THE HIGH COURT

JUDICIAL REVIEW

2006 881 JR

BETWEEN

PATRICK CURTIN, DENIS GOULD AND VINCENT JONES ALSO KNOWN AS THE CURTIN GOULD JONES SYNDICATE AND BRIDGET CURTIN

APPLICANTS

AND

THE IRISH COURSING CLUB

RESPONDENTS

JUDGMENT of Mr. Justice Herbert delivered on the 6th day of March 2009

By a letter dated the 13th March, 2006, the Chief Executive and Secretary of the Irish Coursing Club, (hereinafter referred to as "the Club") advised the applicants that a sample of urine taken from a greyhound dog called Boavista, after the running of the J.P. McManus Irish Cup, which race Boavista had won, was found on analysis to contain amphetamine. Enclosed with this letter was a "Certificate of Analysis No: PC 01-75" dated the 8th March, 2006 and, signed by James F. Healy, Head of Laboratory and authorised signatory on behalf the National Greyhound Laboratory, Limerick. It was accepted by the applicants at the hearing of this application for judicial review, that the above mentioned race was run at Limerick Greyhound Race Track on the 26th February, 2006, and, was also accepted that amphetamine is a prohibited substance.

This Certificate, which was addressed to the Club states that a urine sample, bearing Client Sample Identification Code, D.026 and Laboratory Sample Identification Code, MS 07038 was received on the 27th February, 2006, that an analysis started on that date using National Greyhound Laboratory Methods, SOPSPE 01 Conf and I0IGCMS 01 Conf. and, that the analysis of the sample showed the presence of amphetamine. This letter of the 13th March, 2006, advised the applicants that an enquiry would be held in due course and that they would be advised of the date and time.

By a letter dated the 3rd April, 2006, the first and fourth named applicants, on behalf of all the applicants, were asked to attend an enquiry to be conducted by the General Purposes Sub-Committee of the Club, on Monday, 8th May, 2006, at 2.30 pm, as to whether the drug amphetamine was present in Boavista at the Irish Cup Meeting on the 26th February, 2006, and, whether the applicants were in breach of Rule 88 of the Rules of the Club. This letter advised that in the event of such a breach being established, the applicants would be subject to the penalties set out in Rule 88 and, that the applicants could, if they wished, be represented at the enquiry by a legal advisor. The holding of this enquiry was adjourned, at the request of the applicants on the 8th May, 2006, and 3rd July, 2006, and, at their request was re-scheduled to take place on the 24th July, 2006.

Rule 88 of the Rules of the Club is in the following terms:-

> "A.-(1) The Stewards of the meeting shall have power at anytime to order an examination by a Veterinary Surgeon appointed by the Stewards of any greyhound entered for a meeting or which has run at a meeting. If they order a sample of urine or a sample of vomition or a sample of blood or other fluid or substance to be taken from a greyhound for analysis, such greyhound shall be detained at such place or places as the Stewards may appoint until a sample has been obtained. The taking of any such sample shall be in the presence of either the owner, trainer or any person in control of the greyhound at the time and the Steward of the meeting. The owner, trainer or any person in control of the greyhound at the time may, if he so wishes, have a Veterinary Surgeon of his choice present when a sample of blood is being taken from a greyhound under his care. The non-availability of a Veterinary Surgeon of an owner's choice shall not impede or delay the taking of a blood sample. The greyhound concerned shall not be removed subsequent to the taking of such sample, until permitted to do so by the Stewards who ordered the sample to be taken.
>
> (2) Should the owner, trainer or any person in control of the greyhound at the time, so wish, the total amount of the sample shall be halved in his presence and placed in separate receptacies and securely fastened and sealed. The first sample shall then be dispatched to an analyst chosen by the Executive Committee and the second dispatched by the Executive Committee to an analyst nominated by the owner on his behalf. The cost of the latter analysis shall be borne by the owner.
>
> (3) - The result of all analyses of samples taken must be made available to the Stewards of the meeting who ordered the sample to be taken. The result of the analysis of sample taken from each greyhound shall be sent to the owner of said greyhound. A copy of the analyst's reports shall be forwarded through the Secretary of the Irish Coursing Club to the Executive Committee.
>
> (4) - Should the owner, trainer or any person in charge of a greyhound or any other person obstruct or impede the taking of a sample under these Rules, or should the owner, trainer or any person in charge of a greyhound fail to present said greyhound for the taking of a sample under these Rules, then the owner, trainer and/or other person shall be liable to the penalties as contained under Section B of this Rule.

(5) - A duly authorised officer of the Club may exercise the authority conferred on the Stewards of the meeting by this Rule.

B – Where a sample has been taken from a greyhound and analysed in accordance with this Rule and the analysis has proved positive for a drug or drugs, stimulant or stimulants which shall include the finding of a metabolite or an isomer or an isomer of a metabolite of a drug or drugs, stimulant or stimulants which the Executive Committee consider improper, then the following shall apply

(i) – the greyhound shall be disqualified for the stake in question, the prize money shall be forfeited, the trophy or trophies shall be forfeited, the greyhound may be disqualified from racing, coursing and breeding for a period commencing on a date to be fixed by the Executive Committee.

(ii) – the registered owner/owners of a greyhound deemed to be in breach of this Rule may be warned off from all coursing meetings, greyhound tracks including greyhound sales, registering greyhounds and an Exclusion Order may be made against him under the terms of the Greyhound Industry Act 1958, and may be fined a sum of money which the Executive Committee consider appropriate.

(ii) – the trainer of a greyhound deemed to be in breach of this Rule may be warned off from all coursing meetings, greyhound tracks including greyhound sales, registering greyhounds and an Exclusion Order may be made against him under the terms of the Greyhound Industry Act 1958, and may be fined a sum of money which the Executive Committee consider appropriate.

(iv) – any other person deemed to be in breach of this Rule may be warned off from all coursing meetings, greyhound tracks including greyhound sales, registering greyhounds and an Exclusion Order may be made against him under the terms of the Greyhound Industry Act 1958, and may be fined a sum of money which the Executive Committee consider appropriate.

(v) – prize money and trophy/trophies which have been forfeited shall be distributed at the discretion of the Executive Committee.

(vi) – the Executive Committee may promote a greyhound in a stake which had been beaten in the said stake by a greyhound subsequently disqualified for the said stake under this Rule."

Reference was also made during the course of the hearing of this application for judicial review, to Appendix J of these Rules of the Club. Appendix J of the Rules of the Club provides as follows:-

"NATURAL JUSTICE

There are two rules which are referred to by lawyers as rules of natural justice. These rules apply to all administrative bodies when deciding disputes.

A – One of these rules is that the person or body deciding any dispute must be unbiased, that is, that no one ought to be judge in his own cause. Bias may arise from pecuniary interest or from personal attitudes or from personal relationships. Pecuniary interest will disqualify from adjudicating even though it be proved that the decision was not affected by the interest. Examples of personal attitudes which disqualify are animosity or friendship towards a party and partnership shown before or during a hearing. This rule is so obviously acceptable that it is seldom stated in any Act or statutory instrument.

B – The other rule of natural justice, which is known as the *audi alteram partem* rule, is that each party to an administrative dispute must know the case made against him and be given an opportunity to answer it. The rule requires that each party be informed of all the evidence and be given an opportunity to rebut it and that no evidence may be taken behind the back of a party. The hearing may consist solely of written submissions, in such a case, the rule requires the Tribunal to disclose all relevant communications made to it by each party to the other and to give reasonable opportunity for reply."

By a letter dated the 21st June, 2006, Solicitors for the applicants informed the Solicitors for the respondent that "they", (I think the proper inference from the terms of the letter is that the writer was indicating the applicants together with Solicitors and Counsel), would attend the enquiry on the 24th July, 2006. By this letter, they sought disclosure of the following:-

(a) All documentation by way of statements, or otherwise howsoever arising, to be put in evidence at the hearing.

(b) The names and addresses of all witnesses whom it was intended to call in evidence at the hearing.

(c) Any video evidence concerning the incident in question.

(d) Times and full details of the following:

(i) Who took the sample.

(ii) Where it was taken.

(iii) The method and means of delivery of the sample to the laboratory.

(iv) Who received the sample at the laboratory, (furnish copy receipt if issued).

(v) Storage of the sample at the laboratory.

By a letter dated the 18th July, 2006, the Solicitors for the respondent replied, (as subsequently appears, on the advice

of Senior Counsel) in the following terms:-

> "This is a domestic tribunal not a criminal trial and the hearing will be heard in the same manner as all enquiries carried out by the Irish Coursing Club in the discharge of their duties to date and in accordance with the Rules of Natural Justice. It has never been the practice to make available the Statements of Witnesses, if any, to the parties involved. There is no video evidence involved in this particular matter. It has always been the practice to furnish the party/parties involved with a certificate of analyses as has been done in this case, you will have received PC 01/75.
>
> With regard to the hearing itself it will be conducted in the normal way, evidence will be called in connection with the allegations and the witnesses will be available for cross examination in the normal way."

By letter dated the 19th July, 2006, the Solicitors for the respondent, while maintaining their position that the Club was under no legal or moral obligation to furnish any of the material requested by the Solicitors for the applicants in their letter of the 21st June, 2006, "purely out of courtesy and in order to expedite the hearing", enclosed with that letter the following additional three documents:-

> A copy of Drug testing Details.
>
> A copy of Drug testing – Certificate of Handling.
>
> A copy of Drug Testing – further Certificate of handling.

Each of these copy documents is a printed form on which various indicated details have been inserted in hand writing, and in most instances signed and witnessed.

The Drug Testing Details Form, contains the following:-

> "Date. 26th February 2006.
>
> Venue. Irish Cup Meeting.
>
> Greyhound. Boavista
>
> Earmark SUH.AV
>
> Code No., of this greyhound's sample. D.026.
>
> SECTION B:
>
> 1. Stewards of meeting witnessing the taking of above sample:
>
> Vet. Surgeon John Strumble M.R.C.V.S.
>
> Steward Jim McDonald
>
> 2. For Steward of Meeting: I certify the sample or split samples from the above greyhound was sealed and code numbered in my presence.
>
> Signed: L. Marmion.
>
> SECTION C:
>
> Concerns details on and of Owner/Trainer/Handler of the above greyhound.
>
> 1. State who held the greyhound while the sample was taken:
>
> Name Bridget Curtain
>
> Address . . . . . (stated) . . . . Handler.
>
> 2. Delete as applicable
>
> (a) I waive my right to split sample.
>
> (b) I wish to have split sample sent to Analyst (this option was deleted).
>
> 3. under the terms of Rule 88, I certify the above sample or split sample, if applicable, was taken, sealed and code numbered in my presence.
>
> Time: 3.20 pm,
>
> Signed: Bridget Curtin . . . . Handler.

Both Certificates of Handling are in the same printed format and state as follows.

First Certificate of Handling:-

"Irish Coursing Club

Drug Testing – Certificate of Handling

SECTION A:

I certify that on the 26th February, 2006, I witnessed the boxing and locking of the sealed samples and packages for forwarding to the laboratory. The consignment consisted of 2 samples and 1 of split samples.

These samples were placed in one locked boxes.

Signed: L. Marmion

Witness: John Strumble

SECTION B:

PERSON 1 Name: John Strumble

I state I took possession of one locked container(s) on the 26th February 2006 at 3.30pm (time)

Signed: John Strumble

Witness: L. Marmion

These samples were held by me in careful custody until handed over to _____

PERSON 2 Name: John Strumble

(This entire section is nulled)

PERSON 3 Name: Helen Cullinan

I state I took possession of _____

locked container(s) on the 26th February 2006 at 3.45pm (time)

Signed: Helen Cullinan

Witness: John Strumble

These samples were held by me in careful custody until handed over to Jim Butler.

SECTION 3 Name: Jim Butler

I state I received 1 locked boxes on the 27th February 2006 at 10.25 (time)

Signed: James Butler

Witness: H. Cullinan

In the second Drug Testing – Certificate of Handling, only one of the five sections is completed and in the following manner:-

SECTION 3 Name: Claire Harrigan

I state I received 1 locked boxes on the 27/02/2006 at 12.00 (time)

Signed: C. Harrigan

Witness: Mary O'Grady

By a letter dated the 20th July, 2006, the Solicitors for the applicants responded, stating that having regard to the serious nature of the allegations being made against the applicants, the serious penalties which could be imposed by the Club in the event of an adverse finding against the applicants and, the possible damage to their character, standing and reputation, in addition to other serious consequences and, in the light of the complexity of the issues that would arise at the enquiry, they required full disclosure of <u>all</u> documents, (the emphasis is mine).

At the hearing of this application for judicial review, Senior Counsel on behalf of the applicants confirmed, that whereas what was sought initially was confined to copies of documents which would be used in evidence at the enquiry, the request for disclosure was now extended to all documents in the possession of the Club regarding the alleged incident whether or not those documents were intended to be relied upon at the enquiry. Such expanded disclosure, Senior Counsel stated, had become vital in the interests of fair procedures and of constitutional and natural justice, because the respondent failed to furnish a definitive list of the documents upon which reliance would be placed at the enquiry.

In an affidavit sworn in this application for judicial review and dated the 8th September, 2006, Nicholas P.J. Shee, Solicitor in the firm of John Shee & Company, Solicitors for the respondent, avers as follows:-

> "11. I say that subsequent to sending that letter [of 18th July, 2006] I spoke by telephone with the Applicants Solicitor herein and pointed out to him that the Coursing Club did not in fact have any statements of any witnesses, did not have a video of the incident and that the only documentation that the Coursing Club held consisted of a copy of the drug testing details, a copy of the drug testing certificate of handling and a certificate of analysis No. PCO1/75."

By the letter, dated the 19th July, 2006, from the Solicitors for the respondent to the Solicitors for the applicants, reference is indeed made to, "our most recent correspondence" and to "your Mr. Moloney's telephone conversation with our Mr. Shee today". It is significant that Mr. Joseph Molony, Solicitor of P.F. Molony & Company, Solicitors for the applicants has not filed an affidavit taking issue with Mr. Nicholas P.J. Shee on his recollection of what he, Mr. Shee, had said in the telephone conversation between them on the 19th July, 2006. Further, the documents referred to in, and enclosed with, the letter from John Shee & Company to P.F. Moloney (sic) & Company dated 19th July, 2006, are consistent with this recollection of Nichola P.J. Shee, Solicitor.

By Order of this Court (Quirke J.) made the 21st July, 2006, the applicants were given leave to seek Judicial Review on the following grounds:-

> "The Applicants by reason of the provisions of Article 40.3.2. of the Constitution; by reasons of the principles of natural and constitutional justice by reasons of the principle of *Audi Alterem Partem* and by reasons of the provisions of the European Convention on Human Rights as incorporated into Irish law and by reason of the principle of egalite des armes are entitled to the disclosure material sought and are entitled to these materials to properly defend these serious allegations and to vindicate their constitutional rights. By reason of the procedures adopted by the Respondent herein, the respondent is erring in law and is proposing to acting unfairly, unlawfully and in breach of the Applicants rights and basic entitlements and is will continue to act *Ultra vires*."

A Statement of Opposition was filed on behalf of the respondent on the 24th October, 2006. In it the respondent contends that:-

> "1. The applicants are in effect seeking the equivalent of a Book of Evidence in a criminal trial and there is no precedent for such in the case of a domestic tribunal.
>
> 2. The applicants have been furnished with all documentation in the possession of the respondent and upon which it is intended to rely at the enquiry and, have therefore all relevant documentation which includes the names of witnesses who were involved in the drug testing procedure and who signed the records and the time at which each was involved.
>
> 3. The respondent had confirmed to the applicants that there were no statements from any witnesses or any person in relation to the matters at issue, there was no video evidence and, all witnesses would give *viva voce* evidence.
>
> 4. The enquiry would be held in accordance with the principles of natural justice and, fair procedure would be observed at all times and, if during the course of the enquiry the applicants considered that they were prejudiced by some alleged non disclosure, this matter would be ruled upon by the tribunal which could grant an adjournment should any such prejudice be established."

The legal, constitutional and in the instant case provisions of Article 6(1) of Schedule (I) of the European Convention on Human Rights Act 2003, (because I find that a determination of a "civil right" is at issue in this application in view, not alone of the possible enormous damage to reputation but also, of the possible deprivation of liberty to pursue an occupation and engage in a commercial activity resulting in damage to an applicant's economic interests which could be imposed as a penalty under Rule 88(B) of the Club), which mandate that a domestic disciplinary tribunal adopt fair procedures, apply just as much at the pre-hearing or pre-submission (where an oral hearing is not obligatory), stage of an enquiry as at the hearing or submission stage.

Fundamental to this requirement is that accused persons should be fully informed of the accusations made against them, that they should know the evidence upon which the determination would be made and, should have a timely and reasonable opportunity of challenging this evidence and, for that purpose of calling witnesses before an oral enquiry. (see *Green v. Blake and Others* [1948] I.R. 242 at 269 per. Black J., Supreme Court).

In the instant case the accusation, which is a very serious one, with possible far reaching consequences for the applicants and in particular the first named applicant, is that the greyhound in question was found, on a random test to have a prohibited substance in its urine after winning a major race. I am satisfied on the affidavit evidence on this application for judicial review, that the applicants have been fully informed by the respondent of the full nature of this accusation. This accusation is based upon a Certificate of Analysis No. PCO1-75 purporting to record the result of a scientific analysis by a competent expert or competent experts of a urine sample taken (in accordance with the provisions of the Rule 88(1) of the Rules of the Club) from the particular greyhound, under authority, by an authorised Veterinary Surgeon, in the presence of two stewards, (one, the Steward of the Meeting), and in the presence of the fourth named applicant who was in control of the greyhound at the time, as required. I find that a photocopy of this certificate was furnished to the applicants with the letter of 19th March, 2006.

Unlike, for example, the provisions of s. 21(3) of the Road Traffic Act 1994, there is no equivalent statutory provision in the Greyhound Industry Act 1958, making this or any other of the Certificates hereinbefore referred to, *prima facie* evidence of the matters stated in them. How the respondent intends to establish whether the drug amphetamine was present in Boavista at the Irish Cup Meeting held on the 26th February, 2006, and whether if this should be established, it should result in the applicants or some of them being deemed to be in breach of Rule 88, (raising such possible issues as by whom, when, by what means and in what formulation the drug was administered to the greyhound), is a matter for the respondent to decide.

In my judgment, Appendix J(B) of the Rules of the Club accurately reflect what was held by Black J. in *Green V. Blake and Others* (above cited). That case arose out of a Stewards enquiry into an allegation that the owner and rider of a horse, which won a point-to-point steeplechase run under the Irish National Hunt Steeplechase Rules, had not carried the correct weight in the race, that lead had been handed to him after he had dismounted but before he weighed-in and, that before weighing-out prior to the race one the clerks had tipped-up the scales with his foot. I fully accept that the principles stated in the case of In *Re. Haughey* [1971] I.R. 217 per. O'Dalaigh C.J. at 263 and 264 apply in this case, for the same reasons as were stated by the former Chief Justice at p. 264. In that instant case, I find that there is no disharmony between the judgment in that case and the judgment of Black J. in Green v. Blake and Others where Black J. arrived at the same conclusion with regard to the requirement for advance disclosure to the accused of the evidence upon which the question was going be decided, but by reference to the principles of natural justice rather than constitutional justice. However, the facts in the case of Green v. Blake and Others bear a much closer resemblance to the facts of the instant case.

In Kanda v. The Government of Malaya [1962] A.C. 322, Lord Denning held that:-

> "If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them."

In *R. v. Deputy Industrial Injuries Commissioner, ex P. Moore* [1965] 1 Q.B. 456 at 499, Diplock L.J., identified the duty as requiring disclosure of all evidence to be taken into account whether derived from other parties or independently.

Adopting the reasoning of Barrington J. in *People (Director of Public Prosecutions) v. Greeley* [1985] I.L.R.M. 320 at 323, (a blood sample case under the Road Traffic Acts 1961-1978), in my judgment the system here presupposes that appropriate procedures culminating in the issue of the Certificate of Analysis No. PCO1-75 had been followed. It is trite to say that the conclusion expressed in this certificate is only as valid as the data on which it is based and on the procedures and reasoning by which it was reached. The applicants are clearly entitled to question whether the procedures culminating in the issuing of this Certificate were in fact properly carried out. This could well involve looking into such matters as, the decision to examine and the decision to order a sample, the taking of the urine sample and the timing of that taking, the sealing and marking for identification purposes of the sample, the boxing, custody and transmission to the laboratory of the sample, the storage of the sample, the preparation of the sample for analysis, the carrying out of that analysis, the qualifications of the analyst or analysts that carried it out, the recording of the result, (whether by observation of a chemical test, reading from a machine or the interpretation of an automatic print-out) and, the preparation and signing of the Certificate of Analysis.

The fact that the applicants might raise some or all of these matters by way of defence, should the necessity arise, something which might well be anticipated by reference to the type of information sought in the letter from their solicitors dated 21st June, 2006, does not in my judgment impose any obligation whatsoever on the respondent to endeavour to forestall such a defence. This is especially so since the applicants acting within their rights, have declined to disclose their defence in advance of the hearing. This is not a proper basis upon which to require the respondent to seek out documents and identify potential witnesses upon which it does not intend to rely at the hearing and upon which it will not be inviting the tribunal to make a determination. Should any of these matters become relevant during the hearing, it will be a matter for the tribunal itself at that stage to rule whether the applicants are entitled as a matter of fair procedures to receive further documents from the respondent and on what terms, (if any). If, however, the respondent should be in possession of a document, or a statement, which on a reasonable construction, contradicts or alters the import of any document on which it does intend to rely and, which has been disclosed to the applicants, the respondent must disclose any such document or statement, because the applicants might wish to rely upon it or to call the witness in defence (see *R. v. Blondeston Prison Visitors* [1987] 1 A.E.R. 646 at 649 a-b, (Q.B.D. per. Sir J.R. Phillips)).

Furthermore, if any part of the evidence to be relied upon by the respondent is not recorded in a document, or in a written statement, or in some other format capable of being copied and disclosed, or is not readily capable of being ascertained by reference to some such, (for example, that the signatory of a document would be called to prove its contents where this was not otherwise properly admissible in evidence), and would therefore be evidence given entirely viva voce at the hearing, then the substance of that evidence must be disclosed in advance of a hearing so that the applicants would have a reasonable opportunity of reading, assimilating, taking legal advice on and, if desired, rebutting that evidence. In my judgment this follows from the duty to disclose evidence identified in the case of In *Re. Haughey* and the other cases hereinbefore referred to.

I am satisfied on the evidence, and I so find, that the applicants through their solicitors were informed on the 19th July, 2006, by the solicitors for the respondent, that the respondent did not have any statements from any witnesses, that it did not have a video of the incident and, that the only documents which it held were the four documents, copies of which had been furnished to the applicants, that is to say,- Certificate of Analysis No. PCO1-75 (on the 13th March, 2006) and Drug Testing Details and 2 Drug Testing Certificates of Handling (on the 19th July, 2006).

As to the other disclosures sought by the applicants in the letter dated the 21st June, 2006, from their solicitors to the solicitors for the respondent, I am satisfied that the copy documents furnished by the respondent can provide sufficient details of who took the sample, where it was taken, the method and means of delivery of the sample to the laboratory and who received the sample at the laboratory. However, if as indicated in the Statement of Opposition, the respondent intends to rely on these disclosed documents at the hearing, they must, in my judgment, identify the function and qualifications of any person whose name appears on any of these disclosed documents, insofar as it is not otherwise clear from the documents themselves. To withhold this information would render the evidence unintelligible.

I also find that neither the obligation to inform the applicants of the case made against them, or the obligation to inform the applicants of the evidence upon which that case will be based, could or should be extended to encompass a further right in the applicants to be notified of the addresses of any witnesses whom the respondent intended to call in evidence at the hearing. This information is entirely irrelevant. However, "if the right to be heard is to be a real right which is worth anything", and if the right to be informed of the evidence and the right to cross examine one's accuser or accusers is to be a meaningful right, then in my judgment, the applicants are entitled to be furnished in advance of the hearing with a list of the names of the witnesses, their qualifications and functions, which the respondent may call in evidence. It

remains a matter entirely for the respondent as to how many of these potential witnesses are in fact called to give evidence. The applicants are not, under the guise of fair procedures, entitled to dictate to the respondent how it shall present its case.

The letter of the 21st June, 2006, also seeks disclosure of the times and full details, of the storage of the sample at the National Greyhound Laboratory. As indicated, at para. 11 of the affidavit sworn by Nicholas P.J. Shee on the 8th September, 2006, in this application and, at para. 10 of the Statement of Opposition delivered on behalf of the respondent on the 24th October, 2006, the respondent does not hold such records, nor does it intend to rely upon them in evidence before the tribunal. However, for the reasons which I have already set out, the Certificate of Analysis No. PCO1-75, upon which the respondent undoubtedly does intend to rely, presupposes that the sample was correctly stored at the National Greyhound Laboratory.

There can be no doubt, but that in all instances where the result of an analysis of a sample of urine, blood, saliva, sweat, vomit or other biogenic material is central to an issue of guilt or innocence, a question of whether that sample was stored securely and in proper conditions for the correct time, so as to be protected from, tampering, contamination, biodegradation and suchlike, has always been considered a legitimate matter of enquiry for the accused person. I am satisfied that without the information to which I am referring, the lawyers for the applicants would be unable to advise the applicants as to whether or not this constituted a genuine line of defence and, would certainly not be in a position to effectively cross–examine Mr. James F. Healy or any of the several other persons identified in the Drug Testing Certificates of Handling, upon which the respondent intends also to rely in evidence before the tribunal. This is a limited, specific and focused request for information relevant to the evidence intended to be adduced by the respondent before the tribunal and, which could not possibly be said to be oppressive either in volume, time or expense. This is in sharp contrast to the request contained in the letter, of a month later, seeking disclosure of all documents in the possession of the respondent regarding the alleged incident. It is information which should readily be available to the respondent by request from the National Greyhound Laboratory. The fact that the applicants cannot be required to submit a statement of their defence and, have declined at the hearing of this application for judicial review, to indicate in advance what approach they intend to adopt at the enquiry, does not in my judgment invalidate their request for this information.

I adopt what was held by Geoghegan J. in the course of his judgment in *Maguire v. Ardagh* [2002] 1 I.R. 385 at 740 – Supreme Court, that it is well established by decided cases that in respect of any kind of tribunal or inquiry body, as to what is or is not fair procedures, may vary depending on the nature of the matters being investigated. That case related to the validity of and the procedures adopted by a sub committee established by a Joint Committee of both Houses of the Oireachtas to enquire into the shooting dead of John McCarthy by members of An Garda Síochána at Abbelylara, in the County of Longford on 19th/20th April, 2000. I am satisfied that what was held by Geoghegan J. in that case also applies to disciplinary tribunals of the kind with which the court is concerned in the instant case.

In the instant case the accusation made against the applicants is of the utmost gravity, alleging activity of a clearly criminal nature and, the penalties which could be imposed under Rule 88(B) of the Rules of the Club, could very seriously affect the good name and reputation of all the applicants and, in the case of the first named applicant at least, could in addition affect this liberty to pursue his occupation and could destroy his reputation and business as a trainer and, possibly cause him very great economic loss. I am satisfied, that the instant case is just as serious on its facts as the case of *Flanagan v. University College Dublin* [1988] I.R. 724. In that case, a post-graduate student was accused of plagiarism in an essay, the marks on which would be taken into account in deciding whether or not she should be granted a Diploma in the particular subject. Barron J. held that an adverse decision would have far reaching consequences for the applicant, as it was a charge of cheating, criminal in its nature and, a most serious academic breach of discipline.

Barron J. held (at p. 731), that the procedures adopted by the Committee of Discipline of the respondent should approach those of a court hearing. Having so found, he then considered that the applicant should have received in writing, details of the precise charge being made against her and, the basic facts alleged to constitute the alleged offence. The learned judge, found as a fact, that there was not attempt to make the applicant aware of the exact nature of the charge against her. Only on a second telephone call did she learn that it related to her choice of case-history in her examination essay. Barron J. found that she had been given no opportunity to discover how the case against her was being put or to test its strength by cross-examination. The learned judge also held that one party to such an enquiry cannot decide whether or not the other has a case to make.

In the instant case, I am satisfied that the applicants have received in writing precise details of the charge being made against them. I am also satisfied that as a result of the telephone conversation between Mr. Shee and Mr. Molony on the 19th July, 2008 and, the letter of that date with the enclosures, the applicants have had an opportunity to discover how the case against them is being put. The question remaining is whether the applicants as a matter of fair procedures, constitutional and natural justice and under the provisions of the European Convention on Human Rights Act 2003, are entitled to disclosure of the times and full details of the storage of the sample at the laboratory. In my judgment they are.

Without this knowledge I find that the applicants would be at an enormous disadvantage at the hearing. A meaningful cross examination of any of the laboratory personnel on this issue would be almost impossible for lack of essential details. But even before the hearing the applicants would be at a disadvantage because their legal advisers could not advise them whether or not they had a sustainable case to make that the result stated in the Certificate of Analysis PCO1-75, was either manifestly incorrect or was open to serious doubt because of something pertaining to the storage of the sample at the laboratory. It would be both unfair and prejudicial in my judgment if Solicitors or Counsel could do no better than advise the applicants whether or not to hazard a defence of this nature in such a very serious case.

Schedule I Article 6(1) of the European Convention on Human Rights Act 2003, states that in the determination of his civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The principle of "equality of arms" in the context of pre-hearing disclosure has been developed by the Supreme Court within the confines of the Criminal Law in decisions such as *Braddish v. Director of Public Prosecutions* [2001] 3 I.R. 127: *Dunne v. Director of Public Prosecutions* [2002] 2 I.R. 305: *Scully v Director of Public Prosecutions* [2005] 2 I.L.R.M. 2003.

In *Dombo Beheer B.V. v. The Netherlands* [18 E.H.R.R. 213] The European Court of Human Rights at pp. 229 -230, para. 32 and 33 held as follows:-

"32. The requirements inherent in the concept of 'fair hearing' are not necessarily the same in cases concerning the determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge. This is borne out by the absence of detailed provisions such as paras. 2 and 3 of Article 6 applying to cases of the former category. Thus, although these provisions have a certain relevance outside the strict confines of criminal law the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases.

33. Nevertheless, certain principles concerning the notion of 'fair hearing in cases concerning civil rights and obligations emerge from the Court's case law. Most significantly for the present case, it is clear that the requirement of 'equality of arms' in the sense of a 'fair balance' between the parties, applies in principle to such cases as well as to criminal cases. The Court agrees with the Commission that as regards litigation involving opposing private interests, 'equality of arms' implies that each party must be afforded a reasonable opportunity to present his case - including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent.

It is left to the national authorities to ensure in each individual case that the requirements of a 'fair hearing' are met."

That case concerned the refusal of a national court, under the domestic rules of evidence, to permit a retired managing director of a company to give evidence, while permitting the branch manager of a bank to give evidence, where the issue was whether or not an oral agreement existed pursuant to which the bank had agreed to increase credit to the company.

In cases such as *Martinie v. France* [Application No. 58675/00] and *Nikoguosyan and Melkonyan v. Armenia* [Application Nos. 11724/04 and 13350/04] the European Court of Human Rights held, *inter alia*, that the concept of a "fair trial" implies, in principle the right for the parties to have knowledge of all the evidence adduced and observations filed. This flowed from the wider angle of "fairness of the proceedings" and, "equality of arms" was simply a specific aspect of this fairness.

The referral in the case of *Martinie v. France* was concerned with procedures in the French Court of Audit, constituted under the Financial Judicature Code, in an appeal against a surcharge which had been levied on an accountant in the public service by a ruling of the Regional Audit Office. The European Court of Human Rights were satisfied that the matter involved the determination of a dispute (contestation) regarding a mainly economic obligation of the applicant and, was therefore a "civil claim". In *Nikoguosyan and Melkonyan v. Armenia,* the referral arose out of a sale of property to Melkonyan as part of the Court Process for Enforcing a judgment for debt, in which property other members of the Nikoguosyan family claimed an interest, which they asserted had been disregarded. In this case also, a contest regarding individual economic interests was the principle issue.

Though Article 6, of the Schedule (I) of the 2003 Act, bears the heading "Right to a fair Trial", (added according to the provisions of Protocol No. 11(ETS No. 155) and though forensic terminology is employed extensively in the decisions of the European Court of Human Rights and, even in the wording of Article 6 itself, I am satisfied that the provisions of Article 6(1) apply to procedures in strictly Administrative Law matters, where the decision of the Tribunal is, "decisive for private rights and obligations"). In my judgment, it would be wholly contrary to the broad interpretation which has been given by the European Court of Human Rights to Article 6(1) of the Convention, to hold that a tribunal deriving its existence and powers from Part IV and the Schedule, – especially para. 15, – as well as other sections of the Greyhound Industry Act 1958, did not come within the ambit of Article 6(1). I am satisfied that the provisions of Article 6(1) apply in the instant case and the applicants must have a reasonable opportunity of presenting their case to the Tribunal under conditions which do not place them at a substantial disadvantage vis-à-vis the respondent (*Kaufman v. Belgium* (Application No. 10938/84)).

As to the demand in the letter dated the 20th July, 2006, from the solicitors for the applicants to the solicitors for the respondent, that the respondent make, "full disclosure of all documents", which Senior Counsel for the applicants, at the hearing of this application for judicial review, clarified as requiring full disclosure of all documents in the possession of the respondent regarding the alleged incident, whether or not the respondent intended to rely on any of these documents at the hearing, I am satisfied on the evidence that the alleged reason for seeking this form of general disclosure of documents, that is, that the respondent would not specify a definitive list of documents upon which it intended to rely at the hearing, no longer exists. In any event, the proper remedy in such circumstances would be for the court direct that as a matter of fair procedures the respondents should disclose and furnish a copy of every document to the applicants in advance, a copy of every document upon which they intended to rely at the hearing. An Order in the terms sought would go far beyond what fair procedures would require, and what the decided cases consider proper.