

**THE HIGH COURT  
DUBLIN**

**[2005 No. 478 J.R.]**

**BETWEEN**

**ANTHONY DEAN**

**APPLICANT**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**Judgment Delivered by Mr. Justice Hedigan on Friday 22nd February 2008**

1. This is an application for an Order to prohibit the trial of the applicant on serious charges brought under the Waste Management Act 1996. These are: The disposal of waste in a manner that was likely to cause environmental pollution contrary to s. 32(1) of the Waste Management Act 1996 and the disposal of waste without a licence contrary to s. 39 of the Waste Management Act 1996.

2. Leave to seek Judicial Review was granted by O'Sullivan J. on 9th May 2005. It is agreed that statements made by the applicant to the Gardaí in the course of their investigations, and which admitted to dumping, but denied knowledge of the unlicensed nature of the site, were not brought to the notice of the Judge. These statements were, it seems to me, important parts of the factual matrix forming the basis of the criminal proceedings brought in this case.

3. Mr. McGrath in his book on Judicial Review at paragraph 27.46 sets out the fairly basic rules in relation to the requirements of full disclosure in an *ex parte* application:

"An application for leave should be made on a Monday to the Judge assigned to hear *ex parte* Judicial Review applications. However, if the matter is urgent or the time limit to make the application is about to expire it can be made on another day to a Judge assigned to the Judicial Review list.

It is important to emphasise that given that the application is made *ex parte* the applicant has a duty of *uberrimae fides*, that is the utmost of good faith, and must put all relevant facts and law before the Court, even if it does not support a grant of leave. If an applicant fails to do so then this may provide a basis for an application to set aside the grant of leave."

4. I cannot over emphasise the importance of this principle. The "leave to apply" provision in the rules is an essential part of the system of Judicial Review and is what makes it all work. But without confidence on the part of any Judge hearing the application that all relevant matters and law both for and against the application are before him or her the essential *ex parte* nature of the "leave to apply" system cannot continue.

5. I have considered very carefully overnight the significance of the failure to bring those statements to the attention of O'Sullivan J. I do not consider that the applicant or his legal advisers acted in bad faith. Nonetheless it seems to me that were the making and the contents of those statements by the applicant brought to the Judge's attention they might have led him to refuse leave to apply. I have come to this conclusion on the basis that whilst all other matters required to convict might well have been related to the question as to whether the Applicant did or did not know of the unlicensed nature of the site at Whitestown, Landfill Four and as to whether he did or did not know that he was disposing of waste in a manner likely to cause environmental damage, nonetheless, it would be a central part of any criminal case that the applicant did in fact dump on the site and was familiar with it.

6. Indeed I do not think I need even go that far because it seems to me that when any part of the factual matrix of a case is omitted from the matters presented to a Judge on an *ex parte* basis the test as to whether this amounts to a material non-disclosure should be whether the information was relevant. If it was then it should have been brought to the attention of the Judge, who may weigh the actual importance of that information to the case. In my view the statements made were highly relevant.

7. I note that no application was brought by the Director of Public Prosecutions to set aside the grant of leave. This, however, should not prevent the Court from acting *proprio motu* as it must be the master of its own procedures.

8. I therefore refuse the relief sought on the basis of the nondisclosure of relevant information to the Court on the application for leave to apply.