

**THE HIGH COURT
DUBLIN**

[2007 No. 80 J.R.]

BETWEEN**HAZEL LAWLOR****PLAINTIFF**

**AND
THE MEMBERS OF THE TRIBUNAL OF INQUIRY
INTO CERTAIN PLANNING MATTERS AND PAYMENTS**

DEFENDANTS

**AND
IRELAND AND THE ATTORNEY GENERAL**

NOTICE PARTY**Judgment delivered by Mr. Justice O'Neill on Friday, 27th April, 2007**

1. There are two motions before the Court, one for the applicant seeking a stay on the Quarryvale II Module hearing due to commence on 30th April of this year, next Monday, the other on behalf of the respondent seeking an Order setting aside the leave granted to the applicant by Peart J on 29th January 2007 to seek certain reliefs by way of Judicial Review.

2. The background to this matter is well known. The applicant is the widow of the late Liam Lawlor, a former TD and member of Dublin County Council who died tragically in a road traffic accident abroad in October 2005.

3. The respondent pursuant to its Terms of Reference is in the course of investigating certain matters concerning the Quarryvale development.

4. The late Liam Lawlor was the subject of some of that investigation and was a witness in the public hearings prior to his death.

5. The module in question though one was broken into two parts: Quarryvale I and Quarryvale II. Apart from some additional cross-examination of one witness, necessitated by the disclosure of material consequent on court challenges brought in recent times, the public hearing in Quarryvale I has been completed.

6. The public hearing in Quarryvale II commenced in November 2005. An opening statement was made by Counsel for the Tribunal whereupon an application was made to this court by Owen O'Callaghan for leave to challenge the continuing public hearing of that module.

7. Leave was granted in that case and in due course that module was stayed pending the determination of those Judicial Review proceedings. These proceedings were heard in the High Court over 15 days in April 2006. Judgement was given in July 2006 refusing the reliefs sought.

8. An appeal was taken by Mr. O'Callaghan and that was heard in January 2007, and judgments were given in March 2007 affirming the judgment and Order of the High Court.

9. When the Quarryvale II module was opened in November 2005, an application was made on behalf of the applicant in these proceedings for limited representation. That application was expressed in the following terms as revealed in the transcript of the Tribunal. It is as follows:

"The first is on behalf of Mrs. Hazel Lawlor for limited representation. As you are aware, Mrs. Lawlor is a witness in this module of the Tribunal. She has asked for limited representation in that regard.

My second application is in regard to the estate of Mr. Liam Lawlor. The family have met and have decided that they wish to defend Mr. Lawlor's name notwithstanding that he is bereaved and they have asked that his estate would be afforded limited representation on occasions when issues that are pertinent to Mr. Lawlor, such as those outlined in the opening statement by Ms. Dillon today, could be addressed and that his position as is known to the family and is documented could be put to certain witnesses.

On that regard, the application that I make is that his estate would be granted limited representation, again to deal with issues that are relevant to Mr. Lawlor."

10. In addition Counsel for the Applicant applied for an Order "covering her costs" in the Tribunal in the following terms:

"The final matter I wish to bring to the Tribunal is the issue of costs. Mrs. Lawlor is now a widow and the main support of the family was obviously Mr. Lawlor. Indeed already her pension is being reduced and she is in a position of limited means.

Now, I understand the Tribunal's attitude to costs has been to make a decision towards the end. What I would say in an application for costs on behalf of Mrs. Lawlor and the estate is that the Tribunal would have an inherent jurisdiction to visit this issue. And in the circumstances where Mrs. Lawlor is of limited current means to support both herself and her family, insofar as there is anyone dependant, that it would be something that the Tribunal could consider in exceptional circumstances that we find ourselves in.

Mr. Lawlor by all accounts is a central figure in this module and modules to come, and that is borne out by Ms. Dillon's opening statement. Mrs. Lawlor has asked me to make the application to you in the limited circumstances she seeks representation, that the Tribunal would consider covering her costs from here."

11. On the costs issue the Tribunal refused the application as follows, and this is what was said by the Chairman:

"In relation to costs, I think you know probably as well as anyone that our hands are tied. We are not in a position to provide for costs in advance of the conclusion of the module and in the normal course prepared and published. Even in circumstances where an individual is unable to pay for his or her legal representation, that particular issue, I think you know, has been well flagged and argued in another Tribunal and to some degree in this Tribunal before, but certainly to a

greater extent in another Tribunal. And there is no legislative provision which would allow us direct that Mrs. Lawlor or the estate of Mr. Lawlor should get their costs at this stage or could in any way be guaranteed their costs."

12. The Tribunal granted representation to the applicant in her own right as a witness. In relation to Mr. Lawlor, the Tribunal granted representation in the following terms:

"Now, in relation to the estate of Mr. Lawlor, we have no difficulty in making a grant in favour of the estate. Presumably there has been no representation."

13. And it goes on later to say:

"Now, I think on that basis we will make a grant on behalf of Mrs. Lawlor acting on behalf of the estate, but on an interim basis. Your solicitor will have to satisfy the Tribunal, preferably before the end of this term but certainly early in the New Year, that in fact Mrs. Lawlor has taken steps to have herself appointed as the legal personal representative of the estate of Mr. Lawlor."

14. Following on that by a letter of 1st December 2005 from the Tribunal to the applicant the following was said in respect of representation, and I quote from the letter as follows:

"The Tribunal has also granted legal representation to Mrs. Hazel Lawlor in her capacity as the intended personal representative of the estate of the late Liam Lawlor.

This representation has been granted notwithstanding that a grant of probate has not yet been extracted. The Tribunal has afforded Mrs. Lawlor legal representation on behalf of the estate of her late husband for the reason articulated by her counsel at yesterday's public hearing. The limited legal representation granted has been granted on an interim basis as the Tribunal requires confirmation from Mrs. Lawlor that her application for probate is being progressed.

I would be grateful if you would inform the Tribunal as to the progress in this regard if it is the case that you have instructions from Mrs. Lawlor to extract grant of probate on her behalf. If otherwise, please obtain Mrs. Lawlor's instructions as to how and when her application for a grant of probate is to be made and through whom."

15. Later in the letter the following is said, and I quote:

"The Tribunal is complying with its obligations to adopt fair procedures by affording Mrs. Lawlor limited representation in respect of the matters involving the estate of her late husband by permitting her to have legal representation before the Tribunal for that purpose, by affording her the opportunity to examine witnesses through counsel and the opportunity to make submissions through counsel at the conclusion of the evidence."

16. In these proceedings Counsel for the Tribunal confirmed that on a humanitarian basis the applicant was, as a concession, given limited representation as the personal representative of the late Liam Lawlor to defend the reputation of Liam Lawlor in the oral hearings.

17. I propose to deal with the respondent's application to set aside the leave granted first.

18. I am satisfied from the authorities opened to the Court, namely *Adams -v- Director of Public Prosecutions* [2001] Irish Reports at 47; *Adams & Jordache -v- The Minister for Justice, Equality and Law Reform* [2001] 3 Irish Reports; and *Voluntary Purchasing -v- Insurco Ltd* [1995] 2 ILRM at 145, that this court has a jurisdiction to hear and determine such an application.

19. The test which an applicant seeking to set aside leave must satisfy is stringent. This is a jurisdiction to be invoked very sparingly and an Order setting aside leave should only be granted where on the inter-parties hearing, as we have had, the Court is satisfied that the leave plainly should not have been granted. In this regard see the judgment of McGuinness J in *Adams -v- The Minister for Justice, Equality and Law Reform* [2001] 3 Irish Reports at 53.

20. The respondent submits on this application that the applicant has no *locus standi* to maintain these proceedings. This submission is based principally on the authority of *Hilliard -v- Penfield Enterprises Ltd* [1990] Irish Reports at 138 and the case of *Murray & Gibson -v- The Commission to Inquire into Child Abuse & Others* [2004] 2 Irish Reports at 222 and is to the effect that there is no right to defend the reputation of a deceased person and hence no such right can be exercised by anyone on behalf of a deceased person.

21. Mr. Giblin SC for the applicant accepts that the general law does not protect the reputation of a deceased person and thus in general no other person can assert a right to defend the reputation of a deceased person.

22. However, it was submitted that having been given a right of representation by the Tribunal for the purpose of defending the reputation of the late Liam Lawlor in the proceedings of the Tribunal, the applicant is entitled to avail of all of the normal legal remedies for the purpose of defending and vindicating that right, including maintaining these proceedings.

23. Mr. McDonald SC in reply submits that the grant of representation to the applicant was a humanitarian concession and cannot estopp the respondents from invoking a defence to these proceedings which the law undoubtedly affords them.

24. At this juncture in the proceedings it is appropriate to set out the grounds and the reliefs in respect of which the applicant has been given leave. I take them from the Notice of Motion grounding the substantive proceedings and they are as follows:

"(i) A Declaration that the respondents may not make findings of serious misconduct against the late husband of the applicant unless supported by evidence proven beyond any reasonable doubt.

(ii) A Declaration that the respondents may not make findings of serious misconduct against the applicant unless supported by evidence proven beyond any reasonable doubt.

(iii) A Declaration that the respondents may not make findings of misconduct against the applicant's late husband in consequence of the gross unfairness of procedure to which he was exposed by the respondents.

- (iv) An Order directing the respondents to correct the record of its proceedings for a certain day by omitting the entry indicating that Mr. Seamus Ross had been paid a sum of £500,000 by the late husband of the applicant.
- (v) An Order directing the respondents to furnish to the applicant all relevant material, whether recorded in written or electronic form in its power, possession or procurement prior to the commencement of oral hearings affecting the applicant.
- (vi) An Order directing the respondents to furnish formal rulings, with reasonable expedition, to all applications which may be made by the applicant or on her behalf.
- (vii) An Order directing the respondents to furnish, with all due expedition, a formal response to all applications made by the late husband of the applicant in respect of which no rulings have yet been furnished.
- (viii) An Order directing the respondents to make all necessary financial arrangements to enable the applicant to engage effective legal representation for herself in the course of proceedings before the respondents.
- (iv) A Declaration that the respondents failure to provide financial assistance to the applicant so as to enable her to engage effective legal representation at the proposed Inquiry being conducted by the respondents constitutes a failure on the behalf of the respondents to conduct the said Inquiry with fair proceedings.
- (x) A Declaration that the failure by the respondents to take reasonable steps to assist the applicant to secure effective legal representation is a violation of fair procedures in accordance with which the respondents are required to conduct their business.
- (xi) A Declaration that the failure of the respondents to provide the applicant with the means by which she may secure effective legal representation at the said Inquiry being conducted by the respondents constitutes a breach of the constitutional rights of the applicant and, in particular, of her constitutional right to protect and vindicate her good name and the good name of members of her family, including her late husband.
- (xii) A Declaration that the provisions of the Tribunals of Inquiry Acts 1921 to 2002, when properly construed, permit the respondents to provide or cause to be provided to the applicant legal representation or sufficient means to enable the applicant to secure legal representation at the hearing of the Inquiry to be conducted by the respondents.
- (xiii) An Injunction restraining the respondents from continuing with any public hearing on any matter affecting the applicant until the Notice Party takes reasonable steps to provide the applicant with financial assistance to secure legal representation.
- (xiv) An Injunction restraining the respondents from continuing with any public hearing on any matter affecting the applicant until further Order of this Honourable Court."

25. The grounds upon which leave was granted were as follows, and I quote:

- "(i) Findings of serious conduct which would have a damaging effect upon the reputation of the applicant and her late husband, that the making of such findings on a civil standard of proof would amount to a failure by the respondents to protect and vindicate the good name of the applicant.
- (ii) Mr. Seamus Ross did not state that the late husband of the applicant paid him £500,000 and this erroneous note has damaged the reputation of the applicant's late husband and the respondent Tribunal has wrongfully failed, refused or neglected to correct its own record despite various requests from the applicant's husband prior to his death.
- (iii) The respondents failed, refused and neglected to make relevant material available to her late husband and thereby failed to protect and vindicate his constitutional right to his good name and the applicant reasonably fears that she will be subjected to similar treatment.
- (iv) The respondent failed, refused or neglected to follow fair procedures in the conduct of hearings which affected the late husband of the applicant and the applicant reasonably fears that she will be subjected to similar treatment.
- (v) The respondents failed to respond in a meaningful manner to formal applications for rulings made by her late husband and the applicant reasonably fears that she will be subjected to similar treatment.
- (vi) The respondents forced the applicant's late husband to participate in its proceedings when they knew or should have known that his inability to fund legal representation placed him at a disadvantage and they thereby failed to discharge their duty to conduct their proceedings in accordance with fair procedures.
- (vii) By reason of the provisions of the European Convention on Human Rights, as transposed into Irish law, the proceedings conducted by the respondents, insofar as they are impacted on the applicant's late husband, the applicant herself and their children, are inimical to the concept of human rights and are null and void and have no effect in law, in that they are:-
 - (a) Grossly disproportionate to the allegations against the applicant's late husband.
 - (b) Grossly disproportionate to the alleged actions which prompted the establishment of the respondent Tribunal.
 - (c) Grossly disproportionate, in its 2004 Terms of Reference, to the matters referred to at (a) and (b) hereof and grossly oppressive of the applicant's husband's rights in that the legal landscape, in which he was struggling to vindicate his good name and reputation, was altered on a basis which was entirely arbitrary and contemptuous of his rights as a witness to the application of fair procedures by the respondents.
 - (d) Grossly inimical to the human rights of the applicant's husband, the applicant herself, her children, their extended family in that the proceedings which have affected them have been excessive in length and oppressive in

character.

(e) Grossly disproportionate to the allegations against the applicant's husband in that they have placed enormous mental and physical pressure over an inordinately lengthy period of time upon him up to the time of his death and upon the applicant and her family at all material times."

26. Although the Order of Peart J gives leave against the Notice Party to seek relief relating to the constitutionality of certain provisions of the Tribunals of Inquiry Acts 1921 to 2002, and indeed the applicant's Notice of Motion in the substantive proceeding claims that relief, Mr. Giblin was adamant that that relief was not claimed. Indeed no relief was claimed against the Notice Parties and the Order of Peart J in that respect was in error. Likewise ground (vi) in the Statement of Grounds, which relates to a claim of unconstitutionality of relevant parts of these Acts insofar as they do not secure legal representation for the applicant or furnish her with legal representation in the Tribunal, was not pursued. And this is reflected in the Notice of Motion.

27. In consequence of this, the applicant consented to the reliefs sought against the Notice Party in the Notice of Motion in the substantive proceedings being struck out. Thus no claim is made by the applicant that any part of these Acts are unconstitutional.

28. The first relief sought relates to the standard of proof applicable where findings of serious misconduct are to be made by the Tribunal. This relief is matched to ground number (i).

29. In my view, the applicant as a person who has been granted representation in the Tribunal to defend the reputation of Liam Lawlor against allegations of serious misconduct has a direct interest in this issue. There is nothing in the evidence to suggest that in granting Mrs. Lawlor representation, the Tribunal intended this as a concession such that the normal rights attendant upon having representation were to be withheld.

30. The fact that there may be very strong authority against the proposition advanced by the applicant is irrelevant to her *locus standi* to litigate the point. I am satisfied that the applicant has a *locus standi* to litigate this issue in these proceedings.

31. As no allegations of misconduct are made against the applicant herself, relief (ii) does not arise and hence she does not have a *locus standi* to seek it.

32. Relief (iii) seeks relief in relation to historic matters i.e. the manner in which Liam Lawlor was dealt with by the Tribunal. The same can be said for reliefs (vii) and grounds (ii), (ii), (iii), (iv), (v), (vi)(a) and (vi)(b).

33. The applicant's *locus standi* to defend the reputation of Liam Lawlor arises solely from the grant of representation to her in that regard by the Tribunal and extends no further than that. The general law precludes any further incursion into a sphere of forensic activity, which I am satisfied on the authorities, is excluded from legal redress.

34. As the grant of representation given to the applicant is to represent Liam Lawlor in the forthcoming Quarryvale II Module, it is solely prospective in nature. In my view, any *locus standi* to maintain legal proceedings arising from the exercise of that right of representation must be confined to matters arising from the exercise of that prospective right of representation. It necessarily follows, therefore, that her *locus standi* cannot encompass past grievances which Liam Lawlor had with the Tribunal.

35. I would hold, therefore, that the applicant does not have a *locus standi* to litigate for reliefs (iii) and (vii) or to litigate grounds (ii), (ii), (iii), (iv) and (v).

36. Insofar as ground (vi) is concerned, it is cast in very imprecise terms. But I am satisfied that her *locus standi* is confined to issues affecting herself only, and in relation to Liam Lawlor only such matters as arise from the grant of representation in November 2005. She has no *locus standi* to litigate matters affecting her children.

37. Relief (iv) relates to the correction of the record of the Tribunal. As this appears to have been dealt with well in advance of Liam Lawlor's death, in my view the applicant could not be said to have a *locus standi* to pursue this issue. Ground (ii) relates to this and likewise the applicant, in my view, does not have a *locus standi* in relation to this ground.

38. Relief (v) seeks electronic and written recordings. As this relates to the prospective exercise of a right of representation, in my view the applicant has a *locus standi* to pursue this issue.

39. Relief (vi) is an unstateable form of relief. No-one could have a *locus standi* to pursue this.

40. Reliefs (viii) to (xiii) all relate to the applicant's claim that the respondent is obliged, pursuant to a correct interpretation of the Tribunals of Inquiry Acts 1921 to 2002, to furnish her with legal representation or to secure to her legal representation.

41. In my view, that is a claim that relates to the exercise by her of her representation as granted to her by the Tribunal and, as such, she is directly affected by the subject matter of this issue. That being so, in my view she has a *locus standi* to pursue these reliefs. There are no grounds which specifically relate to those particular reliefs.

42. This brings me to the applicant's Motion to stay the hearing of the Tribunal scheduled for 30th April 2007.

43. It is accepted by all parties that the test to be applied is that set out in the Campus Oil case; namely that in order to obtain a stay as sought here, the applicant has to demonstrate that there are fair questions to be tried at the hearing of the action, that damages will not be an adequate remedy and that the balance of convenience lies in favour of the grant of a stay.

44. It was submitted for the respondent and the Notice Party that none of the grounds advanced demonstrate an issue of substance or fair questions for trial at the hearing of the matter.

45. I am satisfied, on the standard of proof issue, that the authorities are against the contention advanced by the applicant to the effect that the standard of proof should be beyond a reasonable doubt where serious issues of misconduct are concerned.

46. Specifically it was held by the Supreme Court in the case of *Georgopoulos -v- Beaumont Hospital* [1998] 3 Irish Reports at 132 that the standard of proof applicable before an Inquiry or Tribunal was the civil standard. That is to say on a balance of probabilities and not the standard in criminal cases, namely beyond a reasonable doubt.

47. I am satisfied that on this issue, at this inter-party stage, it is clear that the applicant's case falls below the required threshold to justify interlocutory type relief.

48. Relief (iv) refers to the correction of the record of the Tribunal. As it was apparent that this had already been done well in advance of the death of Liam Lawlor, no relief could be granted under this heading and hence there is no basis in it for a stay as claimed.

49. Relief (v) is directed to obtaining for the applicant electronic recordings of interviews and other written materials. The Court was told that apart from a tape recording made by Mr. Noel Smith, Solicitor, of an interview with a client of his and which was furnished to the Tribunal, no other electronic recording was made or kept by the Tribunal.

50. Apart from this, it was far from clear that the applicant had exhausted the normal pursuit of an issue like this, with the Tribunal itself, before coming to court. I am quite satisfied that whatever residual grievance the applicant may have, as reflected in this issue, does not demonstrate a case of sufficient weight to satisfy me that there is a fair issue to be tried in this regard in the proceedings.

51. Reliefs (viii) to (xiii) relate to the issue of costs. These are addressed to the issue of whether the Tribunal is obliged to furnish to the applicant legal presentation or to secure to her the means of acquiring legal representation, in other words financial assistance in some form or another.

52. Again, with this issue, there is the strongest authority against the applicant's case. This issue was considered by Peart J in the case of *McBrearty -v- The Morris Tribunal* unreported 13th May 2003, and he concluded as follows:

"But these matters apart, I am completely satisfied that the Tribunal has no power under the section as contended for by the applicant, namely to make provision for or at least guarantee in advance the costs of the applicant's legal representation or those of his family or his extended family. The applicant is not entitled to any of the reliefs claimed at paragraphs 2, 3, 4, 5 and D of the Statement of Grounds."

53 I am satisfied that on this ground there is not demonstrated a fair issue to be tried in the proceedings.

54. These conclusions would be sufficient to decide the motion for a stay against the applicant. However, for the sake of completeness, I should add that in my view the balance of convenience lies heavily in favour of rejecting the application for a stay.

55. The applicant is not the only person with an interest in the proceedings of the Tribunal. Many more are affected and have been exposed in public to the content of the opening statement which was made in November 2005 and want an opportunity to deal with the allegations made against them. They have been denied this opportunity since November 2005 because of the O'Callaghan case. There is a very great public interest in having Inquiries into the matters under investigation in this Tribunal completed expeditiously. The Oireachtas, who has set up this Inquiry, are entitled to know the outcome of the Inquiry in a timely fashion. And perhaps, more importantly, the public are also entitled to know, the result, in a realistic timeframe.

56. The events which are the subject matter of the up-coming module of the Tribunal go back many years and the longer the delay in conducting a forensic inquiry into these matters, the more the quality of the Inquiry is put to the hazard.

57. Weighed against the contentions that the applicant has *locus standi* to litigate in these proceedings I am satisfied that the balance of convenience lies heavily in favour of refusing the stay sought.

58. This brings me to the question of delay. The respondents urged the Court to refuse the application for a stay on this ground alone. The delay in question is from November 2005 to the bringing of the Motion before me.

59. While this court has the utmost sympathy with Mrs. Lawlor in her bereavement and subsequent ill-health and also in assuming the very great burden of taking on representation in the Tribunal, in my view these proceedings here are to be seen in a different light. These proceedings have been prepared by lawyers and it is the lawyers that undoubtedly did whatever was necessary to advance these proceedings.

60. Having regard to the well-known obligation of promptness required when initiating Judicial Review proceedings, I am not satisfied that these proceedings were moved with the required promptness or within the time set out in the rules of the Court. I am quite satisfied that these proceedings could have been commenced long before they were and the delay has not been explained to my satisfaction.

61. In my view, the delay involving as it does an eleventh hour attempt to stay the Tribunal is unacceptable and alone would justify the refusal of the stay sought.

62. So in the result therefore, the application for a stay is refused and the respondent's application to set aside the leave is in substance refused, save what is granted in respect of certain grounds as set out in my judgment and refused in respect of the others.