Neutral Citation No: [2010] IEHC 168

THE HIGH COURT

JUDICIAL REVIEW

2008 991 JR

BETWEEN

TOM LAWLOR AND MARGARET LAWLOR

APPLICANTS

AND

KIERAN GERAGHTY

RESPONDENT

JUDGMENT of Kearns P. delivered the 20th day of May 2010

BACKGROUND

The applicants are the parents of the late Pierre Christian Lawlor, a self employed bathroom tiler, who was born in 1973 and who died at the age of 34 whilst undergoing elective cosmetic surgery in a hospital in Bogota, Colombia on 3rd September 2007. He had travelled to Colombia from Ireland with his Venezuelan born wife, Andrea Galeano, now aged 26, whom he had met over the internet and to whom he was married in a Dublin registry office on 7 December, 2006. They had one child, a son, Zachary, born on 27 December, 2006. Thereafter they lived in Stepaside, Co. Dublin. It is clear from the affidavit sworn on behalf of the applicants that the marriage was not without its difficulties. There were frequent arguments. It was also the case that the deceased was intensely pre-occupied about his physical appearance and was anxious to have cosmetic surgery. While on holidays to visit his wife's family in Columbia in August, 2007, the deceased arranged to have extensive cosmetic surgery carried out to his eyes, cheeks, neck and nose. He also wanted liposuction. According to the deposition statement made by his wife, the deceased, in spite of being told not to drink in advance of his operation or take a steroid drug he was using for a condition on his hands, ingested both alcohol and cocaine in the course of the weekend prior to his surgery. The surgery had been arranged to take place in the Centro Colomblade Cirujin Plastica in Bogota on the following Monday. On that Monday it appears that the deceased, towards the end of a lengthy operation, suffered a number of heart attacks resulting in his death on the same day. The body of the deceased was repatriated to Ireland on 19th September 2007 and a post-mortem was conducted two days later by Professor Marie Cassidy, State Pathologist.

The respondent is the Coroner for County Dublin with public law functions in relation to the conduct of inquests pursuant to the provisions of the Coroners Act 1962, including, *inter alia*, the duty of hold an inquest in relation to the death of the late Christian Lawlor. The Coroner has statutory powers to return a verdict specifying how a death occurred and to make recommendations of a general character designed to prevent further fatalities which may be appended to the verdict at any inquest. He derives jurisdiction from statute, the common law and the Constitution. The principle domestic legislative provisions are contained in the Coroners Acts 1962 – 2005.

The applicants obtained leave to apply for judicial review on 27th August 2008. The principal relief sought is an Order for *certiorari* quashing the decision of the respondent to refuse their application for adjournment of the Inquest into their son's death in circumstances where they say the respondent acted unreasonably in concluding the Inquest without having had the benefit of the hospital notes relevant to the deceased's treatment in Colombia, particularly where all efforts to obtain those notes had not been exhausted. As evidence of the fact that it would have been possible for the Coroner to obtain the notes or to have enabled the applicants to obtain them, they point to the fact that in the aftermath of the Inquest, the applicants themselves managed to secure the hospital notes within a short few weeks. The applicants have exhibited those notes, with expert medical commentary thereon, in making this application.

In addition to an order quashing the decision of the respondent to refuse their adjournment application, the applicants also seek an order quashing the decision of the respondent to record an Open Verdict in the absence of all appropriate efforts to obtain the relevant and necessary medical records.

The grounds upon which judicial review is sought are that the decision of the respondent to refuse to accede to the application for an adjournment was unreasonable in law and constituted a breach of fundamental fairness and of their rights under the Constitution and under the European Convention on Human Rights to effectively participate in the Inquest as the Deceased's next of kin.

THE FACTS

An Inquest into the death of the late Christian Lawlor was convened and concluded on 1st July 2008. The applicants were legally represented at the hearing by their solicitor, Mr. James McGuill. Witnesses were deposed and were subject to examination by Mr. McGuill.

Professor Marie Cassidy in her evidence offered the opinion that the deceased appeared to have died following extensive plastic surgery, including facial cosmetic surgery and liposuction. The post mortem examination confirmed that surgery had taken place and that there were no obvious acute complications. Professor Cassidy went through her findings upon examination of the internal organs and explained that this had shown dilation of the heart and evidence of heart failure with oedema of the lungs. In the absence of an underlying condition this may have been due to the stress and strain of lengthy surgery.

Professor Cassidy then made the point that liposuction can be associated with heart failure if excessive amounts of fat are withdrawn from the body. She expressed the view that there was no way of knowing how much fat had been removed from the Deceased's body unless the operation notes were made available. She further made the point that the operation notes could reveal the Deceased's clinical condition prior to and during surgery and possibly a cause of sudden deterioration and death. She said that in the absence of

those notes, she could not give a definite opinion as to the circumstances surrounding the death of Mr. Lawlor, that is to say, whether it was a natural death as opposed to a medical incident leading to death.

As the hospital records identified by Professor Cassidy's report as necessary for a meaningful enquiry had not been obtained, an application for an adjournment was made on behalf of the applicants given that, in their view, all attempts to procure these records had not been exhausted. In particular, no attempt was made to procure the records for the purpose of the Inquest as opposed to a prosecution and no attempt had been made to seek consular assistance. It was argued that an adjournment was necessary in those circumstances.

However, the application for an adjournment was refused and the respondent proceeded to conduct the Inquest. He recorded an Open Verdict in respect of the death by Order dated 1st July 2008 and stated that he was doing so due to "the absence of information" having apparently concluded that the information could not be obtained. The injury or disease causing death is recited in the Verdict as being cardiac failure due to prolonged surgery.

In the aftermath of the inquest, the applicants succeeded in procuring the hospital records pertaining to their son's death through diplomatic channels. On the basis of the information obtained, the applicants have secured several expert reports which identify lines of inquiry appropriate to the Inquest and they now seek to challenge both the decision to refuse an adjournment and the consequential decision to record an Open Verdict in respect of the death due to absence of information in circumstances where reasonable efforts to obtain the information had not been made by or on behalf of the Coroner.

THE APPLICANTS' SUBMISSIONS

It was submitted on behalf of the applicants that the respondent is under a duty to enquire into by what means and in what circumstances their son's death occurred. They say that the nature and extent of this duty is as was set out in the UK case of *R (Middleton) v. West Somerset Coroner* [2004] 2 AC 182 and that in the absence of the hospital records, which are now available through the efforts of the applicants to secure them, the respondent did not and could not have discharged his duty to ensure a full and effective investigation into the death of the deceased. His failure to give any adequate opportunity to obtain or to try to obtain the medical records relevant to the Deceased's time in hospital in Colombia by means of an adjournment meant that the respondent Coroner failed in his duty and that his decision should be quashed.

The failure to secure the necessary medical information for the purpose of the Inquest deprived the applicants of a meaningful opportunity of testing the evidence offered by their late son's spouse as to his conduct prior to his death and the circumstances surrounding his death for the purpose of permitting the medical cause of death to be established and to allay rumours and suspicion in relation to the death. The applicants further allege that they were deprived of a meaningful opportunity to test the medical evidence pertaining to the death of the late Christian Lawlor and that their right to representation at the Inquest was thereby rendered ineffective.

The applicants also claim that the manner in which their adjournment application was dealt with was a further breach of the requirements of natural and constitutional justice. Again, they say that constitutional justice requires consideration of the relevant evidence given in making the decision and that it is patent in this case that the respondent shut his eyes to or failed to have any proper regard to the relevant evidence of Detective Inspector O'Reilly that all avenues had not been exhausted in his attempts to procure the medical information.

They say the respondent discounted the evidence of the Detective Inspector and the submissions made by them without any reasonable or proper basis.

Essentially, the applicants argue that the respondent Coroner was obliged either to make reasonable efforts to obtain or to enable such efforts to be made in relation to the relevant medical information pertaining to the death and the circumstances of the death of Christian Lawlor. They submit that the failure to allow an adjournment on the basis of an assumption that the medical information would not be forthcoming must be considered unreasonable in law and otherwise than in accordance with reason and common sense in circumstances where it was in fact possible to procure the records, the applicants having successfully done so through consular assistance since the conclusion of the Inquest.

The applicants submit that the lawfulness of death can be considered at an inquest. Although the legislation governing this area clearly prohibits consideration of any issue of criminal or civil liability at an inquest, the applicants say that this prohibition does not mean that the lawfulness or otherwise of a person's death cannot be the subject of a line of inquiry at an inquest or the subject of a finding by a Coroner. In other words, it is the applicant's case that a finding of wrongdoing or a finding of unlawfulness is not tantamount to a consideration of criminal or civil liability and that the former is permissible at an inquest while the latter is not.

The applicants submit that the respondent, as a Coroner, has a general public duty to act objectively and impartially at all times and he is subject to a duty to exercise his functions in accordance with the requirements of constitutional justice. In the case of *Magee v. Farrell* [2005] IESC 388, Gilligan J. described the role of the Coroner in the following terms:

> *"The Coroner has a general public duty to act objectively and impartially at all times. It is accepted that the role of the Coroner is judicial in nature. He presides, inter alia, over inquests. At the conclusion of the inquest he must address the jury and thereafter record a verdict."*

The applicants say that their right to fair procedures was breached and that they suffered prejudice by virtue of the absence of the medical records at the inquest and the consequent failure of the Coroner to have regard to them in reaching his verdict.

The applicants referred to the decision of O'Hanlon J. in *State (McKeown) v. Scully* [1986] I.R. 542. That case involved a departure from the normal rules of natural and constitutional justice in circumstances where the widow and the next of kin of the Deceased were not given any opportunity to be heard before grave and damaging findings were made against the Deceased husband of the prosecutrix. O'Hanlon J. found as follows, at p. 526:

> *"I would hold that there was a departure from the rules of natural and constitutional justice in the present case in failing to give the widow and next-of-kin of the deceased any opportunity to be heard before this very grave and damaging finding was made against the deceased husband of the prosecutor. Had such opportunity been given, they could reasonably have sought to be represented at the inquest; to have the witnesses cross-examined on their depositions; to address the jury; and to offer to make available to the coroner further evidence which might be of assistance at the inquest."*

In light of the foregoing, the applicants say the decision of the respondent to refuse an adjournment and to enter an Open Verdict on the basis of an assumption that the medical records could not be obtained was unreasonable and that the decision was reached as a result of a flawed procedure. They therefore ask the Court to quash the decision and order a fresh inquest into the circumstances surrounding their son's death.

THE RESPONDENT'S SUBMISSIONS

The respondent opposes the application on the basis that a very full inquiry was made on his behalf to obtain the medical records from Colombia in the period prior to the Inquest. He contacted Detective Inspector Eamon O'Reilly and asked him to take whatever steps he could to obtain the records. The initial request was made in or around September 2007 and was made by way of approach to Garda Peter Keenan. On 17th October 2007, Detective Inspector O'Reilly informed the respondent that he had contacted Interpol with a view to seeing whether or not they could assist in obtaining the records. It appears that Interpol informed Detective Inspector O'Reilly that the only way of obtaining the records so that they could be considered appropriate for use as evidence at an Inquest was by way of rogatory request and/or commission and that such requests could only be made as between Ireland and Colombia in circumstances where criminal proceedings were being contemplated in this jurisdiction. As it was not expected that there would be any criminal proceedings in this jurisdiction relating to the death of the deceased, it was felt that there was nothing further Detective Inspector O'Reilly could do on behalf of the respondent to obtain the records.

The respondent submits that he acted properly and judicially in exercising his discretion not to adjourn the Inquest in all the circumstances of the case. He further submits that he afforded the deceased's family all due and proper fair procedures. Having received the applicant's request for medical records from Bogota, he says he made appropriate requests to An Garda Síochána to obtain the records. He then formed the view on the morning of the Inquest that the Gardaí had made the appropriate and proper enquiries to seek and obtain the records from the Colombian authorities. Crucially, he submits that he was not wrong in concluding that the notes could not be obtained in circumstances where it appeared at that time that the only way the notes could be obtained for the Inquest was by way of rogatory commission and that no such commission would be appropriate as criminal investigation into the death was not being contemplated. Even if he had had the notes they would not have assisted as they were not in English and could not readily be understood.

Ultimately on the adjournment point, the respondent submits that he considered the application and was not in the circumstances persuaded that it was necessary. He says that this was a proper and reasonable exercise of his discretion.

As for the test to be employed by this Court in determining this application, the respondent submits that the Court should be slow to quash the open verdict if it is not persuaded that the verdict was likely to have been materially different if the records from Colombia had been before it. As already stated, the point was made that the records obtained by the applicants were not, at the time of the application for leave to apply for judicial review and up to the time for the filing of the Notice of Opposition, available in English. In those circumstances, even if the notes in that state had been available at the Inquest, it is difficult if not impossible, on the respondent's view, to see how they could have impacted on the verdict as reached if at all.

The respondent further submits that many of the issues which have come to light since the conclusion of the Inquest, both from the medical notes obtained by the applicants and from the reports of experts retained by them to examine and comment upon the notes, would only have been of assistance at the Inquest if the medical personnel who operated on and cared for the respondent in Bogota were available for questioning at the hearing. Yet the respondent points out that at no stage did the applicants ask the Coroner to consider having the said personnel attend the Inquest as witnesses. Nor was that case now being made by the applicants.

Ultimately, the respondent submits that even if he had had the benefit of the medical notes at the time of the Inquest and even if he had had regard to the reports that have since that time been procured by the applicants, none of that information would have led to a different conclusion having been reached regarding the medical cause of death or the verdict. Essentially, his case is that it makes no difference that he did not have the medical notes at the Inquest and so the relief sought by the applicant should be refused.

THE LAW

The law in Ireland concerning the function of the Coroner is governed by the Coroners Act 1962. By virtue of s. 17 of the Act, the primary duty of the Coroner is to hold an inquest where he has been informed that a body of a deceased person is lying within his district and he:

> *"… is of the opinion that the death may have occurred in a violent or unnatural manner, or suddenly and from unknown causes or in a place or in circumstances which, under provisions in that behalf contained in any other enactment, require that an inquest should be held."*

The scope of the inquest is described is s. 30 of the 1962 Act:

> *"Questions of civil or criminal liability shall not be considered or investigated at an inquest and accordingly every inquest shall be confined to ascertaining the identity of the person in relation to whose death the inquest is being held and how, when and where the death occurred."*

Thus a Coroner at an inquest is not concerned with civil or criminal liability though the proceedings are inquisitorial in nature. However, the "how" requires an investigation into by what means and in what circumstances the death occurred.

In *Eastern Health Board v. Farrell* [2001] 4 I.R. 627, Keane C.J. added what Fennelly J. has since described as a "useful gloss" to a proper understanding of the role of the coroner in light of s. 30 of the 1962 Act, when he stated, at p. 637 as follows:

> *"While this provision undoubtedly lays stress on the limited nature of the inquiry to be conducted at an inquest, the prohibition on any adjudication as to criminal or civil liability should not be construed in a manner which would unduly inhibit the inquiry. That would not be in accord with the public policy considerations relevant to the holding of an inquest... It is clear that the inquest may properly investigate and consider the surrounding circumstances of the death, whether or not the facts explored may, in another forum, ultimately be relevant to issues of civil or criminal liability. The intention of the Oireachtas that the inquest should not simply take the form of a formal endorsement by the coroner or a jury of the pathologist's report on the post-mortem is also made clear by s. 31 which, although prohibiting the inclusion in the verdict or any rider to it of any censure or exoneration of any person, goes on to provide in subs. 2 that: - 'notwithstanding anything contained in sub-section (1) of this section, recommendations of a general character designed to prevent further fatalities may be appended to the verdict at*

any inquest."

The requirements of fair procedures in the context of an inquest received careful consideration in the judgment of the Supreme Court in *Ramseyer v. Mahon* [2006] 1 I.R. 216. In that case, the Supreme Court, in a judgment of Fennelly J., re-affirmed that persons represented at an inquest are entitled to an appropriate level of fair procedures including an entitlement to be present and to call and cross-examine witnesses. In relation to disclosure of documentation, the relevant criterion for whether the document needs to be disclosed or not was identified as being whether the party seeking the material can show that he or she would be prejudiced in their participation at the inquest in its absence. The judgment in *Ramseyer* also re-affirmed that the Coroner has a relatively wide jurisdiction in terms of enquiring into the circumstances surrounding a person's death – in other words, the prohibition on contemplating issues of civil or criminal liability does not operate in any other way to constrict or hamper the margins of the investigation which a Coroner can carry out other than to restrict him or her from pronouncing or touching upon such liability. While a person or persons may not be found by a Coroner to be "guilty" in any way in respect of a death or "liable" for such death, the Coroner may nonetheless carry out a very full, wide investigation.

The State (Pheasantry Ltd.) v. District Justice Donnelly [1982] ILRM 512 concerned a judicial review of a decision of a District Judge to refuse an application for a second adjournment. It is relied upon by the State in this case. In *Pheasantry Ltd.*, the applicant licensee was facing a fourth conviction for breach of the Intoxicating Liquor Acts and forfeiture of its licence. The applicant sought an adjournment before conviction to secure a bona fide purchaser for the premises prior to forfeiture in circumstances where it faced severe financial loss if the licence was forfeited before it had an opportunity to sell the premises. The District Judge refused the adjournment application and the applicant sought judicial review arguing that the Judge was wrong in law in refusing to grant the adjournment. Carroll J. refused the relief sought and held as follows:

> *"A District Justice has a discretion to adjourn cases or not to adjourn cases for good judicial reasons… Discretion must however be exercised judicially…"*

The learned judge went on to set out the criteria to be applied in analysing whether discretion has been exercised judicially:

> *"Has [the Judge] allowed his mind to be influenced by matters which are extraneous and extra-judicial which ought not to have effected his decision? If he did so he should be treated as declining jurisdiction… [T]he same principles apply to the refusal to grant an adjournment… The refusal to grant a further adjournment… was… a proper exercise by the District Justice's discretion. His main duty is to hear and decide cases which come before him. He cannot in my opinion be criticised if he decides that justice did not require a second adjournment to be granted. The prosecutor did not have a right to have the summonses further adjourned. That being so, there is no reason to interfere with the exercise of the District Justice's discretion."*

In *Flynn v. District Justice Ruane* [1989] ILRM 690, Gannon J. granted judicial review of a decision of a District Judge to refuse an adjournment application in circumstances where the adjournment had been sought to facilitate the applicant in obtaining legal representation and in securing the attendance of a witness in court. Gannon J. held as follows:

> *"Undoubtedly a District Judge is acting within his jurisdiction in deciding whether to grant an adjournment. However having regard to the well known warning by the Supreme Court in State (Healy) v. Donoghue [1976] IR 325 about the importance of legal representation in criminal matters, it must be wrong for a District Justice to decide that a person should not be given legal representation if it is asked for, by refusing to grant an adjournment, when such adjournment is sought by an accused in order that he might secure legal representation and to require the attendance of a witness… It seems to me that the decision of the respondent District Justice to go on with the hearing and not to grant an adjournment was made within the jurisdiction. However the order of conviction which followed the hearing of one side only cannot stand, because the refusal to grant an adjournment although within jurisdiction led to an order which is not grounded on the valid exercise of jurisdiction by the District Court. I have to make the Order of Certiorari sought setting aside the order of conviction."*

A leading case on the jurisdiction of the courts in adjournment applications is *O'Callaghan v. J.P. Clifford* [1993] TITR 478. In that case, Denham J. held:

> *"The adjournment of a case is a matter for the discretion of the District Court Judge. It must be exercised as a judicial discretion within the constitutional parameters. It is a matter on which the Superior Courts should intervene cautiously."*

Denham J. went on as follows:

> *"Once the issue of the request for an adjournment had been raised in the District Court and the Court was put on notice of the wish of the defendant to be present for his trial which involved the proof of the offence by certificate it is necessary for the District Court in the circumstances of this case to exercise its discretion to proceed with an extra degree of caution."*

In *G v. The Appeals Commissioners* [2005] TITR 783, the Appeals Commissioner having considered the application for an adjournment refused same and gave reasons for his refusal. The Appeals Commissioner granted a short adjournment to enable the applicant to apply for judicial review. The application for judicial review came before Finlay Geoghegan J who held as follows:

> *"… it is well established that there are circumstances in which a Tribunal exercising administrative functions may be under an obligation to act judicially. It is not disputed on behalf of the notice party (Criminal Assets Bureau) that the Appeal Commissioners are under an obligation to act judicially in hearing and determining appeals. It follows that an Appeal Commissioner must also be obliged to act judicially in any application in relation to the appeals including an application such as that at issue herein, namely an adjournment of the appeal hearing by reasonably alleged potential interference with the constitutional rights of the applicant."*

The learned judge continued:

> *"The obligation to act judicially must similarly apply to any decision to be made as to the procedure to be followed. I n this case the matter at issue was the procedure to be followed in the sense of the timing of the holding of the appeal. The assertion that the holding of an appeal at a particular time posed a serious risk of an unfair trial or an interference with the applicant's privilege against self incrimination required consideration of that issue by the*

Appeal Commissioner before he could determine that he should proceed with the appeal."

In *Ramseyer v. Mahon*, referred to above, the relevant issue at the heart of the dispute was the entitlement of the next of kin of a deceased person to have advance disclosure of or sight of material and/or documentation in the possession of the Coroner. The Supreme Court decision in *Ramseyer* provides a helpful consideration of the function of an Inquest and the procedural protections which are afforded to persons who are entitled to participate in the process. The Court approved the dicta of Kelly J. in *Northern Area Health Board v. Geraghty* [2001] 3 IR 321 where it was held that an Inquest, being an inquisitorial procedure whose verdict cannot impose civil or criminal liability, did not require what Kelly J. described as "*the full panoply of natural justice requirements of disclosure*." If it does not require the full panoply of natural justice rights, this does not of course mean that it entails no such rights.

The *Ramseyer* case also emphasises the discretion which a Coroner has concerning the conduct of proceedings before him. Clearly such discretion extends to consideration of whether documentation in the coroner's possession should be disclosed to interested parties. Discretion would also extend to the issue of whether or not to grant an adjournment. The point is that that discretion must be exercised judicially. In any event, that discretion is not unfettered and is subject to review by the courts.

Fennelly J. in that case stated as follows:

> *"It is in no way inconsistent with the inquisitorial character of an Inquest that person with a legitimate interest should propound a version of the facts which accords with those interests. One may wish to seek to establish facts tending to deflect blame; one may wish to pursue a version which tends to suggest that the death occurred other than due to a mere accident or natural causes; one may simply wish to have a verdict which is neutral as regards any such consideration. All of these respective considerations are legitimate.*
>
> *It follows that the persons represented at an Inquest are entitled to an appropriate level of fair procedures. They are entitled to be present, to call witnesses and to cross-examine. All of this is subject to the overriding consideration that they are assisting in an Inquiry into the facts and are not either responding to or making a charge. They are subject to the directions of the Coroner, who is entitled to conduct the hearing in his discretion while respecting the legitimate interests of persons to pursue lines of inquiry." (Emphasis added)*

The Coroner must respect the legitimate interests of an interested party such as a next of kin of the deceased person to pursue legitimate lines of inquiry that are well founded and that arise in the circumstances of the death provided they do not extend beyond the scope of an Inquest.

The test in relation to what a Coroner is obliged to disclose appears to be whether the interested party seeking the disclosure will be unduly prejudiced by a refusal to grant them access to the information sought. Fennelly J. said:

> *"The governing criterion is whether the party seeking the material can show that he or she will be prejudiced in participation in the Inquest in its absence. A party [at an Inquest] is emphatically not entitled to an order for general discovery as in civil litigation"*

In finding that the Coroner had erred in the exercise of his discretion in *Ramseyer*, in that he refused to disclose draft depositions, the Supreme Court placed significant emphasis on the fact that the applicant raised a specific and reasoned concern in relation to the cause of death. This according to the Court was a legitimate concern and one which she was entitled to have the Coroner pursue as part of a statutory inquiry. The Court reasoned that the applicant would not be in a position to properly participate in the Inquest if she did not have the benefit of the draft depositions in advance of the hearing. In other words, the applicant succeeded in establishing that she would be unduly prejudiced in terms of her participation at the Inquest by the refusal to allow or have access in advance to the documentation sought.

In *R v. Southwark Coroner ex parte Hicks* [1987] W. L. R. 1624, the applicant, the mother of the deceased who had died in Brixton Prison, sought judicial review of a verdict of misadventure. The deceased had been an epileptic and had suffered from schizophrenia. The cause of death was stated as death following a fit. The family had concerns in relation to the period prior to death, particularly that their son had not received the proper dosage of medication in the period whilst in prison and in the weeks prior to his death.

The family requested that all medical records dealing with the deceased's treatment in prison and in particular in the fortnight preceding his death be made available to them. The request was made in writing to the Coroner and was refused. The Court held:

> *"… the method adopted by the Coroner was mistaken. He was obviously concerned that his court should not be treated as a hunting ground for civil litigation. The application for notes had initially been made on the wrong basis. He did not sufficiently bear in mind the public importance of having a full investigation of the circumstances of a death in prison. Here was a man with a serious illness. The family were understandably concerned. Mrs. Hicks had given evidence of the inability of the family to visit him in prison over the six days before his death, for which they had been given no explanation. The two letters from the solicitor while asking for something which the Coroner could not give, made it clear what it was that the family were asking should be investigated, whether the worries or suspicions of the Hicks family were justified or wholly unjustified, it was in the public interest that they should be examined sympathetically so long as they went to a verdict which it was legitimate for the jury to return. The Coroner should at least have approached the problem in that spirit. Without the details of the treatment given to Keith over those five days being given in evidence, Dr. Fenwick (when he came to give his own evidence) could offer only tentative opinions based on hypothesis. The Coroner was clearly relying on the cause of death certified by the Pathologist. It may be that the questions which were troubling the family could not have been answered, but an attempt at providing an answer should have been made. Once the large gap in the evidence was revealed, the proper course would have been to adjourn the request in order to fill the gap. That is one of the applicant's grounds of complaint and it is justified." (Emphasis added)*

In *R v. Lincolnshire Coroner ex parte Hay* [1999] All ER 173, a diabetic prisoner died in custody. Over the course of the Inquest into his death, there was a conflict as to whether in the hours prior to his death he had experienced breathing difficulties and was gasping for breath. The evidence of the prison medical orderly was that he did not notice any heavy breathing when he saw the prisoner in the hours prior to his collapse. The evidence from the prisoner sharing the cell was that the Deceased had been gasping for breath. The medical expert called at the Inquest said that gasping for breath was a symptom of diabetic ketoacidosis and this issue could therefore have had a relevance to the finding as to the medical cause of death. An application for an adjournment was made in order to allow other relevant witnesses to attend to give evidence as regards the breathing issue. The Coroner decided to allow a short adjournment of a number of hours and that if the witnesses could not be arranged prior to the close of business, he would not extend

the time any further as he was of the view that there was sufficient evidence before the Inquest to make a full Inquiry and to return a proper verdict. In judicial review proceedings brought by the family, there were a number of criticisms levelled at the Coroner regarding his handling of the proceedings. First, it was alleged that the Coroner's was wrong in failing to furnish a witness list in advance. This criticism was not upheld but the judgment contains a strong recommendation that as a practice, the furnishing of a witness list in advance of an Inquest should be considered. Secondly, the Coroner was criticised for not allowing the examination of prison medical witnesses where such witnesses claimed privilege against self-incrimination against a background of possible criminal proceedings, a criticism which was ultimately upheld by the Court. Thirdly, and of particular significance in the context of the present case, it was alleged that the Coroner had wrongly refused to adjourn the proceedings and to properly ascertain whether or not the two prisoner witnesses might be available to attend and give evidence. This particular criticism was also upheld. In the course of the judicial review proceedings in that case, it was argued on behalf of the applicants that the Coroner had been wrong to reject the possibility of hearing important evidence in an Inquest concerned with a death in custody on the grounds of administrative inconvenience. It was pointed out that the Coroner's attitude throughout his exchanges with the applicants' solicitor had been characterised by an unwillingness to adjourn the Inquest to another day in any circumstances.

By way of a summary of the Court's findings relevant to these proceedings, it may be helpful to quote from the judgment as follows:

> *"… the Coroner failed to pay sufficient attention to the potential importance of the evidence that [the two prisoner witnesses] were capable of giving… If the Jury had accepted the evidence of these two witnesses about the heaviness of [the Deceased's] breathing, a matter not mentioned by either of the officers in the hospital wing, it was on the cards that they might have returned a different verdict… The Coroner ought in the circumstances to have adjourned the Inquest so that the evidence of [the two prisoner witnesses] could have been available to the Jury on what was a highly relevant issue… The difficulty stemmed directly from the Coroner's unwillingness to give advance notice of the names of the witnesses he intended to call. We are not so impressed by the submission that the Coroner was at fault for being unwilling to adjourn the Inquest in order to see if the other two men mentioned by Counsel at the end of the hearing might be able to give relevant evidence and we would not be willing to interfere on that ground alone…" (Emphases added)*

It seems from the above extract that a Coroner may be required to adjourn an Inquest hearing to allow an interested party to make contact with relevant witnesses in certain circumstances. However, as is evident from the last line of the quotation above, where a suggestion that some other potential witness may be of use to the Inquest at the end of a hearing may not of itself require a Coroner to grant an adjournment in every case.

Given that the hospital notes in this case were clearly relevant to and may have helped to establish the facts surrounding Mr. Lawlor's death, there can be no doubt but that the Coroner was required to consider granting an adjournment to see if those notes could be obtained. It appears however that the Coroner simply took the view that the notes could not be obtained based on the evidence of Detective Inspector O'Reilly, which the Coroner took to mean that the notes were out of bounds and that any further attempt to attain them by any other means would simply prove futile and a waste of time. That, however, was not the case and the applicants succeeded, through diplomatic channels, in getting the hospital notes from the hospital in Bogota in the aftermath of the Inquest. This leads inescapably to the view that the Coroner, had he tried, would have been in a position to also obtain the notes for the purpose of the Inquest. Instead, he chose to rely on the evidence of the Detective Inspector and refused to consider that there may have been an alternative route to the notes open either to him or possibly to the applicants as the deceased's next of kin.

From a review of the authorities helpfully set out in submissions, it appears that Coroners are under a number of different obligations in the discharge of their statutory functions. It is also apparent from those authorities that a Coroner has a certain level of discretion in the performance of those duties. The general principles relevant to Coroners duties may be thus summed up as follows:

> (1) A coroner has a discretion to grant or refuse an adjournment.
>
> (2) That discretion must be exercised judicially within constitutional parameters. He or she must observe fair procedures and notably must afford interested parties an opportunity to be heard and to make their point.
>
> (3) The Courts on review must be cautious when it comes to interfering with a decision of a Coroner to grant or refuse an adjournment.
>
> (4) The Courts will nevertheless intervene and set aside a decision to refuse an adjournment and any consequent substantive result or verdict where they are satisfied that the Coroner has not acted judicially or has failed to employ fair procedures or where there is a real manifest or potential prejudice to an applicant.
>
> (5) The next of kin of a deceased have an entitlement to participate at an Inquest and pursue any legitimate lines of inquiry they may wish to raise, that is to say any line of inquiry that is relevant to the medical cause of death and the circumstances surrounding the cause of death, provided such line of inquiry does not cross the line by seeking to blame or exonerate any individual in terms of either civil or criminal liability.
>
> (6) A coroner, while having control over the proceedings, must act fairly and judicially and must consider and deliberate upon any applications as may be made to him in the course of the proceedings.
>
> (7) A coroner is required to have as full and sufficient an inquiry into an individual death as is warranted in the circumstances of the case. This is perhaps one of the most important principles to be gleaned from the authorities helpfully presented to the Court on this application. Any Inquiry which may be regarded as insufficient or not sufficiently thorough in its approach to the question of death may be open to a successful judicial review.
>
> (8) A coroner who, without good and satisfactory explanation or reason, closes off a legitimate line of inquiry by refusing to adjourn the proceedings so as to allow the possibility of further and potentially relevant and admissible evidence is potentially open to a successful judicial review.

In addition to the above principles, it was submitted on behalf of the respondent that an additional two principles flow from the case law on the review of coroners decisions which are particularly relevant to the facts of the instant case. These are as follows:

> (1) The question of whether the verdict would as a matter of probability have been different had an adjournment been acceded to if potentially relevant evidence had been put before the Jury should be considered by the reviewing court in exercise of its discretion.

(2) Arguably, even if the merits of the complaint are made out on a judicial review, the reliefs sought should nevertheless be refused where a Court is not satisfied that as a matter of probability the outcome of the verdict would have been any different had the reportedly relevant and admissible material been available to and considered by the decision maker.

On these final two points, it appears to be the respondent's case that if the outcome of the Coroner's decision would not have been any different had the medical notes been available to him, then that is a matter which this Court should take into account in deciding whether or not to exercise its discretion to grant judicial review. Put another way, the respondent submits that the Court should refuse the reliefs sought if it is of the view that the verdict would have remained the same had the Coroner had the benefit of the medical notes surrounding Christian Lawlor's death.

DECISION

I am of the view that the coroner should have adjourned the proceedings in this case when requested to do so. His refusal to do so appears to be largely based upon the erroneous belief that the original hospital notes could not have been obtained unless some criminal proceedings were contemplated – something which was not, in fact, the case. The hospital notes and records, which shortly afterwards became available by means of an approach through consular channels, were in fact accessible without any great difficulty.

They have since been evaluated by a number of medical specialists retained on behalf of the applicants and the views of those experts have been placed before this Court. The respondent, however, has elected not to engage with the contents of those reports, or to file evidence from experts in response, requesting instead that the Court itself form a judgment as to whether or not it would serve any useful purpose to remit the matter back to the coroner for a further inquest if it were to grant the relief sought by the applicants.

Dealing firstly with the adjournment, I believe the decision of the respondent was an inappropriate and disproportionate decision in the particular circumstances of this case. There was no overwhelming need or requirement to conclude the inquest forthwith. It was a highly unusual case and one in which certain matters raised or alleged caused great distress to the family of the deceased. In balancing the inconvenience of adjourning the proceedings against the understandable desire of the deceased's family for a detailed inquiry, the respondent was aware of an assertion advanced by the deceased's wife that the deceased had ingested cocaine and alcohol in the period shortly before his operation. It is not disputed by either side in this application that to engage in such activity prior to major surgery carries with it very significant risks for the health and life of the patient.

There was not a happy relationship between the deceased's family and the deceased's wife, the latter being a woman whom the deceased had met through the internet and who was from a very different background in South America. That relationship deteriorated sharply in the aftermath of the death of the deceased. It is not for the Court to assess the reasonableness or otherwise of some of the speculation and suspicions at one time advanced by members of the deceased's family. That said, it is difficult to imagine a more obvious case than this one where a family in the particular circumstances would require clarification about the circumstances surrounding the death of the deceased, not least because it would afford the family an opportunity for some emotional closure on a family tragedy and provide also an opportunity for the making of suitable recommendations at the conclusion of the inquest.

None of these things occurred or were allowed to occur. Given that I am satisfied that the applicant's had raised and did have legitimate concerns, they were in my view deprived of the opportunity of a meaningful participation in the inquest because of the dearth of information arising through the non-availability of the hospital records. In my view the Coroner ought in the circumstances to have adjourned the Inquest to permit a reasonable opportunity of obtaining the hospital records to take place and to have such records evaluated by an appropriate medical expert.

I would therefore make an order quashing the decision of the respondent to refuse the application for an adjournment. It also follows that the decision of the respondent to record an Open Verdict should also be quashed in the absence of all appropriate efforts to obtain the relevant and necessary medical records.

It goes almost without saying that judicial review is a discretionary remedy and I am particularly mindful in this context of the submissions advanced on behalf of the respondent that it would serve no useful purpose to quash the verdict if I took a certain view in relation to the medical commentary on the hospital records furnished on behalf of the applicants in making this application.

However, the respondent has not sought to engage with the facts in relation to the medical records or on the commentary thereon by experts retained on behalf of the applicants. Such a joinder could have been effected by providing even a minimal amount of evidence from one or more medical experts on behalf of the respondent. That did not happen in this case, and I do not feel that the Court can constitute itself as a medical expert in these circumstances. A mere assertion that the outcome of the inquest would have been no different does not provide anything like a sufficient basis for me to adopt a course which I might otherwise have followed had that opportunity been taken up.

In the circumstances I will therefore grant the relief sought and direct that a further inquest be held in this case.