Neutral Citation Number: [2011] IEHC 11

THE HIGH COURT

[2000 No. 10718P]

BETWEEN/

JOHN DONNELLAN

APPELLANT

AND

WESTPORT TEXTILES LIMITED

(IN VOLUNTARY LIQUIDATION)

AND

MINISTER FOR DEFENCE, IRELAND AND THE

ATTORNEY GENERAL

DEFENDANTS

JUDGMENT of Mr. Justice Hogan delivered on the 18th January, 2011

1. It may seem remarkable that negligence proceedings involving an adult plaintiff arising from events which took place almost thirty eight years ago are still outstanding before the courts. That, however, is the backdrop to the present case where the plaintiff has sued both a limited company and the State in respect of a hearing loss claim.

2. The plaintiff is a former member of the Defence Forces who was discharged on the 28th June, 1974. He had in fact enlisted on 4th September, 1973, when he was almost 20 years of age, so that his period of service in the Defence Forces was a little short of ten months. He was later employed as a cone winder between 1978 and 1979 with the first defendant, Westport Textiles Ltd. That company went into liquidation in 1981, albeit that the liquidation itself was not completed until June, 2000. For reasons which I will later recount, the action is now proceeding against the State defendants only. These defendants have, however, brought a motion seeking to have the proceedings struck out on the grounds of inordinate and inexcusable delay. The present case is one of approximately 29 such claims in which proceedings as against both Westport Textiles and the State were originally issued. The plaintiff's solicitor was also acting in a very large number of other hearing loss claims against the State.

3. In the present proceedings the plaintiff claims damages for personal injuries caused by the alleged negligence and breach of duty on the part of the defendants, whom I shall describe as Westport Textiles and the State. The gist of the claim is that the plaintiff was exposed to excessive noise during these two separate periods of employment and that he had sustained loss of hearing and tinnitus as a result.

4. These proceedings were commenced on 14th September, 2000. Given the lapse of time, it might be thought that the claim was *prima facie* statute-barred. At the hearing of this motion, however, Mr. Kennedy S.C. informed me that the plaintiff will at trial contend that he commenced proceedings against the defendants within the period of three years from his "date of knowledge" within the meaning of s. 2 of the Statute of Limitations (Amendment) Act 1991. For the purposes of this motion, I will assume that this is so and I will therefore proceed on the assumption that the action is not, in fact, statute-barred.

5. But even if these proceedings are not statute-barred, the critical point here, surely, is that the proceedings were issued in 2000 in respect of events which took place some twenty six years previously. In those circumstances, it behoved the plaintiff to move with very considerable expedition.

6. The State was first notified of the existence of the proceedings on 26th November, 2001, following a letter from the plaintiff's solicitors. The proceedings were not, however, served on the State until 29th May, 2002, the time for service having been extended by this Court on 3rd December, 2001. While the delay in effecting service is in itself striking, the explanation proffered by the plaintiff's solicitor was that this delay "was simply due to the logistics of obtaining formal instructions from in or about 140 clients and issuing plenary summonses for all of them." While it is, perhaps, easy to be wise after the event and while I am not unmindful of these logistical difficulties, I cannot say that I find this explanation compelling. The very long interval between the events complained of and the commencement of the proceedings meant that the plaintiff was under a particular duty to move with expedition.

7. The plaintiff had, in fact, delivered a statement of claim along with the plenary summons. The State entered an appearance and the Chief State Solicitor's Office wrote on the 25th June, 2002, inviting the plaintiff to participate in an early settlement scheme. The plaintiff was subsequently examined by a consultant in September, 2002. The claim as against the State then entered another period of inactivity and nothing further appears to have happened until the State served a notice for particulars in September, 2005. Of course, it should be recalled in fairness that during this period the principal onus with regard to taking action vis-à-vis the litigation rested with the State, but the failure of the plaintiff to press the State for a defence is, perhaps, in its own way telling.

8. As the plaintiff's solicitors had not replied to the notice for particulars, the private firm of solicitors who had taken over the defence of the proceedings on behalf of the State wrote in March, 2006 to the plaintiff's solicitors asking for a response to previous correspondence. As it happens, the replies to particulars were apparently prepared on 15th November, 2005, and were only served on 17th August, 2010, almost five years later. In that letter the plaintiff's solicitors explained due to the fact that they were dealing with issue regarding Westport Textiles, they "inadvertently forgot to send same onto yourselves."

9. Parallel to these developments, the plaintiff's solicitor was endeavouring to resolve a difficult situation with regard to the insurers of Westport Textiles. The liquidator of the company was at the time extremely elderly and there was an understandable reluctance to serve proceedings on him directly. In the end, a solicitor in Co. Cork was nominated to accept service and the proceedings were ultimately served on that solicitor on behalf of the company in March 2002.

10. This was not the end of the solicitor's difficulties. An application had to be made to this Court pursuant to s. 310 of the Companies Act 1963 to have the company restored to the register and this was achieved on 15th July 2002. The issue of the ascertaining the identity of the Westport Textiles' insurer proved even more problematic. It is clear that the plaintiff's solicitor made many diligent inquiries in relation to this matter. Indeed, these inquiries extended to ascertaining the identity of a quite separate plaintiff who had taken action against the company in 1979. The solicitors for this litigant then informed the plaintiff's solicitor of the identity of the insurer - now known as Royal Sun Alliance ("RSA") - and provided some details of the policy.

11. This new information notwithstanding, the insurance company refused to provide indemnity cover. At some stage in early 2004 the plaintiff's solicitor appears to have obtained advice from counsel to the effect that the plaintiff was entitled to join the insurance company as a co-defendant to the proceedings in accordance with s.62 of the Civil Liability Act 1961.

12. In April 2004 the plaintiff's solicitor then wrote to RSA seeking to have them joined in the proceedings, but no reply was forthcoming. In early January 2005 the Master of the High Court made an order ex parte joining RSA to the proceedings. An amended statement of claim was then served on these defendants (but not the State defendants) in March 2005. RSA then successfully appealed this order to this Court: see the judgment of Finnegan P. in case of *Kilcoyne v. Westport Textiles Ltd*. [2006] IEHC 256, a case involving the claim of a plaintiff with very similar facts to the present one.

13. Judged from the comments of Finnegan P. in *Kilcoyne*, it would appear that the amended statement of claim contained only perfunctory changes from the original. Specifically, it did not properly plead the true nature of the case against RSA, *i.e.,* the reliance on the provisions of s. 62 of the 1961 Act as interpreted by the Supreme Court in *Dunne v. PJ Whyte Construction Ltd*. [1989] ILRM 803. It was on this basis that Finnegan P. accordingly struck out the proceedings as disclosing no reasonable cause of action against RSA.

14. Finnegan P. also rejected an application that the plaintiff should be allowed further to amend his proceedings to reflect the true cause of action against RSA:

> "…..I have determined that I should deal with the matter solely on the basis of the pleadings as they stand at present. On the information before me it seems almost inevitable that the plaintiff will obtain judgment in default of pleading against the first named defendant. He can then, if so advised, institute proceedings against the second named defendant as the indemnifier of the first named defendant. In those proceedings the defendant (the second named defendant in these proceedings) can raise the issue of delay and seek to have the proceedings struck out. Rather than proceed on the basis of a notional further amended statement of claim I am satisfied that it is preferable that I should allow the matter to proceed on the basis of the proceedings as they stand.
>
> In deciding to strike out the plaintiff's claim I am influenced by the circumstance that the plaintiff has had from the 11th January 2005 to date to deliver an appropriate amended statement of claim setting out in appropriate terms his claim against the second named defendant but has failed to do so: the amended statement of claim delivered is totally defective in that it fails to disclose the true basis of the claim against the second named defendant. The defendant in this case has to meet a claim which arose more than 25 years ago and in these circumstances the onus on the plaintiff having joined the second named defendant was to proceed promptly and he has not done so."

15. In the wake of this, RSA then brought a motion seeking to have all of these other cases dismissed. The matter was listed for hearing in March 2008 and was then compromised by agreement.

16. Even then, no further action was taken in respect of the proceedings against the State defendants. It is only fair to record that the plaintiff's solicitor did inform the solicitors for the defendants of developments in respect of RSA. It is equally appropriate to note that a copy of the plaintiff's audiogram was sent to the defendants' solicitors in June 2008. There was no response to this and a follow-up letter was apparently sent in March 2009 in another companion case advising the solicitors for the State that the newly retained counsel had suggested that "it would be advisable to set up some form of meeting to discuss how the case is to be progressed." It would appear that the solicitor for the State defendants never received this latter. At all events, completing the narrative, the present motion whereby the State defendants seek to have the proceedings struck out on grounds of undue delay was issued in June 2010. The replies to the notice for particulars (which, as we have noted, lay on file since November 2005) were served only in August 2010, apparently in response to this motion.

Whether there has been Inordinate and Inexcusable Delay

17. In motions of this kind, the conventional starting place is the three-prong test articulated by the Supreme Court in *Primor plc v. Stokes Kennedy Crowley* [1996] 2 I.R. 459, namely,

> (i) whether the delay has been inordinate;
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> (ii) if so, whether such delay is excusable; and
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> (iii) even if the delay has been inordinate and inexcusable, the court must nonetheless consider the balance of justice.

18. I will presently examine the question of whether *Primor* represents an exclusive test. But we may start by considering the first two limbs of *Primor*.

19. There is absolutely no question but that the delay in the present proceedings is inordinate and this was not disputed by Mr. Kennedy S.C. for the plaintiff. Nor can there be any question but that the delay is inexcusable. While I accept that at times there may perhaps have been some delay on the part of the State defendants, this was marginal in the overall scheme of things and it is totally outweighed by the gross and manifest delay on the part of the plaintiff. Even assuming that the plaintiff was not statute-barred at the time the proceedings were issued, the fact that some twenty-six years had elapsed since the plaintiff had left the Defence Forces was in itself a factor which behoved him to move with considerable dispatch: see, *e.g.*, the comments of Geoghegan J. in *McBrearty v. North Western Health Board* [2010] IESC 27 and those of Henchy J. in *Sheehan v. Amond* [1982] I.R. 235 at 237.

20. In saying this I do not overlook the fact that the plaintiff's solicitor had received advice from a different senior counsel at a much

earlier stage of the proceedings to the effect that the plaintiff's claim as against the State defendants should not be progressed "until such time as the issue of the circumstances surrounding [Westport Textiles] and its insurers were determined." It may possibly be that the plaintiff could not actually have set down the case for hearing until that issue had been resolved, but even if this were so, given the enormous time lag between the events complained of and the commencement of the proceedings, elementary justice required and compelled the plaintiff to move with speed. No matter what the logistical difficulties were, one cannot objectively excuse the further delay of some twenty months between the issuing of the proceedings in September, 2000 and the service of the proceedings in May, 2002. Nor, by the same token, can a delay of some five years in replying to a notice for particulars be excused either.

The Balance of Justice

21. In cases of this kind, the question of the balance of justice generally involves an examination of issues of prejudice, both to the plaintiff and to the defendant.

22. Surprising at it may seem, the State defendants have not specifically identified any particular prejudice which they will suffer as a result of these delays. They contend, however, that the court retains an inherent discretion to strike out proceedings for gross delay, even in the absence of specific prejudice to the defendants.

23. It appears to be accepted on all sides that the audiograms show that the plaintiff has suffered some appreciable hearing loss, so that he will suffer prejudice if he is deprived of his remedy to sue in negligence and for breach of duty. Mr. Kennedy SC contended in argument - although the matter was not put on affidavit - that there were no real difficulties with causation, on the basis that the relevant specialists can ascertain from the audiogram whether the injury was caused by noise from the industrial process on the one hand or from being exposed to rifle and cannon shot in a military setting on the other. I will assume for present purposes that this is so and that no specific prejudice of the conventional kind particular to the defendants - such as missing witnesses or difficulties in causation - has been identified in this case. The fact that no prejudice to the *defendants* has been identified does not, however, mean that there is not prejudice of another kind, a point to which I will presently return.

24. This immediately raises the question of whether there are really two strands to the jurisprudence dealing with undue delay in civil litigation, as indeed Mr. Banim argued. There is, on the one hand, the line of case-law deriving from the judgment of Henchy J. in *O'Domhnaill v. Merrick* [1984] I.R. 151. This line of case-law stresses the inherent duty of the courts arising from the Constitution to put an end to stale claims in order to ensure the effective administration of justice and basic fairness of procedures and in order to secure compliance with the requirements of Article 6 ECHR.

25. The other line of authority derives originally from the judgment of Finlay P. in *Rainsford v. Limerick Corporation* [1995] 2 I.L.R.M. 561, but finds its full exposition in the seminal judgment of the Supreme Court in *Primor* plc.

26. While *McBrearty* confirms the primacy of the *Primor* test, the judgment of Geoghegan J. also makes it plain that there are, in fact, two separate - albeit overlapping - strands of jurisprudence in this area. As Geoghegan J. observed with particular reference to *O'Domhnaill v. Merrick*:

> "I now turn to the other line of authorities to which I have referred starting with *O'Domhnaill v. Merrick* ….. The first observation I would make is that it is clear from this line of authorities and indeed from other cases that the inherent jurisdiction to strike out a case for delay in certain circumstances in the interests of a defendant may be exercised taking into account delay in the institution of proceedings. Notwithstanding that that is not a particular issue in this case, I mention it to emphasise the paramount inherent jurisdiction derived from the Constitution. ….Later cases would seem to indicate that even though it can form part of an application to dismiss for want of prosecution as indicated by Hamilton C.J. in *Primor*, *the inherent jurisdiction can be exercised independently of the Rainsford principles.*" (emphasis supplied)

27. Having examined the Supreme Court judgments in *Toal v. Duignan (No. 1)* [1991] ILRM 135 and *Toal v. Duignan (No.2)* [1991] ILRM 140, Geoghegan J. concluded:

> "If I am right in my view that there was not inordinate and inexcusable delay then the action must be allowed to proceed unless it would be fundamentally unfair to any particular defendant because of his special circumstances to have to defend the action thereby legitimately invoking the inherent jurisdiction of the court which can be exercised even in the absence of fault on the part of the plaintiff."

28. In *McBrearty* the plaintiff (who was severely disabled) instituted proceedings against a health board and two clinicians arising from the circumstances of his birth some twenty one years previously. It was contended that these very disabilities had come about by reason of the negligence of the clinicians which were attending the plaintiff's mother when she giving birth. Geoghegan J. held that it would be fundamentally unfair to permit an action against the two individual clinicians in circumstances where it was not clear that they would be indemnified against any potential liability, even though there was no finding of inordinate and inexcusable delay. This was a critical factor which differentiated their circumstances from that of the defendant health board, as the Supreme Court found that the balance of justice should enable the action to proceed against that particular defendant.

29. The significance of this so far as the present case is two fold. First, Geoghegan J. expressly confirmed that the *Primor* principles were not to be regarded as exclusive or all-encompassing and, second, that the Court's constitutionally derived inherent jurisdiction could be exercised even though some elements of the *Primor* test had not been established.

30. If this is correct, then it follows that in an appropriate case this Court can strike out proceedings, even though the third limb of the *Primor* test might not have been established, where, for example, no specific prejudice to the defendants has been established. This point was also made by Peart J. in *Byrne v. Minister for Defence* [2005] IEHC 147, [2005] 1 I.R. 577, a case to which I will presently refer in more detail. Of course, such cases would have to be exceptional. But this is surely an exceptional case where the delay between the events complained of in 1973-1974 and (even assuming that the case could come to trial in this calendar year) a hearing date in 2011 is simply so great that this court can no longer fulfil its own constitutional mandate contained in Article 34.1, namely to administer justice. Even if every allowance is made in favour of the plaintiff and one assumes (and I suspect that it is a large assumption) that there will be no real issues of either causation or ascertainment of loss, the fact remains that the very antiquity of the events in dispute prevents the court embarking in the striking words of Kelly J. in *Kelly v. O'Leary* [2001] 2 I.R. 526 at 544 in "the form of forensic inquiry which is envisaged in the notion of a fair trial in accordance with the law of this State." The claim thus has, in the equally powerful language of Henchy J. in *Sheehan v. Amand* [1982] I.R. 235 at 239, been allowed "to fade into the dim uncertainties of the past as to be beyond the reach of fair litigation."

31. Moreover, quite apart from any considerations of the personal rights contained in Article 40 and *Re Haughey*-style basic fairness of procedures, the speedy and efficient dispatch of civil litigation is of necessity an inherent feature of the court's jurisdiction under Article 34.1. As I ventured to suggest in my own judgment in *O'Connor v. Neurendale Ltd.* [2010] IEHC 387, this constitutional imperative means that the courts have a jurisdiction (and, in an appropriate cases, a duty) to exercise their powers in a way which will best ensure that a litigant's right to a hearing within a reasonable time is best vouchsafed. In any event, and for good measure, the same right is guaranteed by Article 6 ECHR: see *Gilroy v. Flynn* [2005] 1 ILRM 290 and *McFarlane v. Ireland* [2010] ECHR 1272. One might add that this duty also extends to protecting the public interest in ensuring the timely and effective administration of justice, a consideration to which we may now turn.

The Question of Prejudice to the Public Interest

32. Thus far I have assumed that there is no question of prejudice to the *parties*. But there is, in fact, clear prejudice to the *public interest*. This point was graphically made by Peart J. in another hearing loss case, *Byrne v. Minister for Defence.*

33. Here the plaintiff had been a member of the Defence Forces between 1974 to 1997. He commenced proceedings in 1998 claiming damages for hearing loss, but while Peart J. did not accept that this delay was excusable, he noted that no specific prejudice had been caused to the defendants. Peart J. then put the specific question which also arises in this case:

> "The question which arises in those circumstances is whether that lack of adequate excuse is sufficient to justify this Court in dismissing the plaintiff's claim on grounds of the delay, even where the Court is not satisfied that the defendants are prejudiced. Put slightly differently, the question is whether, in a case where there both inordinate and inexcusable delay in the commencement of proceedings, the Court may nevertheless refuse to dismiss the case where it is satisfied that no prejudice has resulted to the defendant."

34. Peart J. then went to observed that he had considered this very question in *MacH v. M*. [2004] IEHC 112:

> "In that case I decided that what I will call the *Primor* principles were applicable in cases of post-commencement delay by a plaintiff, and where a defendant sought to dismiss the plaintiff's case for want of prosecution, and the principles arising from the judgments in O'Domhnaill v. Merrick and Toal v. Duignan were more applicable to cases of pre-commencement delay, which is what the present case involves. In so finding, I stated:
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> > 'I am of the view that there are two separate and distinct tests, one, the *Primor* test in respect of post-commencement delay, and the other, the *Toal v. Duignan* test, if I can so describe it, in respect of pre-commencement delay. First of all, the distinction reflects the different and respective contexts in which the delay took place in each case. But besides that, I am of the view that there are sound and logical reasons why the test in each instance ought to be different.
> >
> > In the case of post-commencement delay, it is usually the case that the proceedings have been commenced within the period permitted by the Statutes of Limitations, although that fact of itself does not preclude a court from regarding the delay as inordinate. That would be the case, most often, with a case commenced by a plaintiff who has reached his or her majority, and within three years thereof, institutes proceedings in respect of a claim which arose sometime during his or her minority. But in most cases, the proceedings would be commenced within three years of the event giving rise to the claim, and again in most cases, a defendant would have notice of the likelihood that proceedings will be commenced before commencement. The delay giving rise to a motion to dismiss arises only out of delay in the actual prosecution of the case to trial. In the case of inordinate delay, there can be some reasons which are regarded as excusable, and others which are not. Even in the case of reasons which do not excuse or justify the delay, there will in many cases be no real or significant prejudice to the defendant. For example, in a claim for damages for personal injuries arising out of a traffic accident, there could easily, and probably often is, a delay of six months since the entry of an appearance by the defendant and the delivery of the plaintiff's statement of claim. The reason for that delay might be simply be that the plaintiff's solicitor never got round to doing it. That is an inordinate and inexcusable delay, but the court would go on and consider the balance of justice issue, and might well decide that to dismiss the plaintiff's claim would be an unnecessarily draconian consequence of that type of delay. If, on the other hand, there was a justifiable excuse for not delivering the statement of claim, it would make no sense if the court could nevertheless consider the balance of justice and perhaps dismiss the claim, in circumstances where (1) the delay was inordinate in the sense of abnormal or out of the ordinary, and (2) was excusable.
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> > Different considerations, I suggest, arise in relation to pre-commencement delay which is inordinate and yet excusable. There can easily be circumstances in which, in such a case, the balance of justice would be in favour of dismissing the claim. For example, even if Kelly J. had in *Kelly v. O'Leary,* found that the delay of 50 years was excusable, he could well have reached the conclusion based on the facts and circumstances of that case, that the defendant was so prejudiced as to her ability to defend the proceedings after such a passage of time, that the claim ought not to be allowed to proceed. That inordinate and excusable delay is of such a completely different category to the *Primor*-type delay, that it is perfectly understandable that a different rule should apply as to how the courts should assess the significance of the delay. In my view it must follow that the *Primor* principles must be confined to post-commencement delay, and that the wider discretion based on general fairness regardless of whether the delay is excusable or not, should be confined to pre-commencement delay.'"

35. Pausing at this point, it is probably unnecessary to express any view as to whether there is such an *a priori* distinction between pre-commencement and post-commencement delays so far as the *Primor* principles are concerned. What is critical, however, is that Peart J. was of the view that this test was not an all encompassing one, a view which, as we have already seen has, in any event, been confirmed by the subsequent judgment of Geoghegan J. in *McBrearty*. Most pertinently so far as the present case is concerned, Peart J. then went on to hold that the court could strike out the proceedings on the grounds of inordinate and inexcusable delay, even in the absence of established prejudice so far as the defendants were concerned, because of the prejudice to the public interest:

> "Finally, there is a public interest, which is independent of the parties, in not permitting claims which have not been brought in a timely fashion, to take up the valuable and important time of the Courts, and thereby reduce the availability of that much used and needed resource to plaintiffs and defendants who have acted promptly in the conduct of their

litigation, as well as increase the cost to the Courts Service, and through that body to the taxpayers, of providing a service of access to the Courts which serves best the public interest.

It is really the final interest which is relevant to consider in the present case since I have already found that the defendant has not been prejudiced by the plaintiff's delay. The question is whether the public interest which I have identified trump the plaintiff's right of reasonable access to the Courts in the present case.

In the unusual circumstances of the present case, I believe that it does. I say that, because a feature of this case is that the major portion of the plaintiff's claim has fallen away, namely the claim related to tinnitus which emerged in about 1998. Prior to that the plaintiff had some difficulty with hearing loss, but it was not significant, and certainly not sufficiently significant to drive him to consult either a solicitor or a doctor. Mr Dougan has described his loss of hearing as mild to moderate and that it ought not to impact greatly. …..The Court has therefore had to hear a claim whose only real justification was on the basis of tinnitus, rather than hearing loss. That claim for hearing loss, if it were to stand alone, could have been and should have been commenced much earlier than 1998, and certainly not in the High Court. By 1998 it was a stale claim in my view. The Court's jurisdiction to dismiss such an old claim is an important power in the public interest, regardless of prejudice to the defendant, yet one which must be used sparingly lest a plaintiff might unreasonably be deprived of a remedy to which he is entitled. If the Court were never to invoke that power it would send the wrong message, namely that the Courts will tolerate and indulge unreasonable delay in the bringing of claims where a defendant cannot show prejudice. That consideration must exist regardless of the existence of a defendant's right to plead the Statute of Limitations by way of defence pleading. That Statute has the capacity to protect the defendant's rights which I have identified, but it serves no purpose in the protection of the public interest to which I have referred."

36. I respectfully agree with this analysis. If the courts were compelled to entertain claims of this antiquity in the absence of clear prejudice to the private interests of other litigants, it would not only set at naught the constitutional and ECHR considerations to which I have referred, but the courts would be failing in their duty to protect the public interest in the manner outlined by Peart J.

Conclusions

37. In conclusion, therefore, I am of the view that:

A. The delay here was manifestly inordinate and inexcusable.

B. The Supreme Court's decision in McBrearty confirms that the *Primor* rules are not exhaustive and all-encompassing, but that the courts enjoy a separate and distinct constitutionally derived inherent jurisdiction to protect the proper administration of justice.

C. Even if one assumes in the plaintiff's favour that no specific prejudice has been caused to the State defendants by this delay, the lapse of time between the events complained of and the present day is so enormous that the courts simply cannot fulfill their constitutional mandate of administering justice in a case such as this.

D. The judicial duty to ensure the timely administration of justice which is derived from Article 34.1 and *Re Haughey*-style basic fairness of procedures (which is in turn derived from Article 40.3.1) extends to protecting the public interest. The delay in the present is prejudicial to that public interest for all the reasons set out by Peart J. in *Byrne v. Minister for Defence*.

E. While not unmindful of the valiant efforts made by the plaintiff's solicitor on behalf of the plaintiff and while I am conscious that the plaintiff has, in fact, suffered some appreciable hearing loss, the post-commencement delays simply compounded a problem which was inherent from the start, namely, that the 26 year delay involved in commencing the litigation in the first place was simply too long for the administration of justice to tolerate, even if the proceedings were technically within the Statute of Limitations.

F. For all these reasons I fear that I must accede to the relief sought in the State defendant's motion and strike out the proceedings on the grounds of inordinate and inexcusable delay.