THE HIGH COURT

[2021] IEHC 130

[2019/6 CT]

IN THE MATTER OF THE HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 TO 2006
AND
IN THE MATTER OF AN APPEAL PURSUANT TO THE PROVISIONS OF SECTION 5 (15)

BETWEEN

A.D.L.R.

APPELLANT

AND

THE MINISTER FOR HEALTH

RESPONDENT

Judgment of Mr. Justice Bernard Barton delivered on the 23rd day of February, 2021.

1. This is the judgment of the Court on the Appellant's appeal against the decision of the Hepatitis C and HIV Compensation Tribunal (the Tribunal), dated the 29th November 2019, whereby her application for compensation under s.4 (1) (h) of the Hepatitis C and HIV Compensation Tribunal Acts 1997 to 2006 (the Acts) was dismissed.

Claims for Compensation; Qualification Requirements

2. Together with the causes of action in respect of which claims may be brought, Section 4 (1) makes provision for the categories of persons who may bring claims under the scheme established by the Acts. While claimants are not required to prove liability whether in tort, contract or otherwise, certain qualifying requirements must be met before the claim can be admitted. On admission of the claim, causation, injury and/ or financial loss must be established to the satisfaction of the Tribunal and, if so satisfied, an award may then be made in accordance with the provisions of s. 5 of the Acts. Subject to certain statutory modifications contained therein, the assessment of compensation is governed by and carried out in accordance with the principles of the law of tort and any relevant statutory provisions.

Claims for Compensation; Onus of Proof

3. In many cases, however, the Tribunal or the High Court on appeal, will be satisfied from the documentation accompanying the form prescribed by regulations for making the relevant claim, or from documentation furnished subsequently, that the applicant qualifies for admission and that causation is established, in which event injury and/or pecuniary loss must be proved. The onus of proof rests with the Claimant; the burden of proof is to establish the case made on the balance of probabilities. If an applicant does not come within a category of claimant upon whom a cause of action is conferred, there is no entitlement to compensation within the terms of the scheme, notwithstanding that the applicant may have suffered injury and/or loss. In that event the applicant is left to pursue whatever cause of action they may have, if any, through the courts in the ordinary way.

The Issue

4. The net issue which fell for determination by the Tribunal, and which falls for determination by the Court on this appeal, is whether or not the Appellant meets the qualification criteria to bring a claim as set out in s.4 (1) (h) of the Acts. Put another way, the question is whether the uninfected 'partner' or 'spouse' of an adult 'child' whose

Hepatitis C and/or HIV infection was contracted indirectly from his or her mother qualifies to make a claim for 'loss of consortium'. The Tribunal decided that she did not do so as she was not the 'partner' or 'spouse' of an infected person who fell within the provisions of s 4 (1) (a), (b) or (f) of the Acts. In the circumstances it is appropriate and convenient at this juncture to set out the relevant statutory provisions.

Relevant Statutory Provisions

5. Section 4 (1) (a), (b) and (f) provide as follows:

"4.(1) The following persons may make a claim for compensation to the Tribunal—

(a) a person who has been diagnosed positive for Hepatitis C resulting from the use of Human Immunoglobulin Anti-D within the State,

(b) a person who has been diagnosed positive for Hepatitis C as a result of receiving a blood transfusion or blood product within the State,

(d) …

(e) …

(f) a person who has been diagnosed positive for HIV as a result of receiving a relevant product within the State." (Emphasis added.)

Section 5 (3) (3B) (a) provides that an award may be made by the Tribunal

"…to a person referred to in section 4 (1) (h) in respect of the loss of consortium of a person referred to in paragraph (a), (b) and (f) of section 4 (1), including the impairment of sexual relations with the person, if the tribunal is satisfied that there has been such impairment arising from the risk of transmission of Hepatitis C or HIV."

It is clear from these provisions that no provision is made for the bringing of a claim for loss of consortium by, nor for the making of an award to, the uninfected 'spouse' or 'partner' of a 'child' or 'spouse' of a person referred to in s 4 (1) paragraphs (a), (b) and (f) above.

6. The provisions of the principal Act of 1997 have been extensively amended. For present purposes the relevant amendments were enacted by the Hepatitis C Compensation Tribunal (Amendment) Act, 2002 and the Hepatitis C Compensation Tribunal (Amendment) Act, 2006. Section 4 (1) of the 1997 Act was amended in 2002 by the addition, *inter alia*, of paragraphs (e), (f), (g), (i), (j) and (k) and was further amended in 2006 by the introduction of an additional paragraph, (h).

7. Paragraph (h) created a statutory right to bring a claim for 'loss of consortium', including interference with sexual relations, arising from the risk of transmission of Hepatitis C. The provision specified the claimants upon whom the right of action was conferred, namely, subject to certain qualifications, the 'spouses' and 'partners' of persons infected with

Hepatitis C and/or HIV identified in s.4 (1) sub paras (a), (b) and (f). To qualify for admission the claimant must have been 'married' to the person falling into paras (a), (b) or (f) before the commencement of para.(h) or was married to a person who fell into paras (a), (b) or (f) on or after the commencement of para.(h) and was so married before that person so fell into that paragraph. Apart from a requirement that they must have been living together continuously for not less than three years, the same qualification applies to partners.

8. The Acts provide for the making of regulations to implement the provisions thereof by statutory instrument, of which there have been several. The regulations provide, *inter alia*, for the mode of making a claim, which is by way of a designated form appropriate to the nature of the claim being brought. Applications for compensation for loss of consortium under s.4 (1) of the Acts, including applications pursuant to s.4 (1) (h) are provided for by Form 111. Every claimant is required to use the designated form appropriate to the nature of the claim.

9. Section 2 of Form 111 provides that it is to be used by an applicant who is

> *"married to or has for a continuous period of not less than three years lived with the person who has been diagnosed positive for Hepatitis C resulting from the use of Human Immunoglobulin Anti-D, a blood transfusion or blood product and/or HIV resulting from the use of a relevant blood product, in respect of the loss of consortium of the person, including impairment of sexual relations with the person arising from the risk of transmission of Hepatitis C or HIV (Sections 4. 1.h of the Act)."*

The Appellant completed Form 111 on the 17th April 2018 *qua* 'partner' of a person diagnosed positive for Hepatitis C, identified in para.(c), and with whom she has lived continuously for more than three years. Her partner, P.A. brought a successful claim for compensation to the Tribunal pursuant thereto. (Emphasis added.)

Background

10. Central to the case advanced on the Appellant's behalf is the proposition that her 'partner' qualified and could also have brought his claim for compensation under s. 4 (1) para.(a). I consider it appropriate to place the subject issue in context by setting out the background from which it emerged.

11. The Appellant was born on the 31st May 1972. She lives with P.A. at an address in the United Kingdom. They have one daughter, who is seven years of age. The Appellant is a full-time homemaker. In January 1996, the non-statutory Hepatitis C Compensation Tribunal found that P.A.'s mother B.A. contracted Hepatitis C as a consequence of having 'received' contaminated Anti-D within the State. (Emphasis added.) She died the following month from an unrelated illness. Prior to her death, B.A. brought a claim for compensation to the non-statutory tribunal. It appears that B. A's application was the first or one of the first cases to be heard by the non-statutory Tribunal. The members were

satisfied the source of her infection was contaminated Anti-D administered to her in the course of the deliveries of her children, of whom P.A. was one.

12. P.A was himself diagnosed positive for Hepatitis C during routine medical examinations carried out in February 2017, some 21 years after his mother's death and the determination of her claim and six years after he and the Appellant began living together. As a result of this diagnosis, P.A. himself made a claim for compensation to the Tribunal; his application was determined on the 19th November 2018. The Tribunal was satisfied that the source of his Hepatitis C infection was transmission from his mother in utero or on delivery and in the circumstances of his case made a provisional award.

13. Following the submission of Form 111 and accompanying documentation by the Appellant's solicitor, the Tribunal, under cover of letter dated the 4th April, 2019, indicated that as P.A. had made his claim pursuant to s.4 (1) (c) of the Acts and that as those entitled to claim under s.4 (1) (h) did not include the spouses of persons entitled to claim under sub para.(c) it was considered the Appellant did not come within the terms of para.(h) and would not therefore be entitled to an award for loss of consortium. By way of reply, written submissions which took issue with the contention were made and filed with the Tribunal on the 7th August, 2019.

14. The submissions and the transcript of the proceedings before the Tribunal, including the grounds upon which the Appellant's application was refused, have been read and noted by the Court. However, the appeal proceeds as a *de novo* rehearing of the application. In addition to the materials before the Tribunal, written submissions on behalf of the Appellant, dated 13th January, 2021 and written submissions on behalf of the Respondent, dated the 22nd January were filed for the purposes of the appeal and supplemented by oral submissions at the hearing thereof.

15. As mentioned above, the net issue which falls for determination is whether the Appellant qualifies to bring a claim for compensation for loss of consortium pursuant to s.4 (1) (h) of the Acts. The Tribunal decided the issue on a construction of the relevant statutory provisions and concluded thereon that she did not qualify. The Respondent submits that the Tribunal was correct in the construction given to the wording and urges the Court to come to the same conclusion. Not surprisingly, the Appellant takes the opposite view and submits that on a proper construction of the provisions in accordance with settled authority the Appellant qualifies and her claim should be admitted.

16. The parties very helpfully agreed a joint book of authorities, which included the Acts and the following reported cases.

    (i) *R.C. v. Minister for Health and Children* [2012] IEHC 204;

    (ii) *C.M. v. Minister for Health* [2017] IESC 76;

    (iii) *A.C. v. Minister for Health* [2019] IEHC 431;

    (iv) *A.W.K. v. The Minister for Justice and Equality & Ors*. [2020] IESC 10;

(v) *J.G.H. v. Residential Institutions Review Committee* [2017] IESC 69, [2014] IEHC 637, [2018] 3 I.R. 68;

(vi) *McKinley v. Minister for Defence* [1992] 2 I.R. 333;

(vii) *Andaloc v. Iarnród Éireann/Irish Rail & Ors* [2014] 3 I.R. 516 and

(viii) *W. v. Gleeson (Appeals Officer)* [2019] IEHC 472.

The Court was also referred to the legal text book, Dodd, *Statutory Interpretation in Ireland* (Bloomsbury, 2008) at para. 5.89 all of which has been read and considered.

Construction of "Remedial-Redress" Statutes

17. The law on the interpretation of statutory provisions in general is well settled, as is the approach in appropriate circumstances to be taken by a court to the interpretation of 'remedial-redress' statutes. For detailed discussion on the topic see *O'G v. Residential Institutions Redress Board* [2015] IESC 41; *J. McE. v. The Residential Institutions Redress Board* [2016] IECA 17; J*.G.H. v. The Residential Address Committee & Anor* [2017] IESC 69; *C.M. v. Minister for Health and Children* [2017] IESC 76; and *A.C. v. Minister for Health and Children* [2019] IEHC 431. The approach to the construction of 'remedial-redress' statutes discussed in these decisions is not a stand-alone approach to statutory interpretation; rather, as is clear from the judgments therein, it is warranted in the resolution of ambiguity arising upon a literal or purposive interpretation of a provision or where a literal or purposive interpretation would lead to absurdity, a view recently emphasised by the court in *W. v. Gleeson (Appeals Officer*) [2019] IEHC 472 at para. 72.

Appellant's Case

18. The ambiguity which the Appellant contends arises on a literal construction of the subject provisions, is that when conferring a right of action on persons infected through the use of Anti-D, the Oireachtas, in framing s. 4 (1) para.(a), employed the word 'use' rather than the word 'receiving' utilised in paras (b) and (f); the express distinction was material to the ascertainment of legislative intention. To come within the parameters of s. 4.1 (a) it was necessary only that the applicant have contracted the infection through the 'use' of Anti-D. Accordingly, qualification to make a claim was not confined to those persons to whom Anti-D had been administered directly. A.P.'s mother, B.A. was directly infected through injection; however, her son was indirectly affected through transmission. Although he was not infected directly it could not be said that his infection had occurred otherwise than as a result of the 'use' of Anti-D.

19. Furthermore, it was argued that the Appellant comes within the expanded meaning of "spouse", as defined in s.1 and s.4.1 (h) of the Acts. No issue arises with respect to A.P.'s claim for compensation. His right to claim is expressly provided for by s. 4 (1) (c), as the child of a directly infected person- his mother- from whom he contracted the infection, albeit not diagnosed until 2017. It is accepted that the Appellant does not come within that provision; apart from anything else, she is not herself infected. However, as stated above, the case advanced is not that the provisions of sub para.(c) should in some way be read into s. 4 (1) (f) rather, A.P. qualified independently of s. 4 (1) (c), to bring

his claim under s. 4 (1) (a) since his infection, albeit indirect, occurred only as a result of the 'use' of contaminated Anti-D administered to his mother. Had A.P. elected to bring his claim under s. 4 (a) (1) (a) and had been made an award, the Appellant would qualify to bring her own claim *qua* his 'partner' by virtue of the provisions of s. 4 (1) (h) since on this construction A.P. falls within the category of claimant encompassed in s. 4 (1) (a).

20. To exclude the Appellant on the grounds that A.P.'s application had been brought pursuant to s. 4 (1) (c) rather than s. 4 (1) (a) would amount to a wholly unwarranted and unjustified exclusion of an otherwise valid claim on narrow/ technical grounds, described by Mr. Craven, Senior Counsel for the Appellant, as a 'box-ticking' exercise, that the jurisprudence concerning the construction of 'remedial-redress' statutes had evolved to address. Accordingly, giving the provisions as broad, liberal and generous an interpretation as the wording permits in accordance with the principles laid down in *C.M.* and applied in *A.C.,* it was submitted that the Appellant qualified as she was the partner of a person who qualified under s.4 (1) (a). The fact that he elected to bring his own claim pursuant to provisions of s. 4 (1) (c) was not determinative of the Appellant's claim, nor was such a consequence contemplated. Paragraph (c) had to be viewed as a provision which had been enacted in ease of infected spouses and children and for the avoidance of doubt which might otherwise arise on an application brought under para.(a).

21. The Court also had to have regard of the fact that at common law, a tortiously injured spouse, whether husband or wife, was entitled to bring a claim for loss of consortium; the entitlement to bring a claim for loss of consortium conferred by the Acts was not created by nor was it a creature of statute. While there was no recorded decision of a 'partner' as opposed to a 'spouse' succeeding in such a claim at common law, the Court was required to have regard to the value of such relationships and any harm done thereto as a result of a tortious act. While the scheme is not concerned with tortious liability but rather was designed to provide compensation to the victims of Hepatitis C and HIV infection, the Appellant's relationship had been harmed; she had suffered a loss of consortium as a result of her partner's Hepatitis C infection as a result of the use of Anti-D administered to his mother in the State and consequently was entitled to be compensated therefor.

22. It is not in dispute that cases involving vertical or horizontal transmission are very rare and are confined to single figures. It was submitted on behalf of the Appellant that it was highly unlikely that circumstances of individuals such as the Appellant were within the contemplation of the Oireachtas when the subject provisions were being enacted. Indeed, subsequent amendments were made to the legislation in order to address what was an evolving situation arising from the Hepatitis C and HIV scandal discussed by McKechnie J. in *CM* and this Court in *A.C*. Moreover, the proofs under s. 4 (1) (a) and 4 (1) (c) are essentially the same; either way these have been met. Although the scheme was established to provide compensation without the necessity of establishing liability, if it had been necessary to do so, the fact that there was a breach of duty of care owed to A.P. independently of his mother would be unassailable.

23. While causation depended on his mother's infection, the legal duty owed to him did not; A.P. was infected in utero or in the course of delivery. It would be an absurdity and, in any event, plainly unjust if the decision of one's 'spouse' or 'partner' could determine the right of the other 'spouse' or 'partner' to bring a claim by what was no more than a 'box ticking' exercise arising from an election by the other to use the provisions of s. 4 (1) (c) rather than s. 4 (1) (c) to make a claim. Rather, the provisions had to be interpreted in a way which Mr. Craven argued was claimant friendly.

Respondent's Submissions

24. On behalf of the Respondent, Mr. Dignam SC submitted that A.C. was not authority for the proposition that the Court had vested in it some sort of rolling jurisdiction to meet evolving circumstances so as to admit the claims for compensation of those Applicants who were not expressly provided for in the Act. The legal maximum *expressio unius exclusio alterius*, applied. In any event, there was no ambiguity apparent on the face of s.4 (1) (c) under which A.P. had brought his own claim; express provision for the 'spouses' and 'children' of those infected could not have been set out in more clear terms. When amending s. 4 (1) by the Act of 2006 the Oireachtas was aware that s. 4.1 (c) as enacted in the principal Act had itself been amended in 2002 to make it clear that the 'child' or 'spouse' of any person referred to in paras. (a) or (b) were persons who had themselves been diagnosed positive for Hepatitis C.

25. When amending this section in 2006 by making specific reference to paras. (a), (b) and (f) in para.(h), the legislature excluded from the class of claimant thereunder the 'partner' or 'spouse' of a 'child' or 'spouse' provided for in s. 4 (1) (c) which confined the category of claimant under that provision to the 'spouse' or 'child' of a person referred to in paras (a), (b) and (f) who themselves had been diagnosed positive for Hepatitis C. If the Oireachtas had wanted to confer a right to bring a claim for loss of consortium on the 'spouse' or 'partner' of a 'child' who had been infected it would have been relatively easy to do so by including in para.(h) reference to para.(c) in addition to sub paras (a), (b) and (f); it chose not to do so.

26. It was submitted on behalf of the Respondent that three discreet issues arose on the appeal as follows.:

    (i) Does 4 (1) (h) apply to the 'partner' of a claimant under s. 4 (1) (c)?

    (ii) Is the Appellant the 'partner' of a person who fell within s. 4 (1) (a) or (b) or (f) and

    (iii) Whether an application by P.A. under s. 4 (1) (c) is determinative, even if he could also have applied under s. 4 (1) (a) and whether, on a true construction of that provision, he fell within the category of claimant contemplated thereby.

    Mr. Dignam contended that it was not a question as to whether there was a greater or lesser burden of proof required to establish a claim under sub paras. (a) or (c); rather, different proofs were required. In the case of an application under s. 4 (1) (c) the

applicant had merely to prove that he was a child, that he had tested positive for Hepatitis C, and that he had contracted the infection from his mother. Once those proofs were satisfied the Tribunal was entitled to admit and determine his claim for compensation. It was contended that P.A. did not fall within the parameters of s. 4 (1) (a) and could not have brought a claim for compensation under that provision. If the construction of s. 4 (1) (a) urged on the Court by the Appellant was accepted and s. 4 (1) (a) is to apply to children infected by their mother, then what was the necessity to have s. 4 (1) (c) at all?

26. Mr. Dignam posited a further question. If a child or a spouse was also intended to be a person coming within the ambit of sub paras. (a) (b) or (f) then why did the provisions of para. (h) specifically refer to the claimants contemplated by sub paras. (a) (b) or (f) but exclude those provided for in sub para. (c)? If the meaning attributable to the word 'use' employed by the legislature in s. 4 (1) (a) contended for by the Appellant is correct, a wholly illogical and unjustified discriminatory dichotomy would be created between the children of persons who contracted infection directly through the administration of an injection of Anti-D, like A.P., and the children of those persons who contracted infection through the 'receipt' of blood or a blood product. If A.P.'s mother had been infected as a result of receiving a blood transfusion it was crystal clear from the wording in para. (b) that although he was infected in utero or at delivery, as he did not contract the infection directly as a result of receiving blood or a blood product, he would not qualify to bring a claim under that provision and would be confined to utilising the provisions in para.(c) to do so.

27. Section 4 (1) had to be looked at in its entirety. The employment of the word 'use' by the Oireachtas in para.(a) was clearly intended to refer to the person who contracted the infection directly from the 'use' of Anti-D by way of injection, as had happened in the case of B.A. This construction was consistent with the provisions of paras. (b) and (f) from which it is clear that the class of persons entitled to bring a claim are primary victims. Any doubt about that construction was abolished by the express provision in para.(c) for claims to be brought by a 'spouse' or a 'child' who themselves had diagnosed positive for Hepatitis C as a result of lateral transmission in the case of an infected spouse to the other or by descent from the mother to her child. Given that the section clearly identified the categories of persons and the circumstances or relationships which qualified claimants to make claims the decisions in *C.M*. and *A.C*. were not authority for construing the employment of the word 'use' in para. (a) by enlarging the class of person beyond those who were primary victims whose infection was contracted through direct transmission whether by means of injection, transfusion or otherwise.

29. In response, Mr. Craven argued that whether or not there was a consequential absurdity arising in the manner suggested by Mr. Dignam was irrelevant to the subject appeal. What was relevant is whether or not on a true construction of para. (a) the Appellant's 'partner' came within the ambit of that provision and consequently could have elected to make a claim thereunder rather than was the case, under s. 4 (1) (c). If the Oireachtas had intended to refer to primary infection through the administration of Anti-D by

injection then it would have been comparatively easy to say so by employing words such as 'administered', 'injection' or 'received', in which case there could not have been any doubt, however, the Oireachtas did not do so. In construing s. 4 (1) (a) the Court was warranted on authority to look at the section as a whole and in this regard the provisions of s. 4 (1) were instructive; it was abundantly clear from a reading of the section as a whole, particularly subsection (8), that the terms 'use' 'receipt 'and 'transfusion' were employed in the section disjunctively.

Decision

30. Having read and considered the written and oral submissions advanced on behalf of the parties and the authorities to which the Court has been referred, it is clear on the authorities and in particular from the judgments delivered in *C.M*. and *A.C.* that the approach by a court to the construction of remedial/redress statutes or any provision thereof is not a freestanding or separate exercise but is to be seen as an approach to construction along a spectrum which commences with the literal interpretation of the words themselves, per McKechnie J. at para. 65 in *C.M*. It is not an instrument or device for abandoning or disregarding the literal or, where relevant, the purposive approaches to the construction of a provision called into question. Indeed, the learned judge in *C.M*. was far from the view in the circumstances of the case that it was necessary to utilise any interpretative means other than the primary method.

Purpose of Interpretation; Literal Approach

31. The sole purpose of statutory interpretation is to determine the objective intention of the legislature by the enactment of the provision or provisions which are called into question. See *Crilly v. T & J. Farrington Ltd* [2001] IESC 60; [2001] 3 IR 251 at p. 295 and in the context of the Acts, the judgments to the same effect in *C.M.* and *A.C.* If the objective intent of the Oireachtas is self-evident from the ordinary and natural meaning of the words or phrases employed in the provision under scrutiny the task of construction is at an end and the function of the court has been performed. This is commonly referred to in judgments and in legal texts on statutory interpretation as the primary approach to legislative construction by giving the words used their literal or, as it is sometimes said, their ordinary and natural meaning.

Other Approaches to Interpretation; Purposive Approach;

32. Where this method does not yield a sufficiently clear indication of the Oireachtas' intention, there are a range of tools available to assist the court in the task of statutory interpretation. Apart altogether from the Interpretation Act 2005, further assistance may be called upon by adopting other approaches to construction, including what is sometimes referred to as a purposive approach which involves looking beyond the plain text of the statutory provision in issue to the Act as a whole and the purpose for which the legislation was enacted, the immutable object of which is always the ascertainment of parliamentary intention; see McKechnie J. in *C.M*. at para. 59. In a general sense it may be said that the canons of construction have been developed over time for the purpose of ascertaining the intention of the legislature behind the provisions of any enactment, the meanings of which are called into question. And where the wording employed gives rise to ambiguity or in certain circumstances where a literal construction would result in an absurd

meaning, these have evolved to provide the court with the tools by which the legislative intent may be ascertained and the wording given a construction which is most compatible with the legislation within which the provision or provisions in issue are contained.

Remedial-Redress Statutes

33. It is in such circumstances that the Court is warranted in approaching the construction of a provision or provisions of the Acts by giving the wording as broad, liberal and generous a meaning as the wording and the legislation itself reasonably permits, subject always to the caveat that the construction should not be so expansive as would render the interpretation *contra legem*. As Clarke C.J. observed in *J.G.H*. at para. 4.5:

> *"The underlying principle behind the proper approach to the interpretation of remedial legislation is that it must be assumed that the Oireachtas, having decided that it is appropriate to apply public funds to compensate a particular category of persons, did not intend that potentially qualifying applicants would be excluded on narrow or technical grounds, for that would be wholly inconsistent with the purpose of the legislation."*

34. As mentioned earlier, the decision of the Court on this appeal is ultimately concerned with a determination as to whether or not the Appellant has a claim contemplated by the legislation on foot of which she is entitled to an award of compensation. It is the disjunctive utilisation of differing terms, depending upon which provision is looked at, that creates an ambiguity and warrants the Court in approaching the construction of the provision *in quo*, para. (a) by giving it and the word "use" therein as generous and liberal a meaning as the wording permits. The question which arises is whether the resulting construction would have admitted the claim of A.P. had he elected to pursue his under para. (a) rather than para. (c) and if so, whether so construed, the interpretation would be so expansive as to render it *contra legem*. That there is an ambiguity is apparent on the face of the provision itself and from the submissions made thereon to the Court.

Conclusion

35. Considering the section as a whole it is not insignificant on the face of the wording in s. 4 (1) (f), which confers a right on a person to bring a claim for compensation who has been diagnosed positive for HIV, that the infection should have been the result of 'receiving' a relevant product within the State. When the section as amended is considered as a whole it is abundantly clear that in conferring the right to make a claim for compensation on persons, the Oireachtas distinguished between primary and secondary victims, that is to say those who had contracted infection because of an act done to them directly and those who were infected indirectly. In my judgment, it is also significant that in making provision for the 'child' or 'spouse' of a person referred to in para. (f), (children or spouses who themselves have been diagnosed positive for HIV), the wording is identical to that utilised in s. 4 (1) (c) (children or spouses who themselves have been diagnosed positive for Hepatitis C).

36. In addition, a right to bring a claim for compensation is also conferred by paras. (d) and (e) on the carers and dependants of persons referred to in paras. (a) (b) or (c). These

provisions had already been enacted by the time the legislature enacted the provisions of para. (h). accordingly, it is evident from a consideration of the section as a whole that whilst a right to claim compensation for loss of consortium is conferred by paras. (c) and (g) on those indirectly contaminated and by sub paras. (d) and (e) on the carers and/or dependants of those identified in paras. (a) (b) or (c), the right to make a claim for loss of consortium is expressly restricted to the persons identified in s. 4 (1) (a) (b) and (f), all of whom, the Respondent submits, are primary victims.

37. In my judgment, by excluding any reference in para. (h) to the categories of claimant identified in s. 4 (1) (c) and (g) the intention of the Oireachtas is absolutely clear and beyond doubt; namely, that it did not intend to confer a right to bring a claim for loss of consortium on the 'spouse' or 'partner' of a child identified in paras. (c) and (g). I accept that the employment of the word 'use' in s. 4 (1) (a), those infected through contaminated Anti-D, is reasonably capable of being construed in a sense other than meaning direct application by the administration of an injection and is thus ambiguous, particularly when consideration is had to the disjunctive use of other terms in qualifying provisions contained in the same section but to construe the provision and in particular to give the word 'use' the meaning contended for by the Appellant would amount on my view of it to an interpretation which does not withstand scrutiny.

38. In my judgment, to construe s. 4 (1) (a) by giving it the meaning urged on the Court by the Appellant would not only be *contra legem* but would also lead to an absurd result which is as follows: The 'spouse' or 'partner' of the child of a person who contracted Hepatitis C from his or her mother as a result of the mother's having been infected directly through contaminated Anti-D would have a right to make a claim because the 'child' could elect to bring its claim under s.4 (1) (a) instead of s.4 para. (c), whereas the 'partner' or 'spouse' of a child of a person who contracted Hepatitis C infection from his or her mother as a result of the 'receipt' of a contaminated blood transfusion or blood product would have no right to elect and make a claim under s. 4 (1) (b).

39. I am satisfied and the Court finds that the only right of claim conferred on a 'child' or 'spouse' who themselves have been infected through their relationship with an infected person identified in sub paras. (a) and (b) and (f) is the right of action provided for in s. 4 (1) (c) or s.4 (1) (g), as the case may be. The effect of the construction urged by the Appellant would operate to circumvent the intention of the Oireachtas expressed in those provisions by permitting A.P. to bring his claim under s.4 (1) (a) rather than under s.4 (1) (c), thereby bringing the Appellant, as his 'partner', within the ambit of s. 4 (1) (h) but excluding him from such a right had his mother been infected through the receipt of blood or a blood product. In short, if A.P.'s mother, B.A. had been infected as a result of a blood transfusion or receiving a blood product (the category of person identified in para.(b)), instead of through the use of Anti-D injection, while he would have been able to bring a claim in either case under s. 4.1 (c), *qua* her child, in the latter circumstance he would not also have been entitled to bring a claim under s. 4.1 (b); there would be no right of election.

40. The consequence that only the infected child of a mother, whose infection arose from the direct administration of contaminated Anti-D, would be entitled to elect to bring a claim for compensation under the provisions of paragraphs (a) or (c) but the child of a mother whose infection arose as a result of receiving blood or a blood product would have no such entitlement constitutes, in my judgment, an impermissible discrimination between them for which there is no justification either in the section itself or in the provisions of the Acts as a whole; a construction which would also risk offending the right to equality guaranteed by Article 40 of the Constitution. Without getting into that discussion, to my mind the matter is put beyond all doubt by virtue of the wording of s. 4 (1) (h) and s. 5 (3) (3B) (a).

41. If the Oireachtas had intended to confer a right to bring a claim for compensation for loss of consortium on the 'spouse' or 'partner' of an adult 'child' identified in s. 4.1 (c) or 4.1 (g) it would have been relatively easy to do so but it chose to do otherwise. Moreover, in selecting the class of individuals on whom to confer a right to bring a claim for loss of consortium parliament expressly restricted the class identified in sub para. (h) by reference only to the persons mentioned in sub paras. (a), (b), and (f). The Oireachtas was entitled to limit the class or category of persons who would be entitled to bring a claim for compensation under the Acts. By enacting the 2002 and 2006 Acts, the Oireachtas expanded not only the class or categories of claimant but also the causes of action in respect of which a claim not previously provided for under the scheme could be brought. Moreover, when enacting s. 5 (3) (3B) (a) the Oireachtas expressly restricted the class of persons to whom an award of compensation could be made for loss of consortium, namely the spouses and partners of the persons identified and falling into s. 4 (1) (a), (b) and (f) and not otherwise. There is no provision for an award to be made to the uninfected 'spouse' or 'partner' of an infected 'child' or 'spouse' identified in s. 4 (1) (c).

42. Furthermore, particularly in circumstances where express provision was made to enable claims be brought by those indirectly infected, by carers and the dependants of infected persons whose death was caused by Hepatitis C or HIV or where the infection was a significant contributory cause in the cause of death, I am satisfied and the Court finds that on the proper construction of s. 4.1 (a), the word 'use' means direct use upon the person identified in para. (a), a construction which is consistent and compatible with the other categories of directly infected persons provided for, and that 'use' does not bear the wider meaning contended for by the Appellant. It follows that A.P. had no entitlement and could not have elected to bring his claim under s.4 (1) (a) of the Acts, and the Court so finds.

43. As mentioned earlier, to construe the meaning otherwise would produce a wholly unmeritorious, discriminatory and unintended result for which there is not, in my judgment, any justification, even on the most benign and sympathetic approach to the Appellant. In answer to the question posed at the outset, I am satisfied, and the Court finds that the Oireachtas did not intend to confer a right to make a claim for 'loss of

consortium' on the uninfected 'partner' or 'spouse' of an adult child whose Hepatitis C and/or HIV infection was contracted indirectly from his or her mother.

Claim for Loss of Consortium at Common Law

44. In reaching this conclusion the Court has not overlooked the arguments advanced by Mr. Craven on behalf of the Appellant in relation to the existence of a cause of action for loss of consortium at common law. He very fairly accepted that on the authorities from *McKinley v. The Minister for Defence & Ors* [1992] 2 IR 333 and *Andaloc v. Iarnród Éireann/Irish Rail & Ors* [2014] 3 I.R. 516 as well as authoritative legal texts on the subject are all one way, namely that the cause of action is vested in the spouse of someone who is tortiously injured. That being so, the cause of action at common law is confined to those who are legally married.

Meaning of 'Spouse'

44. While the Act extends the definition of 'spouse' to include partner, the cause of action at common law for loss of consortium remains as it has been declared. If the intention of the Oireachtas was to confer on the 'partner' or 'spouse' of a child diagnosed with Hepatitis C or HIV contracted indirectly in utero or on delivery, as was the case with A.P., it would have been necessary for the Oireachtas to have provided therefore expressly. Having decided not to do so, it follows that no statutory right to bring a claim for loss of consortium under the statutory scheme was conferred on the Appellant. In reaching its decision the Court was also mindful of the argument advanced in relation to the value of relationships advanced on her behalf by Mr. Craven; however, this does not, with respect, advance the Appellant's case.

45. Having made provision for the children and spouses of those directly infected who themselves became indirectly infected as well as for the uninfected spouses and partners of those directly infected together with others who were not infected at all, such as carers and/or the dependants of those who were infected, it cannot be inferred that when enacting the 2006 Act in particular, the Oireachtas did not contemplate the possibility of a case such as this. Even if that were so, no permissible approach to construction would warrant the Court construing the provision in quo in such a way as to confer on the Appellant a right of action which the Oireachtas did not see fit to expressly confer upon her or those in like positions. The scheme of compensation established by the Acts is a creature of statute; any lacuna therein lies within the province of the legislative branch of government, the Oireachtas and with the Court

Ruling

46. Before concluding, the Court wishes to express its appreciation for the assistance rendered by counsel in submissions during the hearing of the appeal and by the books of pleadings, case authorities and other papers prepared by the instructing solicitors. The Court was conscious in reaching its decision that the outcome will undoubtedly be the source of disappointment for the Appellant; nevertheless, for all the foregoing reasons her appeal must be dismissed, and the Court will so order.