THE HIGH COURT

[2018 No. 4 C.T.]

IN THE MATTER OF THE HEPATITIS C COMPENSATION TRIBUNALS ACTS, 1997 TO 2006

AND

IN THE MATTER OF AN APPEALPURSUANT TO SECTION 5 (15)

BETWEEN

A.C.

DEFENDANT

AND

THE MINISTER FOR HEALTH AND CHILDREN

RESPONDENT

Judgement of Mr. Justice Bernard J. Barton delivered the 13th day of May, 2019

1. These proceedings come before the Court by way of an appeal from a decision of the Hepatitis C and HIV Compensation Tribunal (the Tribunal) made on the 23rd March, 2018, whereby the Appellant's application for compensation was dismissed on the grounds that she was not a 'child' within the meaning of s.5 (3B) (b) of the Hepatitis C Compensation Tribunal Acts 1997 to 2006 (the 1997-2006 Acts).

2. A net issue falls for determination on the Appeal, namely, whether the Appellant, a 'step-child' of a deceased person whose death was caused by Hepatitis C or where Hepatitis C was a significant factor in the cause of the death, is a 'child' within the meaning of s. 5 (3B) (b) of the 1997-2006 Acts. Consequently, the resolution of the issue which has arisen necessarily involves a statutory interpretation of the subsection.

Consequences for the Appellant

3. If a 'step-child' is a 'child' within the meaning of s. 5 (3B) (b) the Appellant would meet the criteria set out in s.4 (1) of the 1997-2006 Acts to qualify as a 'claimant' to whom an award of compensation could be made. The issue under appeal was first raised by the Tribunal as a preliminary point at the hearing of the application for compensation. The approach adopted to the interpretation of the sub-section was to construe the provision strictly in accordance with its terms such being necessary as the scheme of compensation established by the 1997-2006 Acts was a creature of statute.

4. As the Court is tasked with ascertaining the meaning of 'child' within the terms of the subsection and thus with a construction of the provision the text of the subsection will be set out in full.

Section 5 (3B) (b) provides:

> *"Where a dependent referred to in paragraph (e) or (j) of section 4(1) is the* child, *spouse or parent of the person who died('the deceased') as a result of having contracted Hepatitis C or HIV, or where Hepatitis C or HIV was a significant contributory factor in the cause of death, the Tribunal may make an award to* that dependant *in respect of loss of society of the deceased including the loss of the care, companionship and affection of the deceased as a result of the death."*[emphasis added]

Appeal Hearing

5. The hearing of an appeal from a decision of the Tribunal proceeds as a rehearing of the application *de novo* but limited to the issue under appeal unless it is an appeal from the whole of the decision. An appeal from an 'award' is an appeal from "an award of compensation" per s.1 of the 1997-2006 Acts, and is not an appeal from other findings of the Tribunal, for example, a finding on causation. The Court is not concerned with the legal correctness of the approach taken by the Tribunal to the issue under appeal, rather the hearing proceeds and the relevant legal principles are applied *de novo*. Before turning to the task in hand it may be found useful if the background to the case was set out.

Background

6. The Appellant was born on the 28th January, 1969, and lives in New South Wales, Australia. She has a sister D. Their parents married and emigrated to Australia. The Appellant's father, D.K., remarried in January, 1996. His 2nd wife, B.McC had lived in Ireland before her marriage to D.K. The children of his previous marriage became her step daughters and developed a social relationship with their stepmother. On the 8th June, 2016, the year before her death, B. McC made a will in which, *inter alia*, she bequeathed an apartment to her step-daughters in equal shares. In 1987, while living in Ireland B.McC underwent a hysterectomy during which a blood transfusion became necessary; three units of blood were transfused one or more of which were infected by the Hepatitis C virus (HCV).

7. B.Mc C brought an application for compensation to the non-statutory Tribunal. The application was heard and determined in May, 1996. She subsequently appealed the award under the terms of the Hepatitis C Compensation Tribunal Act 1997. The appeal was heard by O'Neil J. on the 23rd October, 2000. The court allowed the appeal and made an award provisional on two conditions, Cirrhosis and Hepatocellulular Carcinoma in the event of the occurrence of either of which liberty was given to return to the tribunal. Unfortunately for B.McC's her liver disease progressed to Cirrhosis as a result of which she returned to the tribunal on foot of the provisional award.

8. The application was heard on the 4th November, 2008 and a further award of compensation made in respect of that condition. B.McC's health continued to deteriorate during the years that followed until the 31st January, 2017, when she died from the complications of HCV infection. As a consequence of her death D.K. brought a number of applications for compensation under the scheme, including an application for 'loss of society'. The Tribunal was satisfied that HCV was a significant contributory factor in the cause of his wife's death and made awards.

9. The Appellant was 27 years old when her father remarried, accordingly the question of adoption never arose, moreover, it is

accepted that B. McC. was not at any time in *loco parentis* to her, facts which are potentially significant in relation to the issue. The essence of the case urged on the Court by counsel for the Appellant, Mr. Craven S.C., is that the provision *in quo* must be construed in accordance with the principles set out in *C.M. v The Minister for Health and Children* [2017] IESC 76, accordingly, the wording is to receive a broad and liberal construction the consequence of which is that 'child' includes a 'stepchild', moreover, such is necessary if the rights of the Appellant under Article 8 of the European Convention of Human Rights (ECHR) are not to be infringed. A more detailed summary of the Appellants submissions follows later; *vide infra* para 34 *et seq*.

10. The Minister, as Respondent, takes an entirely different view. Accepting the subsection fell to be given as generous and liberal interpretation as the wording will permit it was submitted by Mr. Dignam S.C., that the plain difference in meaning between the terms 'child' and 'step-child' was well understood by the Oireachtas, as evidenced by the express distinction made between the two terms not only in the definition of 'dependant' in s. 47 of the 1961 Act but also in s. 5 of the 1997-2006 Acts; a 'child' differs from a 'step-child' in material respects. The use of these terms in the context of relationships connotes distinct and different meanings, one from the other, accordingly, in no sense could 'child' be understood to mean 'step-child'. The Respondent' submissions are summarised in greater detail later; *vide infra* para 45 *et seq*.

The Compensation Scheme; Provisions Relevant to the Issue
11. Having regard to the approach which the Court is required to take to the interpretation of the provision *in quo* it is appropriate that other provisions of the 1997-2006 Acts which may bear upon the task of construction, particularly provisions where the same wording or phraseology is used, should be set out and considered as appropriate but before doing so brief mention will be made of jurisdiction.

Jurisdiction;
12. Apart altogether from other matters which it may need to address in the course of adjudicating upon any claim the tribunal, and on appeal the court, must address what may be classified as a jurisdictional question, namely, whether the applicant satisfies the requirements to qualify as a 'claimant' to whom an award of compensation may be made. The consequence of a failure to meet these requirements, as happened in this case, is a refusal to admit the applicant to the scheme and a dismissal of the application. The categories of persons who may make a claim for compensation are provided for in the 1997-2006 Acts.

Qualifying Claimants
13. In this regard s. 4 (1) provides as follows:

> *"(1) The following persons may make a claim for compensation to the Tribunal—*
>
> *(a) a person who has been diagnosed positive for Hepatitis C resulting from the use of Human Immunoglobulin Anti-D within the State,*
>
> *(b) a person who has been diagnosed positive for Hepatitis C as a result of receiving a blood transfusion or blood product within the State,*
>
> *(c)* children *or any spouse, of a person referred to in paragraph (a) or a person referred to in paragraph (b), who have themselves been diagnosed positive for Hepatitis C*, (emphasis added)
>
> *(d) any person who is responsible for the care of a person referred to in paragraph (a), (b) or (c), and who has incurred or will incur financial loss or expenses as a direct result of providing such care arising from the person being cared for having contracted Hepatitis C,*
>
> *(e) where a person referred to in paragraph (a), (b) or (c) has died as a result of having contracted Hepatitis C or where Hepatitis C was a significant contributory factor to the cause of death,* any dependant of such person, (emphasis added)
>
> *(f) a person who has been diagnosed positive for HIV as a result of receiving a relevant product within the State*
>
> *(g)* children *or any spouse of a person referred to in paragraph (f) who have themselves been diagnosed positive for HIV,* (emphasis added)
>
> *(h) any person*
>
> > *1. who is married to a person who fell into paragraph (a), (b) or (f), before the commencement of this paragraph and was so married before that commencement,*
> >
> > *2. who is married to a person and who fell into paragraph (a), (b) or (f) on or after the commencement of this paragraph and was so married before the person so fell into that paragraph,*
> >
> > *3. who has been living with a person who fell into paragraph (a), (b) or (f) before the commencement of this paragraph and has been so living with the person for a continuous period of not less than three years commencing before the commencement of this paragraph, or,*
> >
> > *4. who has been living with a person who fell into paragraph (a), (b) or (f) on or after the commencement of this paragraph and has been so living with the person for a continuous period of not less than three years commencing before the person so fell into that paragraph,*
> >
> > *in respect of the loss of consortium of that person, including impairment of sexual relations with the person, arising from the risk of transmission of Hepatitis C or HIV,*
>
> *(i) any person who is responsible for the care of a person referred to in paragraph (f) or (g) and who has incurred or will incur financial loss or expenses as a direct result of providing such care arising from the person being cared for having contracted HIV,*
>
> *(j) where a person referred to in paragraph (f) or (g) has died as a result of having contracted HIV or where HIV was a significant contributory factor to the cause of death*, any dependent of such person, (emphasis added) *and*

(k) a person referred to in section 9 in accordance with that section." (emphasis added).

The entire subsection has been set out to illustrate the number of different categories of individuals who may qualify as 'claimants' for the purposes of the scheme and to whom an award may thus be made.

'Claimant'; Meaning
14. Amongst those who qualify as 'claimants' are 'dependents' of persons who have died as a result of HCV or HIV or where either or both of those conditions were a substantial factor in the cause of death. The meaning of 'claimant' and 'dependant' for the purposes of the scheme is provided for by s. 1, the interpretation section.

In this regard

> 'Claimant' *means a person referred to in s. 4 (1) making a claim to the Tribunal in respect of any matter referred to in that subsection or a person referred to in any regulations made under s. 9 in respect of the matters referred to in those regulations" and "dependant" has the meaning assigned to it by section 47(1) (inserted by section 1 of the Civil Liability (Amendment) Act, 1996) of the Civil Liability Act, 1961 (the 1961 Act)."[*emphasis added]

'Dependant'; Meaning
15. It follows from the wording of this provision that in order to ascertain the meaning of 'dependant' for the purposes of the 1997-2006 Acts it is necessary to refer to the definition of 'dependant' contained in the Part IV of the 1961 Act, as amended, the part concerned with fatal injury claims.

In this regard s. 47 (1) provides that:

> "dependant" *means, in respect of a deceased person whose death is caused by a wrongful act*---
>
> *(a) a spouse, civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Co-Habitants Act, 2010, parent, grandparent, stepparent*, child, grandchild, step-child, *brother, sister, half-brother or half-sister* of the deceased. (emphasis added).

The remaining provisions of the subsection are not relevant for present purposes, however, in deducing any relationship for the purposes of Part IV of the 1961 Act, s. 47 (2) provides:

> *"(2) …*
>
> (*a) a* person adopted *under an adoption order within the meaning of section 3 (1) of the Adoption Act 2010 or an intercountry adoption effected outside the State being recognised within the meaning of that Act, shall be considered the* legitimate offspring of the adopter or adopters; (emphasis added).
>
> *(b) subject to paragraph (a) of this subsection, an* illegitimate person *shall be considered the* legitimate offspring of his mother and reputed father; (emphasis added).
>
> *(c) a* person in loco parentis to another *shall be considered the* parent of that other. (emphasis added).

'Offspring'; Meaning
16. At common law the term "offspring" is said to be synonymous with terms such as 'children,' 'issue,' and 'progeny' each of which connote a direct procreative relationship. On a literal interpretation 'offspring' means the natural children of their biological parents. However, the common law meaning of any word or term may be altered or modified by statutory intervention whether by limitation, extension or expansion such as, for example, s. 47 (2) of the 1961 Act where an adopted child is to be considered the legitimate 'offspring' of its adoptive parent or parents irrespective of a biological or genetic relationship.

'Step-Child' as a Claimant
17. It follows from the provisions of s. 47 (1) of the 1961 Act and s. 1 of the 1997-2006 Acts that a "dependent" within the meaning of s. 4 (1) (e) and (j) includes a 'step-child' of the deceased. In this regard, the Tribunal may make an award in a fatal claim to the 'step-child' of a person identified in sub paragraphs (a) (b) (c) (f) or (g) who has died as a result of having contracted HCV or HIV or where HCV or HIV was a significant contributory factor to the cause of death. Apart from a fatal claim, a 'step-child' is not identified as a 'claimant' for the purposes of the scheme though may otherwise qualify qua 'person' in respect of a pecuniary loss claim where the 'person' is responsible for the care of any one of the persons, infected with HCV or HIV, identified in sub paragraphs (a) (b) (c) (f) and (g) of s.4 (1) and who has or will incur financial loss or expense as a result of providing such care.

18. It will be noted that the persons—who qualify as 'claimants' in their own right--- identified in subparagraphs (c) and (g) are "*the* children *or any* spouse" of a person diagnosed positive for Hepatitis C or HIV and who have themselves been diagnosed positive for Hepatitis C but 'grandchildren', 'step-children' and 'foster-children' are excluded. The meaning of 'step-child' in law is addressed later; *vide infra* para. 57.

Awards
19. Once the qualifying requirements are met the next stage in the process of adjudication is for the Tribunal to assess compensation by applying the same common law and relevant statutory principles as if the subject matter of the claim was an action in tort. A significant attribute of the scheme is the removal of the necessity to establish liability in negligence and/or for breach of statutory duty save in respect of a claim for aggravated or exemplary damages (s. 4 (7)).

'Species' of Claim
20. Whereas s. 4 sets out the categories of claimant to whom an award may be made s. 5 prescribes the several species of claim which may be brought and, in respect of any given claim, identifies the categories of claimant to whom an award may be made, of which the provision *in quo* is but one. To best place the provisions of s. 5 (3B) (b) in context it is necessary to set out the text in its entirety:

> *"5. (1) An award of the Tribunal to a claimant shall be made on the same basis as an award of the High Court calculated by reference to the principles which govern the measure of damages in the law of tort and any relevant statutory provisions (including Part IV of the Civil Liability Act, 1961), and including, subject to section 11 , consideration of an award on the basis which reflects the principles of aggravated or exemplary damages.*

(2) Notwithstanding subsection (1) of this section and section 2(2) of the Civil Liability (Amendment) Act, 1996, section 49(1) (b) of the Civil Liability Act, 1961 (as amended by section 2(1)(a) of the Civil Liability (Amendment) Act, 1996) shall have effect in respect of a claim made pursuant to section 4 (1)(e) of this Act.

(2A) Notwithstanding subsection (1)—

(a) section 49 of the Civil Liability Act, 1961, shall apply in relation to the assessment of the amount of the award to a dependant *referred to in paragraph (e) or (j) of section 4(1) with the modification that the reference in subsection (1)(a)(i) of the said section 49 to the death shall be construed as a reference to the injury to the deceased and the death of the deceased,*

(b) the Tribunal may make an award to a dependant referred to in paragraph (e) or (j) of section 4(1) consisting of an amount equal to the amount of the general damages including damages for pain and suffering, personal injury, loss or diminution of expectation of life or happiness which the deceased suffered during his or her lifetime and to which the deceased would have been entitled if he or she had survived and brought a claim for compensation to the Tribunal, and where there is more than one such dependant, *the amount aforesaid of the award shall be divided among those* dependants *in such manner as the Tribunal thinks just, and*

(c) the Tribunal may make an award to a dependant *referred to in paragraph (e) or (j) of section 4(1) in respect of aggravated or exemplary damages where the* dependant *establishes that the deceased would have had a legal entitlement to such damages against a relevant agency or the Minister had he or she survived and brought a claim for compensation to the Tribunal, and where there is more than one such* dependant, *the amount aforesaid of the award shall be divided among those* dependants *in such manner as the Tribunal thinks fit.",*

(d) An award in respect of aggravated or exemplary damages may be made by the Tribunal where a claimant establishes a legal entitlement to such against a relevant agency or the Minister.

(3A) (a) Where a dependant r*eferred to in paragraph (e) or (j) of section 4(1) is the* child, spouse, father or mother *of the person who died ('the deceased') as a result of having contracted HIV or Hepatitis C, or where HIV or Hepatitis C was a significant contributory factor to the cause of death, the Tribunal may make an award to that* dependant *in respect of* posttraumatic stress disorder *or if he or she satisfies the Tribunal that he or she has* nervous shock suffered or is suffering from that condition as a result of the death.

(b) In determining whether to make an award under this subsection, the Tribunal shall have regard to any decisions of the High Court or the Supreme Court enunciating principles of law relating to the award of damages for posttraumatic stress disorder or nervous shock, as the case may be.

(3B) (a) The Tribunal may make an award to a person referred to in section 4(1)(h) in respect of the loss of consortium *of a person referred to in paragraph (a), (b) or (f) of section 4(1), including the impairment of sexual relations with the person, if the Tribunal is satisfied that there has been such loss or impairment arising from the risk of transmission of Hepatitis C or HIV.*

(b) Where a dependant *referred to in paragraph (e) or (j) of section 4(1) is the* child, spouse or parent *of the person who died ('the deceased') as a result of having contracted Hepatitis C or HIV, or where Hepatitis C or HIV was a significant contributory factor to the cause of death, the Tribunal may make an award to that* dependant *in respect of* loss of society *of the deceased including the loss of the care, companionship and affection of the deceased as a result of the death*." [emphasis added]

I pause here to observe that the definition of *'spouse'* in s. 5 (3C) (i) and (ii) for the purpose of the 1997-2006 Acts is another example of statutory intervention by extension to include persons or relationships who would not otherwise come within the common law meaning of the term.

Approaches to Statutory Interpretation; The Law

21. The law on statutory interpretation is well settled and with particular regard to the approach which is to be adopted towards the interpretation of remedial- redress statutes has been expounded upon and clarified in a number of recent decisions of the Court of Appeal and Supreme Court. See *O'G v. Residential Institutions Redress Board* [2015] IESC, 41; *J. McE. v.. The Residential Institutions Redress Board* [2016] IECA 17; *J.G.H. v. The Residential Address Committee & Anor*. [2017] IESC 69; and *C.M v. The Minister for Health and Children* [2017] IESC 76.

22. The purpose of statutory interpretation is to ascertain the objective intention of parliament in any given piece of legislation. Although the exercise has a singular objective it may involve a multiplicity of steps involving several approaches calling in aid the interpretation provisions, if any, of the statute under consideration, the Interpretation Act, 2005 where appropriate and what are variously referred to as ' the cannons of construction'

The 'Literal Approach'

23. The conventional method of dealing with a matter of statutory interpretation is for the Court to approach the interpretation of the relevant statutory provision by giving the words used their ordinary and natural meaning, commonly referred to by legal authors and judges as the literal approach. The clarity of thought brought to the explanation and refinement of the topic by McKechnie J. delivering the judgment of the Supreme Court in *C.M.* at para. 57 *et seq*. warrants repeating in full:

"57. As might be obvious, if the objective intent of parliament is self-evident from the ordinary and natural meaning of the words or phrases used, then the task is at an end, and the court's function has been performed. Whilst it has long been said that the words themselves, in their plain meaning, best declare such wish, that and multiple other similar expressions must be properly understood. I would therefore add the following, as being part of and complementary to this primary approach to legislative construction. The Court may:

(i) Look at any legislative history of relevance; indeed, in D.B., Geoghegan J. felt that the non-statutory scheme established in December 1995 was '…for all practical purposes a legislative antecedent and part of the [1997 Act's] legislative history' (p. 58).

(ii) Consider the subject matter being dealt with, the provisions put in place for that purpose, and the harm, injury or damage – the legislative objective – which the same were intended to address. What Lord Blackburn said as far back as 1877 remains as apt today as when it was first stated:

> *'The tribunal that has to construe an Act of a Legislature, or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand those words it is material to inquire what is the subject-matter with respect to which they are used, and the object in view.'*

(Direct United States Cable Company v. Anglo-American Telegraph Company (1877) 2 App. Cas. 394).

In 1953, Lord Goddard C.J. in R v. Wimbledon Justices, ex parte Derwent [1953] 1 Q.B. 380 stated that:

> *'… the court must always try to give effect to the intention of the Act and must look not only at the remedy provided but also at the mischief aimed at …'*

(iii) Have regard to both the proximate and general context in

which the phrase or provision occurs, including any other such phrase or provision, or indeed the Act as a whole, which may illuminate the correct meaning of the disputed provision.

In In Re Macmanaway [1951] A.C. 161, Lord Radcliffe said at p. 169 that:

> *'The primary duty of a court of law is to find the natural meaning of the words used in the context in which they occur, that context including any other phrases in the Act which may throw light on the sense in which the makers of the Act use the words in dispute.'*

(iv) Have regard to the long title of and preamble to the Act (see, for example, East Donegal Co-Operative Livestock Mart Ltd v Attorney General [1970] I.R. 317 and Minister for Agriculture v Information Commissioner [2000] 1 I.R. 309).

58. Accordingly, a construction of both the narrower and broader context of any disputed provision, including the subject matter of the legislation itself, is an integral part of the literal approach, as is the legislative history, the subject matter of the Act and, to use an almost obsolete phrase, the 'mischief' which was sought to be remedied by its provisions. In identifying such matters, the same is not intended, quite evidently, as a prescriptive ruling on this approach."

24. Subject to what follows with regard to the approach which the Court is required to take towards the construction of "Redress Acts" if at the end of the exercise first mentioned it is manifest that the words employed are clear, free from ambiguity and plainly disclose the objective intention of the legislature the task of construction is at an end. This is so because it is said that the words themselves in their plain and ordinary meaning do best disclose what the law giver intended. See *Howard v. Commissioners of Public Works* [1994] 1 I.R. 101, Blaney J. at p. 151.

The 'Purposive Approach'

25. Where the literal approach does not result in a clear indication of the intention of parliament there are a number of options which may be adopted to assist in the task of construction, the most usual of which is commonly referred to as the purposive approach. This involves looking beyond the text of the statute, considering the intended objective of the legislature and the reason for the statute's enactment. Where on a literal interpretation the meaning of the provision is found to be obscure or ambiguous or a literal interpretation would produce an absurdity or the words employed fail to reflect the intention of parliament, the legislative intention may be ascertained by considering the Act as a whole and the provision construed accordingly. The purposive approach is said to have been encapsulated in and given statutory effect by s. 5 of the Interpretation Act, 2005.

Construction of 'Remedial-Redress' Statutes;

26. The 1997-2006 Acts fall within a category of legislation known as remedial and redress statutes; the latter have also been described as 'reconciliation and recompense' statutes. The proper approach to statutory interpretation for the purposes of resolving any questions of difficulty in construing a provision of a remedial-redress statute is to construe the word or provision of the Act in question as widely and liberally as can fairly be done. See *J.G.H.*, Clarke C.J. at para 4.2, *infra* and *C.M*. McKechnie J. para 62, *supra*. The reason, purpose and object for which the legislation was enacted, namely, to provide redress by way of compensation to the victims of HCV and HIV infection, contracted through the administration of blood or blood products within the State, is immediately apparent from the title and preamble to the 1997-2006 Acts.

Generous and Liberal Approach to Construction; Limitations

27. It was recognized in *J.G.H*. and *C.M*. that this approach to interpretation of remedial and redress statutes is not without limit. Commenting upon the matter in *J.G.H.* at para. 4.2, Clarke C.J. observed:

> *"However, in so doing the Court can only adopt an interpretation which can be said fairly to arise on the wording of the legislation itself. To go beyond a meaning which can fairly be attributed would be to impose a liability on the State which it could not properly be said that the Oireachtas intended to accept.*

28. The principle underlying the broad, liberal and generous interpretation of remedial-redress statutes is the assumption that having decided upon the appropriateness of applying the public purse to compensate a particular category of persons the Oireachtas did not intend that those who would potentially qualify would be excluded on narrow or technical grounds since to do so would be wholly inconsistent with the purpose for which the legislation was enacted.

29. However, it does not follow from the establishment of such a scheme of compensation that the imposition of limits is not appropriate; on the contrary *"…the Oireachtas is entitled, when deciding to apply public funds in a particular way, to define, within constitutional bounds, the limits of any scheme which it is decided should be put in place. Where that scheme is remedial, Courts should not be narrow or technical in interpreting those bounds but they should not be ignored either."* Per Clarke C.J. at para 4.5 in *J.G.H*.

30. The reason for the establishment, purpose and focus of the 1997-2006 Acts was encapsulated in the following passage from the judgment of McKechnie J. in C.M. at para. 63

> *"Widespread wrongdoings on a serious scale, with devastating effects, were being addressed on behalf of the general public: acknowledgement of culpability and the right to compensation were provided for."*

31. Having referred to certain remedial statutes, including the Family Home Protection Act, 1976 and the Succession Act, 1965, the learned judge went on to observe:

> *"Accordingly, I am entirely satisfied that both the 1997 Act and the 2002 Act (two of the Hepatitis C Compensation Tribunal Acts) are even more deserving of such generous, indulgent and permissive an approach as the Act or a disputed provision thereof will allow. In my view, therefore, both should more accurately be described as "Redress Acts", with that description being given its most expansive meaning."*

Addressing the subject matter of the limits which may be defined by the Oireachtas when establishing a redress scheme, he also observed at para. 64:

> *"The proper limits will, of course, be legislatively specific to any given Act, it not being permissible to extend the legislation's reach beyond its terms (see the judgment of O'Donnell J. in J.G.H. at para. 63). Nonetheless, at a general level I think it can be said that in view of the very strong public interest which motivated these redress schemes in the first instance, and the policy decision behind their establishment, a court would be entitled to be as generous as the resulting Act reasonably permits. It should not, however, be so expansive as would render its interpretation contra legem."*

32. In *D.B. v. The Minister for Health and Children* [2003] 3 I.R. 12 and in *M. O'C. v. The Minister for Health* [2001] IESC 72, the traditional approach articulated by Blaney J. in *Howard* was followed by all members of the Supreme Court who delivered judgments. The court decided that there was no necessity to move to what McKechnie J. described in *C.M.*, as "*the next point on the spectrum*" and adopt a purposive approach. However, in *C.M.* the court decided that when the construction of a 'remedial- redress' statute was involved the correct approach was to take a '*step further along the spectrum*' and:

> *"…apply a generous interpretation to the subject legislation, with the justification therefore being the line of authority commencing with Bank of Ireland v. Purcell, running through A O'G, J. McE, and now being further enhanced by this Court in J.G.H."*

This is not to say that the literal or purposive approaches are entirely redundant when it comes to the interpretation of such statutes. The court recognised that there may well be cases where the utilisation of a generous, liberal and broad approach may simply lead to precisely the same result as would ensue from adopting the literal or purposive approach, as was the case in *C.M.*

Submissions
33. Written and oral submissions were made on behalf of the parties the essence of which may be summarised as follows.

Appellant's Submissions
34. The essential proposition advanced on behalf of the Appellant has been mentioned earlier, namely, a 'child' within the meaning of the provision *in quo* means a 'natural child', an 'adopted child', a 'step-child' of the deceased and a person to whom the deceased was in *loco parentis*. To give 'child' a restrictive interpretation, by which I understood Mr. Craven SC to mean the biological 'child' of a parent or those persons who are to be considered a 'child' for the purposes of the subsection by virtue of s. 47 (2) of the 1961 Act, namely adopted children and a person to whom a deceased was in *loco parentis*, would not only offend against an interpretation resulting from the broad approach to construction mandated by C.M., but would also lead to a series of illogical outcomes and unjust results which the Oireachtas could not reasonably have intended the most significant of which were identified as follows.

35. A 'step-child' may fall into one or more categories at the time when a claim for loss of society is made. The deceased may have formally adopted a 'step-child', or have merely been acting in *loco parentis* to that person during its minority but in either case the 'step-child' may make a claim by virtue of the provisions of s. 47 (2) of the 1961 Act. However, that does not alter the essential fact that the deceased, qua parent, remains a stepparent and the child, *qua* child, remains a stepchild.

36. In these particular circumstances a 'child' is simultaneously a 'child' and a 'step-child' in law and thus qualifies as a claimant within the meaning of s. 4 (1) to whom an award may be made for loss of society since that person comes within the meaning of 'dependant' as defined by the 1961 Act and therefore a 'dependant' by virtue of s. 1 of the 1997-2006 Acts. A biological connection is irrelevant for these purposes since in law an adult may act in *loco parentis* to any person during their minority whether or not there is a biological relationship. Whether the person to whom the deceased acted in *loco parentis* was a niece, nephew, grandchild, or biological stranger, they would qualify as a 'claimant' under s. 4 (1) since in those circumstances they would be a 'dependent' within the meaning and for the purposes of the 1997-2006 Acts.

37. I pause here to mention that the Court is aware from other cases that the Tribunal has admitted and determined claims for compensation for loss of society by adult stepchildren in respect of the death of a 'step-parent' who had been acting in *loco parentis* where the death occurred during the 'step-child's minority, however, "...the Court is not aware of any claim for loss of society having been brought and admitted where the 'step-child' or any other person to whom the deceased was acting in *loco parentis* had attained his or her majority before the death of the deceased and where the deceased was no longer in *loco parentis*."

38. Nevertheless, it was submitted that if such a claim were made the applicant would qualify as a 'claimant' since by virtue of having been in *loco parentis* the deceased is to be considered the 'parent' of that person in deducing relationships for the purposes of Part IV of the 1961 Act, accordingly, the person to whom the deceased was acting in *loco parentis* is also a 'dependant' for the purposes of the 1997-2006 Acts. However, as B. McC. was never in *loco parentis* and the question of adoption did not arise it was accepted by Mr Cravan SC that if the word 'child' was to receive a restrictive meaning in the sense already discussed s. 47 (2) of the 1961 Act was of no assistance to the Appellant's claim.

39. It followed from these submissions that a 'step-child' in the position of the Appellant, where her 'step-mother' had never been in *loco parentis*, was the sole circumstance in which a 'step-child' was to be excluded from access to the scheme, a result which ignores the fact that even where a deceased had acted in *loco parentis* to a 'step-child' that does not, *ipso facto*, change the essential nature of what Mr. Craven categorised as the "legal relationship" between the 'stepchild' and the 'step-parent'; on a restrictive interpretation of the subsection the Appellant was excluded irrespective of the relationship she had with her 'step-mother'.

40. Furthermore, in a case where a 'step-child' dies and the 'step-parent' was or had been acting in *loco parentis*, by virtue of s. 47 (2) of the 1961 Act the 'step-parent' is simultaneously a 'parent' and a 'step-parent' of the deaceased but if the deceased was not a

'step-child' but someone to whom another was or had been acting in *loco parentis*, the other is a 'parent' *simplicitor*. It followed from these relationship permutations that a restrictive interpretation of the provision *in quo* would produce an irrational, absurd and unjust result that ignores the very mischief which the legislation was designed to address: compensation for wrongful interference with defined family relationships which included the 'step-parent' 'step-child' relationship between B. McC. and the Appellant

41. Addressing the question of limits which the Oireachtas had placed on the right to claim compensation for loss of society of a deceased person, Mr Craven submitted that applying a generous and liberal construction the subsection could not be interpreted as disclosing a legislative intention to sub-categorise members of the immediate family unit of a deceased (first degree vertical and spouses) to the exclusion of certain non-blood relatives only, particularly where some non-blood relatives may be included because of how the relationships may be categorised in the situations described earlier.

42. If some relatives were included in some circumstances the question arises as to the justification for excluding others. To exclude someone in the Appellant's position was illogical and discriminated against the deceased's family by reason of its non-singularity, something which cannot be considered to have been intended by parliament. It was not possible to adopt a restrictive approach and a generous, liberal and broad approach simultaneously; the latter was the only permissible approach. When so construed 'child' within the meaning of the subsection included not only biological children and those who happen to fall within an extended relationship definition at some time but all children, including 'step-children', by which I understood the submission to be 'foster children' were also embraced by the term.

43. Finally, it was submitted that a question arose as to whether the Appellant's rights under Article 8 of the ECHR were engaged in the circumstances which have arisen. It was contended that if the Appellant's rights in this regard are to be discriminated against on the ground of her status as a 'step-child' – and, in particular, as an adult 'step-child' to whom the deceased had never acted in *loco parentis* and, in particular, without any enquiry as to the nature of her relationship with the deceased – her exclusion must be justified on some objectively reasonable public policy ground that is capable of sustaining rational scrutiny.

44. Whereas legal certainty could be a justification, the question posed is whether the administrative convenience of certainty is proportionate to the discrimination suffered. It was argued that no justification can be identified for the discrimination which would arise from a restrictive interpretation: a broad and liberal interpretation of the word 'child' was necessary if the statute is to be interpreted in a convention-compliant manner, furthermore, such an interpretation satisfies the requirement that supports claimants, including children – however categorised – of deceased persons and hence the conclusion that 'child' was intended to include all children of a deceased, including the deceased's stepchildren. Whatever else, having regard to the nature of a claim for loss of society and particularly the many templates of Irish family life which have evolved over the last quarter of a century, it was entirely inappropriate that the Appellant's claim should fall to be dismissed, as it was, *in limine*.

Respondent's Submissions
45. The Respondent's submissions may be summarised as follows.

The provision *in quo*, contained as it was in a remedial-redress statute, fell to be construed in accordance with the approach set out in *C.M*. It follows that the parties are *ad idem* on the approach to construction which the Court is required to adopt. However, it was submitted by Mr Dignam, on behalf of the Minister, that when so construed the provision did not lead to the conclusion urged on behalf of the Appellant nor did the wording lead to a result which was illogical or absurd, on the contrary, the wording of the provision was clear and unambiguous; when viewed in both its immediate and broad context and due regard was had to the object of the 1997-2006 Acts the legislative intention behind the enactment of s. 5 (3B) (b) was immediately apparent from the wording employed, namely, to confer on certain 'dependants' of deceased persons a right to make a claim for compensation for the loss of the deceased's society where HCV or HIV was the cause of or a substantial factor in the cause of death.

46. It was exclusively within the preserve of the Oireachtas to identify one or more of the 'dependants' of a deceased upon whom to confer a right to bring a claim for loss of society by virtue of a certain relationship with the deceased. In this regard, the Oireachtas was entitled, within constitutional boundaries, to set the limits for access to the scheme and to establish or identify the category or class of claimant to whom an award could be made. See *R.C. v. The Minister for Health and Children* [2012] IEHC 204 and *C.M. v. The Minister for Children*.

47. By enacting the provision *in quo*, the Oireachtas had chosen to limit the right to bring a claim for loss of society to identified members---the 'child', 'spouse' and 'parent'---of a class of individuals, namely, the 'statutory dependants' of a deceased person where HCV or HIV was the cause of or a substantial factor in the cause of death. The classes or categories of persons entitled to bring a claim and the nature of the claims which could be brought were separately and distinctly set out in the several subsections of section 5. It was notable that practically identical wording to the provision *in quo* was used in s. 5 (3A) (a). The Oireachtas must be taken to have chosen the same formula of words for a reason, furthermore, the maxim of construction--- *expressio unius exclusio alterius*---was applicable when construing provisions involving classes or categories of individuals: the express mention of some members or things of the same class excludes the others.

48. Accordingly, while s. 4 (1) (e) and (j) confers a right to bring a fatal claim on twelve categories of person, namely, a spouse, civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010, parent, grandparent, stepparent, 'child', 'grandchild', 'stepchild', brother, sister, half-brother or half-sister, the provision *in quo* limits the exercise of that right in respect of a claim for loss of society to a 'child', 'spouse' and 'parent' of the deceased. It follows from the maxim that having identified three categories of dependant the legislature must be taken to have intended to exclude the others. The same limitation was applied in respect of a claim for 'post-traumatic stress disorder' in s. 5 (3A) (a).

49. To construe the term 'child' as also meaning 'step-child' would render the interpretation *contra legem*. The term or word 'child' was well understood and had a clear an unambiguous meaning when used in the context and for the purpose of defining the relationship of an individual to a deceased person as had the terms 'step-child', 'foster-child', 'grandchild' and 'adopted-child'. The difference in meaning was expressly recognised by the Oireachtas when it chose to distinguish them individually in the definition of 'dependant'. In circumstances where one term had such a clearly recognised and different meaning from others when used in this context it was impermissible to interpret one such term and meaning the same as another irrespective of the approach to construction adopted; a 'child' did not and could not mean a 'step-child'.

50. While perhaps self-evident, having conferred a right to bring a fatal claim on a 'stepchild' and eleven other categories of 'dependant' in respect of the death of a person from the complications of HCV or HIV the Oireachtas cannot but have been aware of the individual relationships involved. It follows that had it intended to confer a right to make a claim for loss of society on a 'step-child' it would have done so expressly or by employing the formula adopted in respect of a fatal claim whereby the right was conferred on all 'dependants' within the meaning of s. 47 (1) of the 1961 Act. It chose to do neither. The broad and liberal approach to

interpretation was not a mode of conveyance by which a right to bring a claim for loss of society could be conferred on a specific category of 'dependant' which the Oireachtas had chosen to exclude and to so construe the term would amount to a trespass on the exclusive preserve of the legislature.

Decision

Claim for Loss of Society
51. Although no submissions were made by either party in relation to the nature of a claim for loss of society, having regard to the establishment of a statutory right to bring such a claim separately from a claim for loss of consortium and to the extension of the right to a child and parent of a deceased it may be found useful if the background to the common law cause of action was synopsised.

52. The cause of action *per quod servititium amisit* lay at the suit of the husband for loss of services as a result of tortuously inflicted injuries to his wife and members of his household for whom he was responsible. The action had its origins in the medieval common law, if not earlier, and was already considered an ancient right of action when commented upon in the 18th century by Blackstone in his commentaries on the common law. Initially the action was for damages in respect of the loss of services but it developed to allow recovery for the loss to a husband of his wife's society. The loss of these benefits to the husband was, it seems, subsumed within the concept of his wife's consortium.

53. There was, however, but one cause of action at common law---*per quod consortium amisit*---in respect of the loss of these benefits. The constituent elements----services, society, the expense of medical treatment afforded in respect of seeking a cure and domestic expenses incurred as a result of the loss of services and the loss of a child's services– are all heads of damage independent of each other. A claim for the loss of a wife's society was not precluded because some other head of loss, such as the expenses of retaining domestic assistance due to the loss *servititium*, was absent but the loss had to be total loss, albeit for a limited time. See *Best v. Samuel Fox and Co. Ltd*. [1952] A.C. 716 at 735 *et seq*., and *Spaight v. Dundon* [1961] I.R. 201.

54. This aspect of the cause of action was revisited by the Supreme Court four years later in *O'Haran & Others v. Devine* [1966] 100 ILTR 53, a decision which represents a modification or more broad interpretation of the requirements. The facts in the two cases were relatively similar but recovery was allowed in *O'Haran*. At p. 56 Kingsmill Moore J. observed that the wife's confinement in hospital for treatment effectively separated her from her husband thus depriving him of "*all the innumerable advantages, pleasures and consolations of married life – save for a limited measure of communication."*

55. From its origins, the action lay solely at the suit of the husband and was not available to a wife. Given the fundamental right to equality before the law enshrined in the Constitution and the subsequent evolution in the social understanding of the marital relationship in law that a challenge to the constitutionality of the cause of action would arise, and so it did in *McKinley v. The Minister for Defence* [1992] 2 IR 333. Finding that the elements of the action were of contemporary significance and value the Supreme Court decided that the cause of action had survived the enactment of the Constitution and lay at the suit of either spouse, who in that case was the wife of a soldier had been seriously injured in an explosion.

56. It is no doubt self-evident from the foregoing that an action for loss of consortium at common law is confined to a spouse. Any extension of the right to recover damages for loss of consortium or any one of the independent elements subsumed into that concept, such as loss of society, requires legislative authority. And so it is that, in addition to a spouse, the Oireachtas chose to extend the right to make a claim for loss of the deceased's society to a parent and a child where HCV or HIV was the cause of or a substantial factor in the cause of death.

57. It follows that the right to bring a claim for loss of society conferred on a 'child' or 'parent' is a creature of statute. In passing it will be noted that apart from the right of a spouse to make a claim for loss of consortium the Oireachtas also conferred on a spouse a separate right to make a claim for loss of society notwithstanding that this is one of the elements of consortium, a matter which, it appears to me at least, would have to be taken into account in the assessment of compensation for loss of consortium where a separate claim is brought for loss of society since to do otherwise would run the risk of double recovery, a result which must be avoided on principle and as a matter of law.

Meaning of 'Child' at Common Law
58. At common law a 'child' is the begotten offspring or issue of its natural parents. An individual who has no biological connection to another cannot be that person's child. Writing on the rights of parent and child Blackstone, in his 18th century work 'Commentaries on the Laws of England,' 14th ed. Vol 1. Ch. 16, p. 446 observed:

> *"The next, and most universal relation in nature, is immediately derived from the proceedings, being that between parent and child. Children are of two sorts; legitimate, and spurious, or bastards. A legitimate child is he that is born in lawful wedlock, or within a competent time afterwards. "Pater est quem nuptiae demonstrant" is the rule of the civil law……. [w]ith us in England the rule is narrowed, for the nuptials must be precedent to the birth…".*

59. When viewed from the accepted norms in the early 21st century, or at least those in western society, the legal and social consequences which flowed from the states of 'legitimacy' and 'illegitimacy' seem entirely unjust and inhumane. Legal consequences, such as those arising from the rebuttable presumptions against illegitimate children in respect of inheritance, extant until comparatively recent times, were harsh and unjust. See *In Re Sillar, Hurley v. Wimbush* [1956] I.R. 344 and *Re Wilson's Estate*, (May 1979 unreported) HC, where only legitimate blood relations were to be included in the ascertainment of "next of kin" under s. 71 of the Succession Act 1965. The legal and social discrimination against those categorised as 'illegitimate' was not finally addressed in Irish law until the abolition of the concept by the Status of Children Act, 1987.

Meaning of Child; Statutory Modification
60. For present purposes, it follows that 'child' includes those children formally classified or categorised as "illegitimate". But as to meaning otherwise a general observation appears to me to be pertinent to the issue: the word 'child' rarely if ever appears *in vacuo*. Ordinarily 'child' is used together with other words or prefixes the effect of which is to create a context within which the word is to be understood, the provision *in quo* being but one example. The word 'child' is not expressly defined in the 1997-2006 Acts though by virtue of the provisions of s. 1 it includes an 'adopted child' within the meaning of the Adoption Acts and a person to whom a deceased is in *loco parentis*.

61. Moreover, the general rules of construction set out in s. 18 of the Interpretation Act, 2005 provide that a reference, however expressed, to a 'child' of any person in any enactment promulgated after the passing of the Adoption Act 1976, shall be read as including a reference to a 'child' adopted under the Adoption Acts , a 'child' within the meaning of s.3 sub.s (1) of the Status of

Children Act 1987 and a 'child' adopted outside the State where the adoption is recognised by law for the time being in force in the State.

Meaning of 'Step-child' and 'Step-Parent'; Common Law; Statutory Extension
62. At common law a 'step-child' is the offspring of one's spouse by a previous marriage or union. Consequently, a 'step-parent' is the spouse of a parent of a child by a previous marriage or union. It follows the 'step-parent' cannot be the natural parent of that 'child' though could become a parent at law by adopting the 'child' or in certain circumstances where acting in *loco parentis*. I pause to observe that the common law definition of 'step-parent' has been incorporated into the Adoption (Amendment) Act, 2017, which also expands or extends the meaning of 'step-parent' as follows

> *"(a) …*
>
> *(i) a spouse of a parent of the child,*
>
> *(ii) a civil partner of a parent of the child, or*
>
> *(iii) a cohabitant in a cohabiting couple where the other cohabitant is a parent of the child,*
>
> *and*
>
> *(a) the child, in respect of whom the adoption order is sought, has a home with the child's parent and that person (the 'step parent') for a continuous period of not less than 2 years."*

63. Following a general review of parentage and relationships the Oireachtas enacted the Children and Family Relationships Act, 2015. It is agreed between the parties that the provisions of that Act are not relevant for present purposes. However, it serves as yet another example where the existing common or statute law has been amended or updated to reflect advances in medical science and the social understanding of family relationships as they have evolved in Ireland over recent decades.

Legal Status and Capacity
64. In relation to capacity and the legal status of a 'child' a distinction was made between a 'child' and a 'young person', the former being a person under the age of 15; the distinction was abolished by the Child Care Act 1991. In general, however, it maybe said in this context that a 'child' is a person who is unmarried and has yet to attain the age of majority, presently set at 18, though for the purposes of the Child Trafficking and Pornography Act 1998, as amended, a 'child' is defined as a person under 17 years of age. The meaning of 'child' for present purposes is not concerned with whether the Appellant is a 'child' or an 'adult' at law but with the meaning of the word in the context of a relationship with her deceased step-mother. It is necessary, therefore, to consider the meaning of the word in that context.

Meaning of 'Child' in the Context of Relationships
65. First and foremost, amongst the observations which may be made in this regard concerns the utilisation of certain prefixes or other words conjoined with the word 'child' in order to convey a meaning which defines the relationship of the 'child' to another person. In Gaelic culture placing the prefixes such as O, Mac, Mc Ui before a family or surname connotes a biological and generational family relationship. Conjoining 'grand' or 'great' to 'child' explains the relationship of that person to its grandparents or great grandparents. Similarly, placing the prefix 'adopted' before the word 'child' conveys a meaning which defines or explains the relationship between that 'child' and its adoptive parents and also distinguishes the relationship between it and the natural children, if any, of those parents though in law all are to be considered the parent's offspring. Similarly, the prefix 'foster' to the word 'child' defines or explains the relationship between that child and its foster parents. And so, placing the prefix 'step' before the word 'parent' or before the word 'child' defines or explains the relationship between those individuals. In the context of relationships, it follows that the words 'child' and 'step-child' convey distinct and different meanings.

'Child'; Statutory Definitions
66. It is not intended to even attempt a summary of statutory definitions of the term or the meanings to be attributed to the word 'child. Suffice it to say that from a perusal of statues concerning the interests of children going back to the Fatal Accidents Act 1846, an almost universal theme emerges, namely, any limitation, extension or expansion of the common law meaning of 'child' is expressly provided for either in the statute in which the term appears or by reference to another statute so, the formula used in this instance: the meaning of 'dependant' in the 1961 Act is adopted for the purposes of the 1997-2006 Acts. An early statutory extension of the common law meaning of 'child' is found in s 5 of the Fatal Accidents Act 1846 which defines 'child' as including a 'grandchild' and a 'step child'.

67. A similar perusal of case law leads to the next observation, namely, in the absence of a statutory definition the word 'child' receives a restricted interpretation.

In this regard the meaning of 'Children' for the purposes of s. 117 of the Succession Act 1965, as amended, is confined to the natural and adopted children of the testator or testatrix and does not extend to other categories, such as grandchildren. See *E.B v. SS* [1998] 4 I.R 527. When section 110 of the 1965 Act was repealed by the Status of Children Act 1987 and replaced by the insertion of a new sub section in s. 117, the meaning of 'child' was not extended to include a 'step-child'.

68. On the other hand, the common law meaning of the word 'child' was extended by 2 (1) of the Capital Acquisitions Tax Consolidation Act, 2003, which requires references to 'a child' to be interpreted for the purposes of the Act as including a 'stepchild' and an 'adopted child'. See also by way of example of statutory modification the Child Care Acts, the Status of Children Acts, the Adoption Acts and the Irish Nationality and Citizenship Acts. Although the 1997-2006 Acts are silent as to the meaning of the word 'child', save as provided by s. 47(2), of the 1961 Act, the word is expressly qualified in the definition of 'dependant' by adopting a prefix or by conjunction ---*'child', 'grandchild', 'step-child'*---thereby defining or explaining the nature of the relationship between those individuals and the deceased---in no sense can one term be said to have the same meaning as the other; the relationship of each of these 'dependents' to the deceased is manifestly different.

69. The significance of the different meanings conveyed by the words 'child' and 'step-child' and the significance of the distinction drawn between them in a statutory provision has recently been considered by this court in *Hyland v. Residential Tenancies Board* [2017] IEHC 557, where the meaning of the word 'child' for the purposes of the *Residential Tenancies Board* Act 2004 (the 2004 Act) fell to be considered. The case involved an appeal on a point of law pursuant to s. 123 (3) of the Act which, by virtue of Section 3 (2) (h), does not apply to *"a dwelling within which the spouse, parent or child of the landlord resides and no lease or tenancy*

agreement in writing has been entered into by any person resident in the dwelling…".

70. The first issue which fell to be determined was identical to the issue on this appeal albeit for the purposes of a different and unrelated statute, namely, whether the appellant was a 'child' within the meaning of the section. In common with the 1997-2006 Acts, the 2004 Act contains no explicit definition of the word 'child'. However, s. 4 (1) of the 2004 Act provides that:

> *"'child"' includes a person who is no longer a minor and cognate words shall be construed accordingly"*

The court approached the construction of the provision in accordance with the well settled canons of construction by firstly giving the words of the provision their ordinary and natural meaning; the court found these to be clear an unambiguous. Noonan J. rejected the argument that in light of evolving concepts of the family, the word "child" was ambiguous and unclear as to its meaning and, accordingly, ought also to include 'step-child'. At para. 17 he observed:

> *"The word 'child' in its natural and ordinary meaning can only refer to the biological offspring of a natural person. Such a person's son or daughter is a 'child' of that person. Of course, whether a person is the biological offspring of another is, with advances in medical science, perhaps a more complex question that it used to be. What is clear however is that a person who has no biological connection to another cannot be the latter's 'child'. A stepchild is thus not a 'child'."*

71. The learned judge was fortified in reaching this conclusion by the provisions of s. 39 of the 2004 Act which provides for the termination of a tenancy on the death of the tenant except where certain conditions are fulfilled including that stipulated in sub.s (3) (a) "*…the dwelling was at the time of the death… occupied by (iii) a child, stepchild or foster child of the tenant, or a person adopted by the tenant under the Adoption Acts 1952 to 1998, being in each case aged eighteen years or more*". He considered this provision "*clearly recognises that a child is something different from a stepchild or indeed a foster child or an adopted child*" noting that, in a different context, s. 35 (4) of the 2004 Act defines a reference to a member of the landlord's family for the purposes set out there as being a reference to any "*spouse, child, stepchild, foster child, grandchild, parent, grandparent, stepparent, parent-in-law, brother, sister, nephew or niece of the landlord or a person adopted by the landlord under the Adoption Acts, 1952 to 1998*".

72. It was submitted on behalf of the Appellant that apart altogether from the fact that the 2004 Act was not a redress statute and that the approach to construction mandated by *CM* was required when addressing the interpretation of the provision *in quo* the conclusions reached by the learned judge in relation to the meaning of 'child' were inconsistent. The unqualified requirement for a biological relationship between individuals before a person might be considered a child as a matter of simple statutory interpretation could not be correct in circumstances where the court had subsequently found that 'child' had to be construed as including an adopted child. The contradiction was obvious; the adopted child need not have and in many cases, would not have any biological connection with its adoptive parent. Accordingly, the conclusion that the appellant was not a child of the landlord (she was the daughter of the landlord's wife and therefore the landlord's stepchild) was questionable on the court's own analysis which, in any event, was predicated on a strict and literal interpretation of the legislative scheme in question.

73. For my part I cannot accept the proposition that the conclusions reached were inconsistent; no inconsistency emerges when the relevant passages are read in context. It is clear that in referring to an adopted child having to be considered a 'child' for the purposes of the Act the learned judge was referring to the common law meaning having been extended by statute. Mindful that Noonan J. construed the meaning of 'child' for the purposes of the 2004 Act and did so by adopting the literal approach, giving the word 'child' its ordinary and natural meaning, I find the decision to be nevertheless of some considerable assistance, particularly where in certain provisions of the Act, as with the 1997-2006 Acts, express distinction is made between different categories of children.

74. He considered and rejected the argument that the word 'child' was ambiguous and unclear in its meaning having regard to the concepts of family life which had evolved in Ireland over recent decades, a proposition advanced, albeit in a different way, on behalf of the Appellant in this case. The express distinction between a 'child' 'step-child', and 'foster-child' comprised in s. 39 and other family relationships in s. 35 of the 2004 Act was a clear recognition by the Oireachtas that a 'child' meant something different to a 'grandchild', 'step-child, 'foster-child and an 'adopted-child'.

It was also submitted that the court appears not to have had any regard as to whether the appellant's rights under Article 8 of the European Convention on Human Rights had been engaged. The attention of this Court was drawn to the decision of the Court of Appeal in England and Wales in *Sheffield City Council v. Wall's Personal Representatives* [2010] EWCA Civ. 922 following *R (on the application of Gangera) v. Hounslow London Borough Council* [2003] EWCH 744 (Admin), [2003] HLR 68.

75. With regard to the nature of the claim for loss of society it was contended on behalf of the Appellant that this right of claim was not strictly a dependency claim at all but rather in the nature of a claim for a wrongful or tortious interference with the relationship arising from a death as was the claim for loss of consortium. A claim for nervous shock/post-traumatic stress disorder is in the nature of a personal injuries action. None of these claims are derivative: each arises from the breach of a primary duty to the claimant. In none is there an element of dependency properly so called

76. The nature of these claims, introduced by the 2002 Act in s. 5 (3A) (a) and (b) and (3B) (a) and (b) and the limited class of 'dependants' to the exclusion others was reviewed in *RC & Ors v. The Minister for Health and Children & Anor* [2004] IEHC 407. Commenting on the several claims introduced by the 2002 Act O'Neill J., stated at p. 9:

> *"The Act of 2002 introduced claims in respect of loss of consortium, loss of society, post-traumatic stress disorder or nervous shock and a claim in respect of the general damages to which the deceased would have been entitled had he survived to pursue a claim. Clearly the loss of consortium claim is not a dependency claim at all as it does not arise from a death and is not expressed as a dependency claim in the Act of 2002. A feature of some of these new dependency claims introduced by the Act of 2002 is that they are not available to all dependants. The claims in respect of loss of society and post-traumatic stress disorder or nervous shock are limited to a child, spouse, or father and mother of the deceased excluding all other dependants within the meaning of s. 47(1) of the Civil Liability Act, 1961."*

Whilst these observations are undoubtedly correct, the claims are not cast as 'dependency' claims in the sense understood for the purposes of Part IV of the 1961 Act, though they all arise as a result of a death caused by or where HCV or HIV was a substantial factor in the cause of death, rather the definition of 'dependant' in s. 47 (1) is utilised for the purpose of identifying the class or category of individuals who may bring the several causes of claim recognised and provided for in s. 5 of the 1997-2006 Acts.

Meaning in Other Statutes; Relevance

77. The Court is not concerned with the meanings attributable to the word 'child' in other statutes, particularly where they form no part of the legislative history of the 1997-2006 Acts. Nevertheless, and mindful of the risk inherent in the importation of a statutory

definition for the purposes of one legislative scheme into another, the consistency of approach by the Oireachtas when dealing with the meaning of 'child' in other statutes merits noting, particularly where identical or very similar wording is used, such as in the 2004 Act. In the circumstances which pertain here, where the Court is required to adopt as generous and liberal an approach to the construction of a provision in a statute which the words employed will permit, where a consistency of approach by the legislature in other statutes to the same subject is readily apparent it is at least indicative, absent an intention to the contrary, that a different approach was not intended.

78. As will have been seen earlier, it is invariably the case in statutes which are concerned with or touch upon the status or interests of children that where the intention of parliament is to modify, extend or otherwise alter the meaning of 'child' beyond the understanding of the term at common law, express provision is made. While the word 'child' is not defined in the 1997-2006 Acts, the common law meaning has been extended for the purposes of the scheme by virtue of the definition of 'dependant' by reference to s. 47 of the 1961 Act so as to include an 'adopted- child', a person who, prior to the abolition of the concept was an 'illegitimate child', and a 'child' to whom the deceased is in *loco parentis*.

79. In recognising and identifying several categories of children, namely, a 'child', 'grandchild' and 'step-child' as 'dependants' of a deceased person for the purposes of the 1997-2006 Acts the Oireachtas chose to exclude 'foster children' notwithstanding that a close emotional and social bond could be engendered by such a relationship, an exclusion which formed the basis for the EHCR issue which fell for consideration in *Sheffield City Council v. Wall.*

Article 8 of the ECHR

80. Finally, it is necessary to consider whether the Appellant's rights within the meaning of Article 8 of the ECHR were engaged by the provision *in quo*. It was argued that if the Appellant's enjoyment of those rights was to be discriminated against on the ground of her status as a 'stepchild' to whom the deceased had never acted in *loco parentis* and, in particular, without any enquiry as to the nature of her relationship with the deceased – her exclusion must be justified on some objectively reasonable public policy ground that is capable of sustaining rational scrutiny. When the matter was viewed in the context of the approach to the construction of the provision which the Court was required to adopt no justification could be identified for the exclusion of the Appellant; to be convention compliant she had to be included within the meaning of 'child'.

81. Article 8 of the European Convention on Human Rights provides:

> *"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> *2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Having regard to the nature of the argument advanced on behalf of the Appellant it is necessary to consider Article 8 together with the provisions of Article 14 which provides:

> *"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*

82. The essence of the case advanced on behalf of the Appellant on this issue as I understood it is that an interpretation which restricts the meaning of 'child' to the exclusion of a 'step-child' would infringe one of the Appellant's substantive convention rights and amount to discrimination on the grounds of 'birth or other status'. In *R (on the application of) Gangera v. The London Borough of Hounslow* [2003] EWHC 794 (Admin) the High Court for England and Wales approached the issue on Article 8 of the convention by posing a number of questions which had been formulated by Brooke L.J. in *Wandsworth Borough Council v. Michalak* [2002] EWCA Civ 271 at para 20.

83. Of these the first question is whether the facts fall within the ambit of one or more of the substantive convention rights. The essence of the Appellant's submission is that they do. If on the construction of the provision the Appellant is taken to be excluded from access to the scheme the exclusion amounts to a failure to respect her 'family life' and discriminates against her contrary to Article 14. I am far from being convinced that the Appellant's rights in this regard are engaged but if I am wrong about that the next question which falls for consideration is whether there was a difference in treatment as respects the rights enshrined in Article 8 between the Appellant on the one hand and other persons put forward for comparison on the other.

84. In this regard, the Appellant points to the several situations in any of which she would qualify for inclusion in the scheme save the sole exception of the circumstance in which she finds herself. It is undoubtedly the case that a difference in treatment pertains, accordingly, the next question to be posed is whether the Appellant's situation is in an analogous position to other categories which qualify, for example a 'step-child' who had been adopted or to whom the deceased had been in *loco parentis*. On my view of it the Appellant's situation is self-evidently different; a critical factor in the relationship with the deceased is absent, she was neither adopted nor was the deceased in *loco parentis* to her at any time. In the circumstances I cannot accept the correctness of the proposition advanced on behalf of the Appellant that the relationship between herself and the deceased was a 'legal relationship' though I do accept there was certainly a close social relationship as a consequence of their father's remarriage

85. Again, if I am wrong about the positions being analogous the fourth question identified by Brooke LJ., is whether the difference in treatment had an objective and reasonable justification. *"In other words, did it pursue a legitimate aim and did the differential treatment bear a reasonable relationship of proportionality to the aim sought to be achieved*". In my judgement, the justification for the difference in treatment is to be found in the scheme established by the Oireachtas, the democratically-elected parliament of the State. In this regard the courts should respect the legislative judgement as to what is in the general interest unless that judgement was without reasonable foundation or was constitutionally infirm. See *Mellacher & Ors v. Austria* (Judgment of 19 December 1989).Or to put it another way did the Oireachtas pursue a legitimate aim and did the differential treatment bear a reasonable relationship or proportionality to the aim sought to be achieved. In the interest of completeness, I should say it was not suggested on behalf of the Appellant that the provision is in any way constitutionally infirm rather the question was whether on a given interpretation it is convention compliant.

86. The appeal in *Sheffield* (supra) concerned the statutory entitlement of certain members of a family to the occupancy of a council house, owned by Sheffield City Council, which arose on the death of a secure tenant. The appellant, Mr Wall, was a 'foster-child' of the deceased tenant. Section 113 (2) of the Housing Act, 1985 extended the meaning of 'child 'to include a 'stepchild' and an

'illegitimate child', but not a 'foster-child'. The Court of Appeal held that the meaning of 'child' was limited to the closed categories stipulated in s. 113 (2), namely blood relationships, stepchildren and illegitimate children. When Parliament wished to extend the meaning to cover de facto relationships, it did so expressly, absent which there was no room for extending the meaning to include a 'foster-child'.

87. Although the appellant's Article 8 ECHR rights were engaged and it was assumed the enjoyment of those rights had been discriminated against contrary to Article 14 on the ground of his birth or status as a 'foster- child', the court found that the exclusion of foster children was objectively justified. The legislation was compatible with the appellant's convention rights; accordingly, there was no need to extend the ordinary and natural meaning of the words of the statute. The need to strike a balance between security of tenure and the wider need for systemic allocation of the local authority's housing resources was pre-eminently a matter of policy for the legislature; the courts should respect that judgement unless it was manifestly without reasonable foundation.

Conclusion
88. Contained as it is in a redress statute the Court is required to approach the construction of the provision *in quo* by giving it as generous and liberal an interpretation as the words employed will permit, that much is not in controversy. What therefore does "… the child'… of the person who died…" mean for the purposes of s. 5 (3B) (b) of the 1997-2006 Acts? On a literal interpretation, I accept the submissions made on behalf of the Minister and find that the wording of the provision is clear and unambiguous, namely, that the child of the person who died as a consequence of or where HCV or HIV was a substantial factor in the cause of death is the natural or adopted child of the deceased or a child to whom the deceased was in *loco parentis*.

89. In circumstances where the legislature has identified a class of individuals by reference to a relationship with a deceased person upon whom to confer a right to bring a claim for loss of society and in that context has recognised by express distinction the difference in meaning between a 'child', 'grandchild' and 'step-child', a construction of the word 'child' to include a 'step-child' would, in my judgement, be so expansive as to render such interpretation *contra-regem*.

90. In common with the approach of the Westminster Parliament to the interpretation of the word 'child', where the legislative intention of the Oireachtas has been to extend or expand the common law meaning such intention has been consistently provided for by the enactment of an express provision to that effect. Had the Oireachtas intended to confer the right to make a claim for loss of society on a 'step-child' it would have been necessary to do so expressly, all the more so where the right to bring such a claim is a creature of statute; parliament chose to do otherwise. Considering the proximate and general context in which the provision occurs together with the preamble, title and object for which the 1997-2006 Acts were enacted, the legislative intention in this regard is, for the reasons given, beyond question and without doubt.

91. It was not suggested, quite correctly in my view, that the limitations on access to the scheme, the nature and types of claim and those upon whom the right to claim is conferred are otherwise than within constitutional boundaries. Indeed, having regard to the awful circumstances which gave rise to the legislation in the first place, the 'mischief' the 1997-2006 Acts were enacted to address and the ever evolving direct and indirect consequences of the infections for the victims and their families the Oireachtas chose to expand the scheme very considerably, particularly by the Hepatitis C Compensation Tribunal (Amendment) Act, 2002, on foot of which new rights of claim were established and conferred where none had existed before.

92. The power to raise taxes and set the limits of exposure on the public purse is vested exclusively by the Constitution in the Oireachtas. In confining the right to bring a claim for loss of society to the 'child', 'spouse' or 'parent' of the deceased the Oireachtas set a limit, as was its right, to the liability under the scheme which the State was willing to accept. The decision to create a free standing statutory right of claim for loss of society and to confer the right on those dependants most likely to have the closest family and filial relationship with the deceased, especially in circumstances where no such right existed for a child at common law, was manifestly reasonable and objectively justified; in my judgement the provision as construed is also convention compliant.

Ruling
93. For these reasons and upon the conclusions reached the Court will dismiss the appeal and affirm the decision of the Tribunal. And the Court will so order.