AN CHÚIRT UACHTARACH
THE SUPREME COURT

Supreme Court Record No: S:AP:IE:2023:000157
[2024] IESC 55

Dunne J.
O'Malley J.
Murray J.
Collins J.
Donnelly J.

BETWEEN/

SAVE THE SOUTH LEINSTER WAY AND TARA HEAVEY

APPLICANTS/APPELLANTS

– AND –

AN BORD PLEANÁLA, THE MINISTER FOR HOUSING, LOCAL GOVERNMENT AND HERITAGE IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS/RESPONDENTS

SPRINGFIELD RENEWABLES LTD

NOTICE PARTY/RESPONDENT

JUDGMENT of Mr. Justice Brian Murray delivered on the 5th day of December 2024

1. The word '*counterintuitive'* may well be overused by lawyers and judges. Yet it accurately describes the spectre that emerges from a drive-by view of some legal arguments, rules and indeed outcomes. This case is a good example. Section 50(6) of the Planning and Development Act 2000, as amended, ('*PDA'*) provides that an application for judicial review of certain decisions in the planning field '*shall be made'* within a period of 8 weeks '*beginning on the date of the decision'*. That, it might be thought, could not be more straightforward. The more brazen of advocates may well summon the courage to argue that a '*week'* is actually eight days long, but one might be forgiven for believing that there is no version of the law governing the construction of legislation – the focal point of which is the proposition that words are given their plain and ordinary meaning – whereby a week means anything other than a period of seven days.

2. Except that there is a strong current of legal authority suggesting – in at least one situation – a different view. There has been case law in this jurisdiction for over thirty years to support the proposition that where the institution of legal proceedings requires some action by court offices and the last day for the institution of legal proceedings expired on a day when those offices were closed, the courts should interpret the relevant limitation period as expiring not within the period specified in the legislation in question, but upon the next day on which the relevant court offices are actually open (*Poole v. O'Sullivan* [1993] 1 IR 484). As with many counter-intuitive propositions, the analysis leading to that conclusion is based on considerations that may not be obvious at first view – here a common sense of fairness and an inclination towards equal treatment of the like positioned. It may fairly be thought that litigants who find that the period the legislature has allowed them to bring legal proceedings expires when

the offices whose actions are necessary to enable the suit to be issued are closed, should not have to bear the very significant consequence of the barring of their legal actions because of a state of affairs that is wholly outside their control – not least of all when the closing of the office on that day was obvious to the legislature. And it might be reasonably believed that every would-be litigant should have the same period of time within which to bring the same type of claim irrespective of the day on which the period for the initiation of that legal action expires.

3. That logic has been thereafter applied to proceedings – such as those referenced in s. 50(6) of the PDA – in which the proceedings involve an application for leave to seek judicial review (*Max Developments Ltd. v. An Bord Pleanála* [1994] 2 IR 121) and, indeed, it has been applied to criminal appeals (*The People (DPP) v. McCabe* [2005] 2 IR 568). That law – and indeed earlier suggestions to this effect in the cases (*McGuinness v. Armstrong Patents* [1980] IR 289) – is based squarely on a series of decisions of the English courts. Its rationale, parameter, correct legal categorisation and thus applicability to s. 50(6) of the PDA all depend on an understanding of those decisions.

4. When originally conceived, this analysis was based on an intent attributed by the courts to Parliament: if the time for the taking of an act by the court office that was necessary to commencement of proceedings or bringing an application concluded on a day when those offices were closed, the final day must be treated as one on which the office was open: *'[O]therwise, the party would not have that which the legislature contemplated that he should have'* (per Byles J. *Hughes v. Griffiths* (1862) 13 CBNS 324, 337). *Hughes v. Griffiths* was concerned with the time for filing a writ of *capias* under the

Absconding Debtors Act 1857, and the striking effect of the decision (which concerned a period that expired on Good Friday) was that although a seven-day period was specified by Parliament for the taking of the relevant steps, the application was within time when initiated on the twelfth day. In the last century, the rationale was applied by one judge of the English Court of Appeal to an originating application by a tenant under the Landlord and Tenant Act 1954 (*Hodgson v. Armstrong* [1967] 1 All ER 307), and then to the issuing of a writ claiming damages pursuant to the provisions of the Fatal Accidents Act 1846 (*Pritam Kaur v. S. Russell and Sons Ltd.* [1973] 1 QB 336 ('*Pritam Kaur'*)). In *Hodgson v. Armstrong* Sellers LJ supplemented the rationale for this deduction of legislative intent as explained in *Hughes v. Griffiths*: it was to be assumed that the legislature intended that all tenants would be treated similarly, yet to stop time for some on a day when the court office was closed would mean that those tenants would obtain less time than other like positioned litigants for bringing their claims (at pp. 312-13). In a strong dissent, Russell LJ observed authority to the contrary, characterising *Hughes v. Griffiths* as a '*rather special case'*. Noting that, strictly, the decision of the majority in that case was based upon the relationship between the relevant rules of court and the statutory limitation period (an issue to which I return shortly) the effect of the decision of the majority was that the Court itself redefined a legislative prescription of time, adding two days to the four month limitation period specified in the legislation, that period expiring on Easter Sunday, and the courts not opening again until the following Tuesday.

5. *Pritam Kaur* is the key reference point for the Irish cases. There, the English Court of Appeal, while citing *Hughes v. Griffiths*, understood itself as fixing on a legal rule of construction. Noting that the arguments on each side were evenly balanced, Lord

Denning MR (with whom Karminski LJ agreed) spoke of *'laying down a rule'* (at p. 349). Megarry J. approved Seller LJ's analysis in *Hodgson v. Armstrong,* describing the outcome in terms of a '*rule'*, a '*general principle'* and a '*limited but important'* exception to the general rule that a statutory period of time will, in the absence of contrary provision, normally be construed as ending at the expiration of the last day of the period (all at p. 356). In reaching that conclusion, the Court of Appeal overruled two earlier decisions in which the contrary had been held (*Morris v. Richards* (1881) 45 LT 210, *Gelmini v. Moriggia* [1913] 2 KB 549).

6. Having regard to the issue that gave rise to *Hughes v. Griffiths* it is to be expected that this reasoning would be readily applied outside the immediate context of writs originating plenary actions seeking damages for personal injury. In *Re Phillip and Lion Ltd.* [1994] BCC 261, Arden J. applied *Pritam Kaur* to an application for disqualification of a company director under s. 7(2) of the Company Directors Disqualification Act 1986: Parliament, she said '*must be taken to have been aware of the decision in Pritam Kaur and, by making no contrary provision, to have intended it to apply'* (at p. 263). In *Aadan v. Brent London Borough Council* (1999) 32 HLR 848, a 21-day period for appealing to the county court against a decision under the Housing Act 1996 which expired on a Saturday was found to expire the following Monday. Chadwick LJ expressed the kernel of the issue clearly (if perhaps over-broadly):

> '*The problem, as a matter of statutory construction, is to determine whether, when Parliament provides that some act must be done within a limited period … in the knowledge that there will be circumstances in which it is not possible to do that act on the last day of that period … Parliament is to be taken to have intended, by the use of the word "within", that the act must be done before such*

time as it becomes impossible to do it; or whether, it being impossible to do it on what would otherwise be the last day, Parliament intended that the act might be done on the first day after that day on which it is again possible to do it.'

7. The Court answered that question consistently with the decision in *Pritam Kaur*, but the manner in which it was framed strongly suggests that there was not a 'one size fits all' solution to the question: so stated, it depends on the particular statute and its context. Indeed, in the course of his judgment (which opened with the salutary warning that '*hard cases make bad law*') Sir Christopher Staughton observed that it did not follow from *Pritam Kaur* that *all* statutory limitation periods fell to be interpreted in the same way.

8. While the rationale of *Pritam Kaur* was approved in somewhat general terms by the House of Lords in *Mucelli v. Government of Albania* [2009] UKHL 2, [2009] 1 WLR 276, it received more detailed consideration in *Calverton Parish Council v. Nottingham City Council* [2015] EWHC 503. There, Lewis J. applied the same logic to an application to quash a development plan within the six-week period specified by the Planning and Compulsory Purchase Act 2004, in circumstances in which that period expired on a Sunday. Lewis J.'s approach was more cautious and flexible than that adopted in many of the earlier cases. He said (at para. 33):

'*… Kaur… sets out a* ***general approach*** *to the interpretation of statutory provisions prescribing periods within which proceedings must be brought. I recognise that* ***the precise provisions of a particular statute may be such that a different approach is called for*** *in relation to that particular statute****. In general terms however****, where a statutory provision provides that proceedings*

must be brought no later than the end of a specified period and the bringing of proceedings requires that the court office be functioning, and the last day of the prescribed period falls on a day when the court office is closed, then the statutory provision is to be interpreted as permitting the proceedings to be brought on the next day when the court office is open.'

(emphasis added)

9. Thus, Lewis J. focussed not merely on the fact that Parliament had not expressly disapplied the rationale of *Pritam Kaur*, but directed his attention to whether there was anything in the broader context in which the provision had been enacted to justify a different approach. Noting that the provisions before him – unlike those in issue in the earlier cases – were concerned with decisions affecting parties other than those before the Court and indeed having earlier noted the need for certainty in respect of those decisions (at para. 24), he nonetheless concluded that these considerations were insufficient to justify a departure from what he described as '*the general approach to statutory interpretation recognised in Kaur's case'*; the application of that approach would not add significantly to the period allowed to applicants, and the application of the principle would mean that persons will know that if the final day for the bringing of proceedings falls on a weekend or bank holiday, the claim may be brought on the following day. A similar analysis was adopted in *Yadly Marketing Co. Ltd. v. Secretary of State for the Home Department* [2016] EWCA Civ. 1143, [2017] 1 WLR 1041, where the issue was whether a 28-day period for the bringing of an appeal against a penalty imposed on an employer for breaching provisions of the Immigration, Asylum and Nationality Act 2006 ended on a public holiday, or the following day. Applying *Pritam*

Kaur, the latter was held to be the case; that and subsequent decisions were described by Beatson LJ as being based upon '*the presumed intention of Parliament'*.

10. The decision of Lewis J. in *Calverton Parish Council v. Nottingham City Council* was cited at length, and approved, in *Croke v. Secretary of State for Communities and Local Government and anor* [2019] EWCA Civ. 54, [2019] PTSR 1406. There, the time for challenging the decision of an inspector appointed by the Secretary of State under the Town and Country Planning Act 1990 expired on the Wednesday before Easter. The relevant court offices were scheduled to close at 4.30 p.m. on that day. At 4.25 p.m. an agent of the claimant arrived at those offices to institute a challenge to such a decision but was refused access. When the claimant himself arrived the following day at the office, he was told that he had sought to file the wrong form and when he sought to file the correct one, was refused permission to do so. The proceedings were not commenced until the following Tuesday, the offices being closed from Friday to Monday. To prevail in his contention that the proceedings were not time barred, the claimant had to win two arguments – that the time should be extended from the Wednesday until the Thursday, and that it should then be extended from the Thursday until the following Tuesday. Both propositions depended on an enlargement of *Pritam Kaur* and this the Court of Appeal declined to do: if that '*principle'* (as the finding in that case was described) were extended to accommodate the circumstances in that case, '*the inevitable result would be uncertainty, unpredictability and unfairness to other parties, contrary to Parliament's intention in creating the statutory time limit, and contrary to the court's consistent approach in upholding it'* (at para. 25). Lindblom LJ. proceeded to explain what was decided in *Pritam Kaur* as follows (at para. 32):

'*It was a narrow principle, founded on the certainty and predictability of the calendar, and the particular days on which court offices would not be open for business. Inherent in it was that all parties to potential litigation would know, or easily be able to find out, when court offices would be open, when and where a relevant claim could be issued, and whether the limitation period would be extended so that it did not end on a "dies non". It conceded nothing to uncertainty and inconsistency. It was simple. A statutory limitation period would not be shortened if the final day of that period occurred on a "dies non". That "dies non" would always be clear in advance. The principle was not subject to the vicissitudes that might prevent a claimant from filing a claim on a day when the court office is open.*'

11. Thus viewed, it is I think, possible to discern in the trajectory of these cases a move from a firm rule of law as suggested in *Hughes v. Griffiths* where an intent is imputed to Parliament in the context of a particular statute which, it is to be assumed, can be displaced by express provision to the contrary, through the decision in *Pritam Kaur* in which that rule was both broadened and restated, to *Aadan v. Brent London Borough Council* (in which *Pritam Kaur* was tellingly described by Sir Christopher Staughton J. as '***presumably*** *a decision based on statutory interpretation'*) (emphasis added) and *Calverton Parish Council v. Nottingham City Council*, in each of which the approach was viewed as one of presumed legislative intent, displaceable by not only express provision to the contrary, but also considerations of purpose and context.

12. That trajectory is, today, a familiar one. As the modalities of statutory interpretation have evolved from an analysis focussed on a literal construction of legislation displaced

by patent ambiguity or obvious absurdity, to an appreciation that the meaning intended and communicated by words is a product of the reason they are spoken and the scene in which they are set, principles of construction that may once have depended on presumptions rebuttable only by express words, may in at least some situations give way to the prospect that broader considerations of legislative purpose and context may, in and of themselves, displace legal rules hitherto brought to bear on the interpretation of legislation. That has been most obviously explained in cases dealing with the strict construction of criminal or revenue statutes (see *People (DPP) v T.N.* [2020] IESC 26: and *Bookfinders Ltd. v. Revenue Commissioner* [2020] IESC 60).

13. But this poses a challenge when, as with the principle under consideration here, the limits of a rule that treats the words '*weeks'* , '*months'* or '*years'* as meaning those periods plus one (or more) days are defined by the need to achieve certainty: a very short period for bringing proceedings may suggest a firm legislative intent that proceedings be brought within that period and not otherwise, yet it is in precisely that situation that the exigencies of fairness are most likely to demand an extension of time when the final day of a statutorily prescribed period falls on a day when the court offices are closed. How these considerations of purpose and context are to actually work is not clear, and therefore it will not be clear in all cases when time runs. Yet, as the judgment of Lindblom LJ in *Croke v. Secretary of State for Communities and Local Government and anor* shows, the parameters of what is a rule that pushes the meaning of words beyond their normal limit, are intended to posit a time period that will be known to all in advance.

14. This is the first occasion on which this Court has had to rule on this question. There are, it seems to me, three options. One is to treat the principle as a hard rule of law, positing that when time for the institution of legal proceedings or the bringing of a particular application expires on a day the court offices are closed *and* the initiation of the legal action requires the active participation of those offices, time runs from the next date on which the offices are in fact open *unless* the legislature has expressly specified otherwise. A second is to modify the same principle, but to enable the court in construing a statutory limitation period to find that this presumption is ousted by considerations of purpose and context. The third is to hold that words mean what they say, that the Oireachtas fixed a clear period of time by reference to words that are not capable of ambiguity ('*within 8 weeks'*) and that it would be a usurpation of the legislative function for the courts to construe that language as bearing anything other than its clear, unambiguous and indisputable meaning.

15. The first of these is the version that most effectively combines fairness and certainty, yet it involves the courts grafting onto very clear language an implausibly wordy qualification. The second, while presenting much the same qualification, combines fairness with flexibility and is more consistent with the general approach adopted by the courts today to the process of construing the law. The third is also clear and certain, but potentially harsh. However, it is the version that affords the language of the provision the primacy generally favoured by the process of statutory construction while, at the same time, encouraging litigants to order their affairs so that they bring proceedings within the relevant period when it is liable to expire on a *dies non*. In any system in which the institution of legal proceedings requires the active participation of an issuing court office, there will always be the potential for a harsh outcome in the

case of the litigant who decides to leave matters to the last minute. The cases in this and the allied field of applications to extend time for initiating various legal processes are littered with missed trains, over-eager vacationing court officials, unreasonable bureaucrats, litigants who attend court offices with incomplete papers, and to these can no doubt be added the days of unexpected complete or partial office closures by reason of understaffing, broken down boilers or extreme weather events. None of these are captured by the exceptions invoked here, and each show that potential harshness cannot in and of itself afford a rational basis for rewriting the law where this is expressed in otherwise clear terms – even if the potential that a limitation period will expire at a point when the institution of proceedings is not possible is known to the legislature. The legislature can, quite rationally, conclude that these problems are avoided by prudent precaution and by would be claimants taking steps to ensure that the institution of legal proceedings requiring the active intervention of the court offices is undertaken in good time.

16. If the issue in this appeal was solely whether there should be, by reason of the known and obvious practical consequence of the closure of court offices, a rule of law that interposed into otherwise clear statutory language a proviso of the kind suggested by the decision in *Pritam Kaur* (something like '*save where the bringing of such an action requires an action on the part of any court office and where the said period expires on a day other than one in which those offices are open, in which event the said period will expire on the immediate next day on which those offices are open*'), there might thus well be a strong case that such a rule would not be consistent with the proper role of the courts in interpreting rather than rewriting, the law. This is especially the case in relation to robustly worded limitation periods which predate the adoption in this

jurisdiction of *Pritam Kaur* in 1992. In particular, it will be recalled that the phrase used in the Statute of Limitations Act 1957 is that an action '*shall not be brought after'* the expiration of a stipulated period of time.

17. The matter, however, does not end there. As well as prescribing when the court offices will be open and closed, in the case of proceedings before the High Court, Order 122 r. 3 provides:

> '*Where the time for doing any act or taking any proceeding expires on a Saturday, Sunday, or other day on which the offices are closed,* ***and by reason thereof such act or proceeding cannot be done or taken on that day****, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.'*
>
> (emphasis added)

18. The reference in the first clause of this Rule assumes a specific source for the time limit thus extended, and it seems likely from the terms of Order 122 r. 1 that that source must be in '*these Rules, or by any order'*. In the instant case, the time limit is not fixed by the Rules or any order, but by statute. Of course, the Superior Court Rules Committee – no more than any body exercising the function of promulgating delegated legislation – does not have the legal authority to change the provisions of a law enacted by the Oireachtas. Indeed, it has been clear since the earliest iterations of this Rule that it cannot extend the time fixed by Parliament for the doing of an act (*Flower v. Bright* (1862) 2 J. & H. 590). But the Rules of Court are themselves a '*law'* duly promulgated

under the authority of an Act of the Oireachtas, and as with any such provision, are relevant to the construction of other laws into which those Rules have been expressly or, perhaps implicitly, incorporated.

19. At a general level, limitation periods and the provisions of the rules of court enjoy a symbiotic relationship. Certainly, where the Oireachtas fixes the time for the bringing of legal proceedings that limitation period cannot be changed by the Rules Committee. The Rules of the Superior Courts, however, fix *how* proceedings are commenced, and thus in practical terms affect the mechanics of a legal action and thus the ease with which – in particular – short limitation periods can be complied with. Usually, the Rules require the intervention of the court offices (hence the problem that arises in this case), but that is a choice, not an inevitability; it is entirely open to the Rules Committee to prescribe that proceedings are commenced by dropping a document into an official postbox, or by sending them to an email address, or by simply serving a notice in a prescribed form on the proposed defendant or, for that matter, that an action begins by application to court. Where (as is most usually the case) primary legislation does not itself prescribe how a particular suit is to be initiated or application made, any reference in legislation to the action or application being '*brought'* or '*commenced'* or '*made'* is, in fact, to that action being so instituted *in the manner provided for by the applicable court rules.* The theory by which this is permitted is that generally the Oireachtas has through the Courts of Justice Act 1936 and the Courts (Supplemental Provisions) Act 1961, delegated to the Rules Committee, acting with the concurrence of the Minister for Justice, the authority to regulate all aspects of practice and procedure surrounding actions or applications to court and thus, that unless the Oireachtas has specifically mandated a particular type of procedure for a particular kind of claim or has specifically

regulated that procedure in a particular statute, the procedure is that made by the Rules Committee under that delegated authority. To that extent, it can be fairly said that some features of the Rules of Court are necessarily - if implicitly - absorbed into every statute that provides for legal actions or applications to court. That, clearly, includes both the authority to delimit the opening days and hours of the relevant court offices (as the Rules Committee has done in Order 118 r. 4) and the power to determine how time periods fixed by the Rules themselves which expire on those days, should be negotiated.

20. The majority in *Hodgson v. Armstrong* based its decision on the view that the court rules in issue in that case (making provision similar to that in Order 122 r. 3) were '*incorporated into'* the substantive legislation, fixing time for the bringing of an application. That view was discredited by the Court of Appeal in *Pritam Kaur*. Davies L.J. (with whom Sellers .LJ. agreed) explained his position in *Hodgson v. Armstrong* as follows (at p. 317):

> *'A statute lays down a time within which proceedings must be commenced; but proceedings can only be commenced in accordance with the procedural rules of the court … if that is so, any special time provisions which are a part of the court's procedural code are necessarily incorporated.'*

21. Referring to the provisions of the County Court Rules in issue in that case which provided for extensions of time in terms similar to Order 122 r. 3, he continued:

> '*It is a provision which deals with the special circumstance of the court office being closed on the last day. It does not extend the time limited by the statute.*

What it does is to provide that in such a special case the act shall be deemed to be done within that time.'

22. Davies L.J. later repeated the explanation (at pp. 320-21):

'*the initiation of proceedings is governed by the rules of procedure. It is only under and in accordance with rules of court that a writ or summons can be issued or an originating application can be made; and among the rules of procedure there is to be found such a rule as C.C.R.O. 48, r. 10(3), dealing as it does with very special circumstances. There does not seem to me to be any possible ground on which such a rule should be excluded or ignored … the rule seems to me not to extend the time prescribed by the statute but to provide that in the special circumstances the act shall be in time if done on the next day.'*

23. In *Pritam Kaur*, Denning M.R. felt that the rule in question did not apply to a limitation period fixed by statute. Megarry J. made what was essentially the same point, adding that he felt that it was questionable whether the Rules Committee had any power to make a rule which, in effect, extends a time limit laid down by Parliament. It is clear that the Rules Committee does not have the jurisdiction to change the limitation period fixed by statute, not least of all for the reasons of constitutional law referred to by Donnelly J. in her judgment. But the Rules do – in many different ways – affect the time a litigant has to bring their claim; whether by prescribing if the initiation of proceedings requires the involvement of a court office, or by conditioning the detail of the legal documents required before a claimant can sue, or by prescribing when the

court offices are open to allow this to occur. Necessarily and in practical terms they do '*in effect'* impact upon statutory limitation periods.

24. I think that the majority in *Hodgson v. Armstrong* was thus making a subtly different point. Once it is acknowledged that the Rules regulate the bringing of claim and may properly define when the court offices are open, they in effect impact on every statutory limitation period for a claim the bringing of which requires the intervention of those offices. If the respondents are correct in the essential point they make here, Order 118 r. 4(1) has reduced the time for the bringing of a challenge to certain decisions by one or in some cases two days (and in the case of time periods expiring on bank holidays, more). If that Rule was changed so that the offices were open on a Saturday, or on a bank holiday, then the class of affected cases would be correspondingly reduced. If the Rules governing a particular form of proceeding are changed so that the intervention of the court office is not required at all, then by that action the time available for bringing proceedings is, again in practical terms, potentially increased – if the respondents are correct in the essential argument they advance. This is achieved by the Rules and only because of the Rules, and it occurs in a context in which the vast majority – if not all – statutory limitation periods necessarily, and for the reasons I have earlier explained, depend upon the provisions of those Rules that regulate how particular legal actions or steps in those legal actions are initiated and progressed.

25. The odd consequences that would follow were the statutory limitation period not in at least some circumstances interpreted cognisant of the provisions of the Rules, is well-demonstrated by the provisions of s. 50(6) of the PDA. The relationship between s. 50 of the PDA and the Rules of the Superior Courts is unusually close. In the particular

case of proceedings to which s. 50 of the PDA applies, the legislature has prescribed precisely how those proceedings are to be brought: s. 50(2) states that they must be '*by way of an application for judicial review under Order 84 of the Rules of the Superior Courts'*. Order 84 is defined both in s. 50 and s. 50A as '*the Order'*, and s. 50A defines '*section 50 leave'* as meaning '*leave to apply for judicial review under the Order in respect of a decision or other act to which section 50(2) applies'*. Section 50A states that an application for '*section 50 leave shall be made by motion ex parte and shall be grounded in the manner specified in Order in respect of an ex parte motion for leave.'* Order 84 r. 20 prescribes that such an application may not be made without leave of the Court, and that in turn is done by motion *ex parte* grounded upon notices and affidavits in the prescribed form (O. 84 R. 22). The time period stipulated in s. 50 of the PDA stops at the point when leave to seek judicial review is sought before the court (Simons *Planning Law* (3rd Ed. 2022) at para. 12-198): this follows from the provisions of s. 50A(2)(a). As a matter of practice, the President of the High Court has required that such applications be preceded by the filing of the notice and affidavit (High Court Practice Direction HC02), but as a practice direction this requirement can be waived by the court and filing does not in and of itself stop time running. However, by definition where the court office is closed, the court itself is not engaged in general sittings – only special and emergency sittings.

26. An application for judicial review in accordance with Order 84 RSC must, usually, be brought within three months of the date on which grounds for the application first arose. Because that time is fixed by the Rules themselves, it is governed by Order 122 r.3 and, thus, if the last day for making such an application were to fall on a Sunday, time would expire only on the following day. Yet if the respondents were correct in the case they

make here, the position in respect of the eight-week period specified in s. 50 of the PDA would be exactly the opposite – even though the application mandated by that provision is expressly stated to be that provided for by Order 84 RSC, and even though the PDA contains no stipulation to that effect. That, indeed, would be *counterintuitive*.

27. The provisions are aligned by reading the legislation and the Rules as congruent. The Oireachtas, in mandating the procedure specified in Order 84, must be taken to have adopted the prescription by the Rules themselves as to when that time expired. It could, of course, have created a special rule that departed in whole or in part from the facility expressed in Order 122 r. 3. Indeed, in a number of obvious respects s. 50 expressly deviates from provision made in Order 84 where this is the intent for example by expressly identifying the point from which time runs for certain decisions (s. 50(7) of the PDA). Having regard to the considerations outlined earlier as to the relationship between a statute that regulates a particular cause of action and the Rules of the Superior Courts in stipulating how a case is commenced, I am of the view that not having expressly provided otherwise, it is to be assumed that the legislature intended the expiry of time for the bringing of proceedings to which s. 50 of the PDA applies to be governed by the same provisions as regulate that question under Order 84.

28. While noting that the issues that would arise were the provisions to be construed so that the Superior Court Rules Committee could, by changing the terms of Order 122 r. 3, actually alter the legal definition of the statutory limitation period, I think it reasonable to approach this on the basis that the Oireachtas intended to accommodate the Rules as in force at the time of enactment (which have not changed now for a century and a quarter – so this should not in most cases be a real issue). I also stress that unlike many other limitation periods, the provisions of s. 50(6) of the PDA are concerned with an

action that can only be commenced in the High Court. This is, I think, a clear example of a situation in which the clear words of s. 50(6) of the PDA are necessarily conditioned in their meaning by the express adoption of the procedure provided for in Order 84 RSC.

29. In the case of s. 50(6) of the PDA, all of this can also be rationalised in the manner suggested by Donnelly J. at para. 95 of her judgment: time was extended from a *dies non* to the next day on which the court offices were open for judicial review applications prior to the introduction of a bespoke planning judicial review procedure, and it is to be assumed that absent provision to the contrary, that the running of time was to be calculated in the same way under the new procedure.

30. For these reasons I agree with Donnelly J. (whose detailed account of the facts and submissions of the parties I gratefully adopt) that this appeal should be allowed.