



SUPREME COURT



Record No:

Application for Leave to Appeal

Part I

The information contained in this part will be published. It is the applicant's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court

1. **Date of Filing:** 15/6/2023

2. **Title of the Proceedings:**

ALAN HARTE

-v-

THE SUPERIOR COURT RULES COMMITTEE, THE MINISTER FOR JUSTICE, IRELAND,
and THE ATTORNEY GENERAL

3. **Name of Applicant:** Alan Harte

What was the applicant's role in the original case: Applicant

4. **Decision of Court of Appeal (where applicable):**

n/a

5. **Decision of the High Court:**

Record No: 2021/569 JR

Date of Order: 2nd May 2023

Perfection Date: 23rd May 2023

Date of Judgment: 17th April 2023

Names of Judge: Hyland J

Where this application seeks leave to appeal directly from an Order of the High Court has an appeal also been filed in the Court of Appeal in respect of that Order?

Yes

6. Extension of Time:

Yes

If an application is being made to extend time for the bringing of this application, please set out concisely the grounds upon which it is contended time should be extended.

Extra time was required to obtain an attested/certified copy of the High Court Order

7. Matter of general public importance:

If it is contended that an appeal should be permitted on the basis of matter(s) of general public importance please set out precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance justifying appeal to the Supreme Court.

This section should contain no more than 500 words and the word count should appear at the end of the text.

1. The Applicant challenges the propriety of time limits on seeking judicial review contained of S.I. No. 691/2011 - Rules of the Superior Courts (Judicial Review) 2011. The Applicant contends that the creation of those limits, and the circumstances under which time can be extended are *ultra vires* the powers of the Superior Courts Rules Committee. (the Rules Committee) Such limits ought to be introduced by legislation. The Applicant further argues that the provisions are repugnant to Article 15.2.1° of Bunreacht na hÉireann. It is contended that the setting of a time limit by the Rules Committee is not a matter of practice and procedure.

2. It is accepted that there is nothing remiss in a rules making committee regulating the conduct of proceedings once a case has been commenced. It is submitted however such a committee could never be empowered to:

(i) Decide the time limit in which a citizen should initiate a case.

(ii) Be empowered to determine the criteria upon which a Court can exercise its discretion to extend the said time limit.

For the avoidance of doubt, the entitlement of the Oireachtas to impose a time limit, or criteria for extending such a limit is not in doubt. It is the entitlement of an unelected rules committee making these decisions which is at issue.

3. The applicant further maintains that the legislation providing for the Rules Committee does not contain contained sufficient principles and policies to satisfy the requirements of Article 15.2.1° of Bunreacht na hEireann.

4. Rather the rules amount to a free-standing regime regulating access to the courts. The level of choice purportedly afforded to the Rules Committee in determining a time limit is breath-taking. The Court may extend time to bring an application, but its discretion is fettered by the criteria set by the Committee. The criteria are sophisticated and layered and far extend to formalizing the aims of the governing legislation. This goes way beyond the formality of giving effect to policies of primary legislation.

5. The effect is to impermissibly limit citizens' access to the courts. Judicial Review Proceedings initiated by the Applicant in a separate matter were adjudged to be out of time and the Applicant did not satisfy the criteria which would have permitted a court to extend the time. The Applicant was denied the opportunity to have the substantive merits of his application. It is submitted that the regime amounts to a statute of limitations by way of statutory instrument.

6. Access to the courts is a constitutional right. It is submitted that the imposition of a time limit to initiate proceedings, and where the Rules Committee determines the criteria to extend time, by which a Court is bound, is the enactment of substantive law, which is a power reserved for the Oireachtas. This is a breach of the doctrine of separation of powers. Thus, there is a significant public interest in this complaint being determined by the Supreme Court.

Word count – 491

8. Interests of Justice:

If it is contended that an appeal should be permitted on the basis of the interests of justice, please set out precisely and concisely, in numbered paragraphs, the matters relied upon.

This section should contain no more than 300 words and the word count should appear at the end of the text.

9. Exceptional Circumstances: Article 34.5.4:

Where it is sought to apply for leave to appeal direct from a decision of the High Court, please set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.

This section should contain no more than 300 words and the word count should appear at the end of the text.

Firstly, an intermediate appeal to the Court of Appeal is unlikely to be of benefit in narrowing or definitively determining the issues in this case for either the applicants or the respondents given the previous Supreme Court jurisprudence upon which reliance is placed by both parties.

Furthermore, it is contended that there are exceptional circumstances warranting an appeal directly to the Supreme Court because the decision involves a matter of general public importance that affects access to the courts.

Word count – 79

10. Grounds of Appeal

Please set out in the Appendix attached hereto the grounds of appeal that would be relied upon if leave to appeal were to be granted.

11. Priority Hearing:

Yes

No

If the applicant seeks a priority hearing please set out concisely the grounds upon which such priority is sought.

This section should contain no more than 100 words and the word count should appear at the end of the text.

n/a

12. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union please identify the matter and set out the question or questions which it is alleged it is necessary to refer.

n/a

Appendix

Notice of Appeal

1. Title of the Proceedings:

JUDICIAL REVIEW

Between

ALAN HARTE

Applicant

-v-

**THE SUPERIOR COURT RULES COMMITTEE, THE MINISTER FOR JUSTICE, IRELAND,
and THE ATTORNEY GENERAL**

Respondents

2. Grounds of Appeal:

Please set out in numbered paragraphs the Grounds of Appeal relied upon if leave to appeal were to be granted.

The High Court erred in law, on the following grounds:

1. In determining that the provisions of Order 85 Rule 21(3) as inserted by S.I. 691/2011 “do not intrude in an area of decision making reserved to the Oireachtas”
2. In determining that the Applicant only enjoyed “*standing to challenge sub rule (a) and not sub rule (b)*” of Order 84 Rule 21 in circumstances where the separate decision to refuse an extension of time made by Barr J which have rise to the present proceedings involved a determination of factors under both sub rule (a) and sub rule (b) of Rule 21.
3. In placing excessive emphasis on obiter comments in the High Court and Supreme Court in the case of *A. OG v Residential Institutions Redress Board* [2015] IESC 41 in respect

of the power of the Rules Committee to fix time limits for the initiation of judicial review proceedings.

4. In determining that the Rules Committee in determining the period in which proceedings could be initiated (as opposed to being regulated) was only a matter of practice and procedure.
5. In determining that the discretion to extend time takes Rule 21 out of the realm of a limitation period and that the conferral of that discretion justifies a finding that the Rule is *intra vires* the Rules Committee.
6. In failing to take into account that the discretion of Court to grant an extension of time was fettered by the fact that the criteria for exercising its discretion was restricted by choices made by an unelected body, namely the Committee, in circumstances where application of such criteria negate a citizen's access to the Courts.
7. In failing to attach sufficient weight as a matter of fact and law, that the time limits proposed in Order 84 Rule 21 is the only circumstance in law under which a right of access to the Courts is (i) regulated by the Committee and (ii) the binding criteria upon which the Court must determine whether an extension of time is to be granted is delineated by the Committee.
8. In refusing to accept that certain provisions of the Statute of Limitations in respect of which similar "*flexibility*" vis-à-vis extending time as occurs in respect of sub rule 21(3) arises are not on that basis deemed not to be limitation periods.
9. In determining that "the test to be met when considering an extension of time i.e. whether good and sufficient reason has been provided, is enormously flexible."
10. In determining that the provisions of Order 84, rule 21(1) and (3) represent a permissible policy type decision that does not overstep the bounds of the discretion of the Rules Committee.
11. In determining that that the mere fact that a rule involves a policy decision cannot be treated as rendering it necessarily unsuitable for a rules committee in deciding that the limits imposed by the Rules Committee in respect of Rule 21 are permissible.
12. In placing considerable emphasis on the fact that time limits have been enacted by way of secondary legislation since at least the time of The Rules of the Supreme Court

(Ireland) Order 1905 and that there was “*nothing radical or indeed particularly new in the choice of a three-month time limit for an application for judicial review as identified in sub-rule 21 (1).*”

13. In determining that there were “very limited policy type decisions reflected in sub-rule 21 (1) and (3)”.
14. The Court in all the circumstances erred in law and in fact in refusing the relief sought in the proceedings.

Michael D. Hourigan B.L.

Michael O’Higgins S.C.

3. Order(s) sought

Please set out in numbered paragraphs the order(s) sought if the Appeal were to be successful.

1. A Declaration that the provisions of S.I. No. 691/2011 - Rules of the Superior Courts (Judicial Review) 2011 imposing time limits for the initiation of proceedings to seek leave to make an application for judicial review are *ultra vires* the powers of the Superior Courts Rules Committee.
2. A Declaration that the aforesaid provisions of S.I. No. 691/2011 are repugnant to Article 15.2.1° of Bunreacht na hÉireann.
3. A Declaration that the provisions of the legislation providing for the constituting of the Superior Court Rules Committee and of all other powers enabling it to make Rules of Court do not contain sufficient principles and policies to satisfy the requirements of Article 15.2.1° and therefore do not permit the Committee to impose the aforesaid time limits.
4. A Declaration that there is nothing contained in the aforesaid Acts of the Oireachtas indicating an intention that applicants for judicial review will be subjected to time limits in the nature of those envisaged by the provisions of S.I. No. 691/2011.

5. Damages.

6. An Order providing for Costs.

7. Such further or other Order as to this Honourable Court may appear to be just and meet the case.