of the petitioner's

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[20] Ibid at 81 citing "[1] The petitioner is a quite, unassertive girl. She was brought up strictly but always obedient to her parents… [2] The petitioner said there was no question of having the baby at home without being married and I accept this. I am satisfied that at this stage there was only one outcome contemplated by the petitioner's parents, and that was marriage…[3] The parties would not have got married but for the pregnancy. [4] The respondent was completely immature and unsuited for marriage. He had no job and no means of supporting a wife and child. [5] The petitioner was little more than a schoolgirl. She did not see any alternative to getting married. She would not consider an abortion. If she did not get married she believed she would get no support from her parents and would have to leave home. [6] She acquiesced in her parents' wishes from the start. They said marriage was the best thing and she thought they knew what was best. [7] She got no advice on what alternatives she did have, such as adoption or bringing the child up as a single parent. [8] The shock of discovering she was pregnant probably put her into a state where she could not think clearly.

[21] Ibid at 82.

[22] Art 41.1.1. The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

Art 41.1.2 The State, therefore guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

Art 41.2.1 In particular the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

Art 41.2.2 The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

Art 41.3.1 The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

personal circumstances surrounding the marriage, the Supreme Court was of the view that this was in essence an arranged marriage[23] to which the petitioner had not freely consented owing to the duress the parties were subjected to by the petitioner's parents. Here the quality of the apparent consent given was inadequate and thus rendered the marriage void. A close examination of the judgements reveals that the invalidity of the consent arose from a number of factors. In addition to the duress present in this case, there was also the important lack of information given to or obtained by the petitioner. In particular, the petitioner was unaware of the alternatives to marriage and agreed to marry in ignorance of the alternatives which affected the quality of the consent given. The judges spoke in similar tones referring to the fundamental nature of the consent to a marriage which had to be "full and free", [24] "personal and full internal and informed", [25] "full and valid"[26] and one "based upon adequate knowledge".[27] These various references to "adequate", "informed" and "full and free" are linked to the specific facts of the case, namely the lack of independent advice. Such an absence of advice invalidated the consent given. One can have no doubt but these phrases in their legal context can only relate to either the petitioner's ability to appreciate the nature and consequences of the marriage contract or to the particular fact that the decision to marry was made in ignorance.

As simple an analysis as the above may seem, the manipulation of *N. v. K.* in recent nullity decisions created a worrying trend in a number of cases.

In *M.O.'M. (orse M.O.'C.) v. B.O.'C.*[28] a unanimous Supreme Court in a single judgement radically interpreted the simple concept of "informed consent" to provide a brand new ground upon which to annul a marriage. The facts very succinctly involved a laicised priest who as part of his laicising process was advised by his Bishop to attend a psychiatrist to assist him in his transition from secular to lay life. Some three years later the respondent husband married but failed to inform the petitioning wife that he had attended a psychiatrist. It was found as a fact that the

[23] Ibid at 91.
[24] Id.
[25] Id,
[26] Ibid at 92.
[27] Ibid at 93.
[28] [1996] 1 IR 208

respondent was not suffering from a major personality disorder rendering him incapable of entering into and sustaining a normal marital relationship thus precluding the marriage from being declared void on the inability ground.

The Supreme Court, however, declared the marriage void on the reasoning that the petitioning wife did not give an "informed consent" to the marriage. The absence of an informed consent arose exclusively from the fact that the wife was unaware that the husband had attended a psychiatrist prior to marrying. The petitioner had categorically stated in evidence before the trial judge that she would not have married the respondent had she been aware that her husband had attended a psychiatrist.

The test for the validity of such a consent comprises two elements. Firstly it is subjective. Secondly, the party in question must have adequate knowledge of every circumstance relevant to the decision she was making, so that her consent could be said to be an informed one. Such a test is inherently dangerous as it is primarily based upon the subjective and retrospective view of a party to a broken marriage. There are no objective factors operating to enable a court to restrain the application of such a principle and thus potentially operate to invalidate many marriages where one party to the marriage has failed to divulge some aspect of their past life to a prospective spouse. The position is all the more undesirable as the ground is a void ground which in technical legal terms renders the marriage void a*b initio*, that is without the need to obtain a decree of nullity to that effect, though in practice decrees are invariably sought irrespective of the ground upon which they are based.

Blayney J. in the Supreme Court was of the view that the husband's failure to divulge this information deprived the petitioner of knowledge of a circumstance which was clearly relevant to the decision she was making. The test applied is an objective assessment of what the respondent should have done in the circumstances, but is must be recalled that before this issue can be addressed the court is first obliged to accept the subjective opinion of the petitioner. Clearly this is an unsatisfactory basis upon which to determine whether a marriage is valid or not.

The potential of such a decision is obvious and the inherent danger of such a precedent was born out in a High Court decision some three months later. In *B.J.M. v. C.M.*[29] the High Court annulled a marriage in circumstances where the husband was unaware of a physical deformity the wife suffered from.[30] The husband only discovered the deformity on the wedding night and was repulsed by what he saw. While no specific authority is cited by the court, and there is no mention of the *M.O.'M.* case, there is clear reference to the *N. v. K.* phraseology[31] referring to the want of informed consent and depriving the petitioner of an election he was entitled to make prior to entering the marriage. The test it would appear is threefold. Firstly there must be an illusion as to the physical appearance of the party in question. Secondly, the illusion once a reality must create revulsion which thirdly must be instantaneous on revelation. Inherent in the test formulated is the requirement that the respondent deceive the petitioner, but the motive behind such need not be intentional and an innocent failure to disclose such information would suffice to annul a marriage. While this reasoning is disturbing in itself owing to the potential exploitation of "failing to inform" concept, no authority is cited to substantiate the proposition, and thus the remainder of the judgement is likewise of dubious validity.

The High Court proceeded to declare the marriage void on the basis of the inability ground. This is most curious as the gist of the petitioner's argument was that owing to the respondent's defect, namely her physical appearance, that defect created in the petitioner an inability to "maintain an emotional and psychological relationship with the respondent". Ordinarily the inability ground arises from some defect in one party where both the inability and defect are possessed by the same party. Here, however, the wife's defect in itself, could cause the husband to possess the necessary inability to render the marriage void. The logic of such is all the more questionable in light of

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[29] [1996] 2 IR 574

[30] The wife had a scar from her breast to her vulva suffered as a result of her nightdress catching fire when she was a little girl.

[31] *To any partner or intended partner, the concept of relationships - a life long partnership - prior to marriage is based upon a mixture of respect and desire and of the reality or near reality of the partner's or intended partner's concept of certainly the physical reality of his basic concept. If his basic concept proves wholly illusory and has in fact no foundation in fact but on the contrary creates a revulsion, he has in fact not entered into the contract of marriage with a full, free and informed consent and accordingly that his consent was apparent rather than real.*" And "*she deprived him of an election which he was entitled to make prior to entering into the contract of marriage, namely whether he would accept his future wife with all her physical infirmities and this has rendered this marriage null and void"*

the fact that a number of children were born to the alleged marriage, which fact alone would seriously raise the doctrine of approbation.

These two decisions are not the only cause for concern. In *M.J. v. D.P.M*[32] a marriage was declared void in circumstances where the petitioning wife was unaware that her husband was an alcoholic and gambler.

On the voidable ground further worrying developments are evident in *D.McC. v. E.C.*[33] where both alcoholism and exposure to an abusive childhood in which the petitioning husband witnessed the physical abuse of his mother and also suffered abuse at the hands of his father rendered the husband incapable of both consenting to the marriage it self and constituted an inability for a voidable marriage.

The above developments occurred within the period 1996 to 1998, which co-incidentally reflect the noticeable increase in nullity petitions at this time.

The disturbing nature of these developments has been radically curbed by a recent Supreme Court decision. At least the "defective knowledge" ground has been restricted to its own particular facts. As absurd as the above cases may be, the facts of *P.F. v. G.O.'M*[34] indicate how important a clear and unambiguous statement of principle is needed. Quite simply in *P.F. v. G.O.'M* the respondent wife conducted an extra marital affair with a fellow employee unbeknownst to husband prior to and subsequent to the marriage. The petitioning husband's claim, and a valid one at that based on the existing authority, was that had he known of his wife's infidelity, he would not have married her.

The Supreme Court rejected the petition stating that the former Supreme Court decision in *M.O.'M* was limited to its own particular facts. Thus only where some fact relevant to a person's mental condition is not revealed can the notion of "defective knowledge" arise to invalidate a marriage. The Supreme Court also marginalised the *B.J.M.* decision by stating that such was of little authority owing to

[32] Unreported Circuit Court, Buckley J 21/2/97, Irish Law Times No 8 1998, 126-7.
[33] Unreported High Court, 6 July 1998, McCracken J.
[34] [2001] 3 IR 1.

the fact that it was an uncontested petition. A new attitude is clearly identifiable in the Supreme Court. McGuinness J. categorically stated that cases such as *P.F. v. G.O.'M.* properly fell within the remit of judicial separation and divorce. The crucial point being that the marriage in this case was valid and subsisting and that it had merely failed. This attitude is also evident in other recent cases where attempts to secure invaluable evidence as to the invalidity of marriage have been restricted. In *P.McG. v. A.F.*[35] the Supreme Court restricted the role of the medical examiner in nullity proceedings so as to prevent the psychiatrist interviewing third parties to gather evidence concerning the respondent's state of mind at the time of the marriage ceremony.[36] The only possible reason for attempting to expand the role of the medical examiner in this novel fashion would be to gather sufficient evidence upon which a decree of nullity could be granted.

While a change in judicial attitude towards nullity petitions is evident, a clearer statement of intent could have been made by overruling the *M.O.M.* principle in its entirety on a simple ruling that it was a fundamental misinterpretation of the *N. v. K.* decision, of which it clearly is.

What possible advantage is there in seeking nullity decrees over the judicial separation and divorce? The answer is a simple one. There are considerable financial advantages linked to a decree of nullity as unlike in the United Kingdom, there is no financial and property ancillary relief orders available on the grant of a decree of nullity. Thus a spouse has no financial obligation towards the other spouse. Obligations remain for any dependent children born of the relationship but that is the full extent of the obligation. Recent divorce cases indicate, especially in ample resource cases, between 1/3rd and ½ of the total marital assets being awarded to the financially dependent spouse. Such awards, it is suggested are the reason for the increase in nullity petitions for no other reason other than to avoid what would otherwise be exposure to considerable financial liability.

[35] [2001] 1 I.R. 599.

[36] A number of evidential reasons were given justifying not interviewing third parties. These were: It would otherwise constitute a preliminary hearing of persons other than the parties involved in the petition; It would cause problems in cross-examining the witnesses and the operation of the hearsay rule and the weight to be attached to the medical inspector's opinion would be undermined by claims and counter claims of failing to include other individuals.

Apart from utilising the nullity jurisdiction to avoid such responsibility, the legal reasoning underlying the more worrying developments of the law nullity are justification enough to warrant a complete overhaul of this archaic and uniquely Irish solution to what is now a past Irish problem. Lax and unprincipled reasoning underlying the grant of decrees of nullity only invites the creative lawyer to do what the common law is famed for, namely the development of the law by analogy. The reliance on the nullity jurisdiction to resolve marital breakdown is now no longer necessary. While there is merit in retaining and codifying the void grounds for a decree of nullity, the voidable basis should be abolished as a means of invalidating a marriage. Matters that concern the deterioration of the inter personal spousal relationship are better resolved within the parameters of judicial separation and divorce.

In *N. v. K.* as far back as 1986, the Supreme Court expressly called for a modern statute to regulate the law of nullity. Similarly that call was again made in *P.F. v. G.O.'M.* When and if the Irish Parliament answers the call remains to be seen.