

Judgment Title: R.C -v- Minister for Health & Children
Neutral Citation: 2012 IEHC 204

High Court Record Number: 2011 4CT **Date of Delivery:** 30/03/2012 **Court:** High Court

Composition of Court: Judgment by: Irvine J. **Status of Judgment:** Approved

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THE HIGH COURT

[2011 No.4 C.T.]

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

IN THE MATTER OF A CLAIM BY R.C. AND

IN THE MATTER OF A DECISION OF THE HEPATITIS C AND HIV COMPENSATION TRIBUNAL ON 9TH MARCH, 2011 AND

IN THE MATTER OF AN APPEAL BY R.C.

BETWEEN

R.C. AND THE MINISTER FOR HEALTH AND CHILDREN

JUDGMENT of Ms. Justice Irvine delivered on the 30th day of March, 2012

APPELLANT

RESPONDENT

1. This is an appeal from a decision of the Hepatitis C and HIV Tribunal ("the Tribunal") made on 9th March, 2011.

2. R.C. had applied to the Tribunal for compensation pursuant to s. 4(1)(g) of the Hepatitis C Compensation Act 1997 (hereafter referred to as "the 1997 Act"). That is the section that permits the children or spouse of a person who contracted HIV from contaminated blood products within the State to themselves claim compensation if they have been diagnosed positive for HIV. Her application was rejected by the Tribunal which concluded that she did not come within the definition of "spouse" as defined by s. 1 of the Act and was thus not entitled to compensation. The hearing before me is consequently a full *de novo* application for compensation.

Background

3. R.C. was born on 8th July, 1985 and is now 26 years of age. She presently lives with her parents at Ballycragh, Dublin 24. It is accepted that R.C. has been diagnosed positive for HIV and that she contracted her infection in the course of an intimate relationship with A.F. who himself has been compensated by the Tribunal as a person

who contracted his infection from contaminated blood products used in the treatment of his haemophiliac condition.

4. In the course of the present appeal, I heard medical evidence from Prof. Colm Bergin, Consultant in Infectious Diseases. I also heard evidence from R.C. and both of her parents in addition to evidence from A.F's mother, E.F. Regrettably, at the time of the hearing, A.F. was very ill and awaiting liver transplantation in London consequent upon his co-infection with HCV.

5. The evidence given by R.C. on the present appeal was at times somewhat different from that given by her to the Tribunal, particularly in relation to a number of relevant dates. Likewise, R.C. and A.F's mother were not agreed as to the dates when R.C. moved in to reside with A.F. in an apartment he purchased in Lucan. Neither were they in agreement as to the date upon which the couple vacated that apartment or the date upon which their relationship eventually came to an end. However, I think little turns upon these differences having regard to the closing legal submissions made by the parties. I am also entirely satisfied that all of the witnesses, including R.C., gave evidence with the intention of fully and truthfully informing the court as to their recollection of all relevant events.

6. I do not intend in the course of the present judgment to record the evidence given by the various witnesses. However, having regard to that evidence I will now set out my findings of fact as to the nature of the relationship which existed between R.C. and A.F. prior to its termination. I will then deal with the circumstances relevant to R.C's infection with HIV prior to ruling on her entitlement to compensation under s. 4(1)(g) of the 1997 Act.

Findings of Fact

7. A.F. was born in 1982. He is the eldest of three adopted children and is a haemophiliac. Sadly, in the course of his treatment for that condition, he went on to contract both HIV and HCV from contaminated blood products. A.F. coped badly with his diagnosis and illness. He has apparently never discussed his condition or its consequences with his mother and father. He rarely told anyone about his infections and when he did, such disclosure, according to his mother, was not always well received. Accordingly she advised him to be very careful about sharing his diagnosis with anyone unless they really had to be appraised of his status.

8. A.F. met R.C. in 2003. I accept that they entered into a sexual relationship shortly thereafter albeit that the same was somewhat curtailed by the fact that they were mostly

residing in the homes of their respective parents. This continued until they went to live with each other in an apartment in Lucan which A.F. bought out of the compensation obtained by him in respect of his HIV and HCV infections. The purchase of the relevant apartment was completed on 5th December, 2003 and I am satisfied that R.C. and A.F. moved into it prior to Christmas 2003. I believe that R.C. is mistaken in her recollection that she made that move in October 2003 as this could not have occurred prior to the completion of the purchase.

9. I accept that in December 2003, R.C. moved her clothes and belongings into the Lucan apartment and that thereafter she spent a good deal of her social welfare income on items such as towels, bed linen, photo frames, cutlery, pots and pans etc. all of which helped to make her life with A.F. more comfortable than it might otherwise have been.

10. As to the relationship between R.C. and A.F. in general, I am satisfied that from the earliest of times that they were a committed couple who rarely if at all socialised separately. They went on holidays together, at home and abroad, and in the initial phase of their relationship regularly stayed with each other in their respective parent's homes.

11. During the period when R.C. and A.F. were

together, they were treated by their respective families as a normal couple in that they went together to all family functions such as christenings, weddings and Christmas day festivities. They also attended R.C's mother for an extended family lunch each Sunday.

12. Having heard the evidence of A.F.'s mother and R.C.'s mother and father, I am absolutely satisfied that R.C. and A.F. lived together entirely committed to each other for a period of seven to eight months in A.F.'s apartment. During that period, I am convinced that they enjoyed a close and loving relationship. I accept R.C.'s evidence that she was in love with A.F. and he with her and that to those who knew them best, namely their family, they appeared to be the same as any other couple who were looking forward to a life together. In this respect, A.F.'s mother told the court that she believed that after they moved in together she expected them to get engaged and ultimately marry. In particular, she said that she was relieved when they went to live together because to her it meant that A.F. would no longer have to search for a life partner which was something that was very difficult for him because of his co-infection. She felt that when he moved in with R.C. that one of the greatest difficulties which he was likely to encounter in his life had come to an end and her worries in that regard were also over. I am satisfied from all of the

evidence that I have heard that when A.F. and R.C. moved in to live together in Lucan and until such a time as their relationship ended they were each committed to each other in the hope and belief that they would support each other indefinitely into the future.

13. As to why the couple ultimately left the Lucan apartment and went back to live with their respective parents is somewhat of a mystery. R.C. told the court that the reason they went back to live

with their parents was because A.F. had advised her that he could no longer financially afford to keep the apartment. While she was upset about having to move out of their apartment, it did not in any way alter her feelings for A.F. Notwithstanding the evidence of R.C. on this issue, I feel that the account of events as given by A.F.'s mother is probably closer to the truth of what occurred. She recalls receiving a phone call from A.F. on one particular day when he told her that he was not able to cope and asked her to come over and bring him home. I accept her evidence that at that stage, she believed that A.F. was very depressed and that he had refused to engage with the psychiatric services or talk about his troubles notwithstanding the efforts of herself and her husband in this regard.

14. I do not accept as a matter of fact that the

reason A.F. went back to live with his mother was because he was not committed to R.C. or because their relationship was, as suggested by counsel for the respondent, some type of extended adolescent relationship devoid of the type of depth of feeling and commitment which one would normally find in a couple who had taken the significant step of setting up home together. In reaching my findings of fact as to why A.F. suddenly moved back to live with his mother and yet continued his apparently loving relationship with R.C., I cannot exclude from my evaluation of the evidence the facts of life as they applied to A.F. at that time.

15. A.F. through no fault of his own became infected with two life threatening diseases which drastically reduced all of the opportunities open to him in life including his prospects of family life, the ability to obtain and retain sustainable employment and to enjoy even modest good health. As I write this judgment, A.F.'s life is in the balance in a hospital in London, awaiting liver transplantation. He is 28 years of age and according to his mother has never come to terms with his diagnosis or co- infection. When he phoned her stating he was not able to cope and needed to return to her care, I cannot be certain what was at the back of his mind but it is highly likely that whatever it was, it had nothing to do his lack of commitment to R.C. and most likely

had a great deal to do with his physical and psychological health deriving from his co-infection. It is simply not normal for a 24 year old man who lived out of home for seven to eight months with his girlfriend to ask his mother to come to collect him and confess that he was not able to cope and then continue that relationship over a further extended period.

16. Mr. Mac Eochaidh, S.C., on behalf of the respondent made a specific submission as to the findings of fact I should make arising from the fact that R.C. and A.F. went back to live with their respective parents after their period of life together in the apartment in Lucan. He urged the court to look at the overall circumstances of this couple for the whole of the period they were together. He submitted that the evidence established that they moved in together, not by reason of any particular commitment that they had to each other, but by reason of the fact that A.F. had received compensation from the Tribunal in respect of his HIV infection. They would never have bought a house or moved in together were it not for that fact. In truth, he submitted that this was a teenage relationship where through happenstance one of them was able to buy a flat allowing them to move in together. Further, the fact that everything stayed the same between them after they stopped living together was also indicative of the fact that they were not

cohabiting together in the sense in which that term is used to trigger certain legal effects. For reasons I will now refer to, I do not accept that the relationship between R.C. and A.F. can, on the balance of probabilities, be viewed in this way. To do so would be in the teeth of the evidence of R.C., that of her mother and father and that of A.F.'s mother. Further it would require me to have little or no regard for A.F.'s health and prognosis at the time he made that decision and the fairly unique circumstances of the case in general.

17. In this context the submissions made on behalf of the respondent, the medical evidence as to A.F.'s health at the time he made that phone call to his mother is of significance. In 2002, he had been taken off all of the medication he had been taking to suppress both infections. Dr Bergin told the Court that consequently his HIV escalated to its highest point in September 2004. It is all too easy when trying to assess the nature of the relationship and the commitment which existed between R.C. and A.F. during the period of time they were living together, to sanitise the detail of their lives and forget the disastrous medical scenario that was unfolding for A.F. at the time he moved back home. His condition at that time, to use Prof. Bergin's words "revved up" to its highest point. In these circumstances, I am not surprised that at a time when A.F. appeared to be in love

with and committed to R.C. that he nonetheless felt the need to move back to be cared for by his mother and continue his

relationship with R.C. in that environment.

18. After R.C. and A.F. went back to live with their respective parents, they continued to have a close and intimate relationship and continued to socialise in the same way as they had done since they met. Later in 2006, sometime after R.C.'s 21st birthday in July of that year, R.C. became aware of the fact that on some prior occasion, A.F. may have been unfaithful to her and she decided to terminate the relationship.

19. In the aforementioned circumstances, I cannot make the finding of fact which has been urged by Mr. Mac Eochaidh, on behalf of the respondent.

Infection

20. Prior to dealing with the legal issues on this appeal, I have carefully considered the evidence of Prof. Colm Bergin, Consultant in Infectious Diseases. He told the court that R.C. was referred to him from Tallaght Hospital in March 2009 with a diagnosis of HIV. In the course of investigating her sexual history, it became clear that she had been infected by A.F. who was known to Prof. Bergin. Access to A.F.'s medical history has made it much easier that would otherwise have been

the case for me to decide when, on the balance of probabilities, R.C. is likely to have contracted HIV from A.F.

21. In endeavouring to establish R.C.'s likely date of infection, I have had regard to the evidence of Prof. Bergin who told the court that the CD4 count of a patient who contracts HIV usually goes up 80- 100 points per year from the date of infection. In this regard, R.C.'s CD4 count in March 2009 was 235. He also told the court that the factors which influence infection are the frequency of sexual contact, the transmissibility of the exposure and the infectivity of the source.

22. In looking at the infectivity of A.F., Prof. Bergin told the court that this patient, prior to 2002, was on suboptimal treatment which left him with detectable virus but a stable CD4 count. This means he would have had a low viral load but would nonetheless have been infective. Because he had a resistant virus, it was decided to stop his treatment completely but continue to monitor his progress. Accordingly, his anti-HIV medication was discontinued in 2002 and he continued to attend for review. When he was off treatment, his viral load escalated and his CD4 count started to fall. To use Dr. Bergin's expression, his HIV "revved up". His viral load had only been 500 copies per ml in June 2001 but by August/September 2004, it was 17,000 copies

per ml and his CD4 count had collapsed. Because of this very significant deterioration in A.F.'s condition, he was commenced on anti-retro viral drugs in September 2004. These successfully brought his infection under control by December 2004 when his virus was undetectable and his CD4 count satisfactory.

23. Prof. Bergin stressed that there is a very significant correlation between viral load and the transmission of this virus, albeit that the virus can be transmitted in the course of any individual sexual encounter including the first sexual encounter between a couple where one party is infectious.

24. It was Prof. Bergin's evidence that R.C. was most likely infected at a time when A.F. was off treatment i.e. between June 2003 and September 2004 and that as between the last six months of 2003 and the first eight or nine months of 2004 that it was more likely that R.C. was infected in the latter period. During that time, A.F. would have been at his most viremic given the impact of the time he had been off treatment on his CD4 count and viral load.

25. Prof. Bergin was satisfied that it was highly unlikely that R.C. was infected after October 2004 and certainly not after December 2004 as at that stage, A.F.'s virus was fully suppressed as a result of his new drug regime. He was clear that

A.F. was much more infective between January and September 2004 than at any time during the previous two years and that there would have been a progressive rise in A.F.'s infectivity over all of the period following the cessation of his medication.

26. For the aforementioned reasons, whilst it is possible that R.C. was infected prior to moving in to cohabit with A.F. in December 2003, I am satisfied that having regard to the frequency of sexual contact prior to that date, the infectivity of A.F. during the period of their cohabitation and R.C.'s exposure to A.F. over that period that I should conclude that R.C. was, on the balance of probabilities,

infected while the parties were living together at A.F.'s apartment in Lucan. In these circumstances, I have no difficulty in concluding that R.C. was infected at a "material time" within the meaning of s. 1 of the 1997 Act.

27. Having decided as a matter of fact that R.C. became infected with HIV when she was living with A.F. between December 2003 and the late summer of 2004 and having regard to the other findings I have made as to their relationship, I now have to decide whether or not she is entitled to compensation to somebody who falls within s. 4(1)(g) of the Act.

Relevant Statutory Provisions

28. Section 4(1) of the 1997 Act, as amended, provides:-

"The following persons may make a claim for compensation to the Tribunal-

...

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

(g) children or any spouse of a person referred to in paragraph (f) who have themselves been diagnosed positive for HIV..."

29. The relevant provision of s. 4(8A) of the 1997 Act, as relates to A.F. provides as follows:-

"A claimant referred to in paragraph (f), (g), (h), (i) or (j) of subsection (1) shall, as the case may be, establish to the satisfaction of the Tribunal, on the balance of probabilities-

(a) that the HIV in respect of which the claimant has been diagnosed positive from resulted from a relevant product received by the claimant within the State..."

30. Section 1 of the 1997 Act provides:-

""*spouse*' in relation to a person includes a person with whom the person is or was at a material

time cohabiting."

The Act is silent as to the meaning of the terms "at a material time" and "cohabiting".

31. Given that counsel for the respondent has relied significantly upon the provisions of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (hereafter referred to as 'the 2010 Act'), it is relevant to set out the provisions of s. 172 which provides, *inter alia*:-

(1) For the purposes of this Part, a cohabitant is one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.

(2) In determining whether or not 2 adults are cohabitants, the court shall take into account all the circumstances of the relationship and in particular shall have regard to the following:

(a) the duration of the relationship; (b) the basis on which the couple live together;

(c) the degree of financial dependence of either adult on the other and any agreements in respect of their finances;

(d) the degree and nature of any financial

arrangements between the adults including any joint purchase of an estate or interest in land or joint acquisition of personal property;

(e) whether there are one or more dependent children; (f) whether one of the adults cares for and supports the children of the other; and (g) the degree to which the adults present themselves to others as a couple."

32. Section 5 of the Interpretation Act 2005 (hereafter referred to as 'the 2005 Act') provides *inter alia*:-

"(1) In construing a provision of any Act (other than a provision that relates to the imposition of a penal or other sanction)-

(a) that is obscure or ambiguous, or

(b) that on a literal interpretation would be absurd or would fail to reflect the plain intention of--

(i) in the case of an Act to which *paragraph (a)* of the definition of "Act" in *section 2 (1)* relates, the Oireachtas, or

(ii) in the case of an Act to which *paragraph (b)* of that definition relates, the parliament concerned, the provision shall be given a construction that reflects the plain intention of the Oireachtas or parliament concerned, as the case may be, where

that intention can be ascertained from the Act as a whole.

33. Section 6 of the 2005 Act provides:-

"In construing a provision of any Act or statutory instrument, a court may make allowances for any changes in the law, social conditions, technology, the meaning of words used in that Act or statutory instrument and other relevant matters, which have occurred since the date of the passing of that Act or the making of that statutory instrument, but only in so far as its text, purpose and context permit."

Submissions of the Appellant

34. For the purpose of this appeal, I received written submissions on behalf of both parties and these have been fully considered for the purposes of this judgment.

35. The appellant submitted that the words used in the statute should be given their natural and ordinary meaning. It was argued that the word "cohabiting" is not ambiguous either by reference to its ordinary or colloquial meaning or a dictionary defined meaning. The appellant pointed to the Oxford English Dictionary entry for 'cohabit', which defines the term as "live together and have a sexual relationship without being married". While the hearing before me was the *de novo* hearing it is appropriate to record that the

written submissions dealt with the approach adopted by the Tribunal in reaching its decision and in this regard the appellant argued that the Tribunal had been incorrect in adopting the purposive approach to section I of the 1997 Act when it stated:-

"The Hepatitis C Act provides very little guidance on the definition of co habitation but, merely, states that if a person is not a spouse being a cohabitant suffices.

It would seem that the intention of the legislature here is to include persons who are in relationships which are de facto marriages albeit not married recognising the reality of
modern day relationships."

36. Counsel for the appellant argued that R.C. and A.F. were clearly "cohabiting" within the ordinary meaning and the dictionary definition of the word. R.C. and A.F., on the evidence, had lived together as a couple in an intimate, co-dependent and committed relationship. It was further submitted that there was no justification in the Act for the Tribunal introducing into its considerations the concept of a "de facto marriage".

37. The appellant referred to the meaning of the term 'cohabitation' in *Huxtable v. Huxtable* (1899) 68 LJP 83 where Jeune P held:-

"Cohabitation may be of two sorts, one continuous, the other intermittent. The parties may reside together constantly, or there may be only occasional intercourse between them which may, nevertheless, amount to cohabitation in the legal sense of the term. Such cohabitation may indeed exist together with an agreement to live apart... The circumstances of life, such as business duties, domestic service, and other things, may separate husband and wife, and yet notwithstanding, there may be cohabitation." (at p. 85)

38. The appellant also relied upon the Law Reform Commission Report on the Rights and Duties of Cohabitants (LRC 2006 at 26 and 27), and submitted that the Court should have regard to the definition recommended therein.

39. It was submitted that the Court should have regard to s. 172 of the 2010 Act. The appellant argued that the circumstances of the case at hand clearly bring her under the meaning of "cohabitant" for the purposes of that section.

40. In relation to the duration of cohabitation, the appellant argued that the 1997 Act does not lay down a minimum period in the definition of cohabitation and criticised the Tribunal for concluding:-

"There is very little evidence that this couple,

actually, cohabited for more than a couple of months. We are not satisfied that Ms. Cahill was a spouse within the meaning of the Act."

The appellant submitted that the Tribunal applied an unidentified duration requirement which is not comprised in the 1997 Act. It was claimed that the Tribunal in this regard mistakenly relied upon the definition of "qualified cohabitants" under ss. 172(5) and 172(6) of the 2010 Act rather than the definition of "cohabitants" in ss. 172(1) - 172(3). The appellant further submitted that the Tribunal's focus on the time periods distracted from the fundamental question of the interpretation of the 1997 Act which sets down no such period.

41. The appellant claimed that the Tribunal also appeared to rely on the three year requirement relating to consortium claims under the 2002 Amendment Act and cited in this regard the following finding of the Tribunal:-

"The intention of the legislature when drafting the 2002 Amendment Act and when introducing the loss of consortium claim, clearly, envisaged that a period of, at least, three years cohabiting was needed to establish a claim."

It was submitted that the fact that the legislature had provided a time limit in respect of the right of a person to make a Loss of Consortium claim was

a clear example of why the court should not impose a time limit on an entitlement to claim compensation of a different type where no such qualifying period had been provided for in the legislation.

Submissions of the Respondent

42. It was accepted by the respondent firstly that A.F. was infected with Hepatitis C and HIV as a result of receiving blood products within the State and secondly that the HIV was transmitted from A.F. to R.C. Further, in his closing submissions, Mr. Mac Eochaidh, S.C., did not put in issue the fact that

R.C. was infected at a "material time" within the meaning of s. 1 of the 1997 Act, once she could establish that she was "cohabiting" with A.F. so as to come within the definition of "spouse" within that section.

43. The respondent referred to the 2005 Act and submitted that, although no definition of "cohabiting" was provided in the 1997 Act, the definition of "cohabitant" in the 2010 Act should be adopted for the purposes of interpreting the 1997 Act.

44. The respondent also submitted that the 1997 Act should be given an updated construction under s. 6 of the 2005 Act.

45. It was argued that the term "cohabited" as used for various purposes in the social welfare code is construed in accordance with the definition introduced ins. 172 of the 2010 Act and that guidance to that effect has been issued by the Department of Social Protection.

46. The respondent submitted that there is a difference between living together on the one hand and co-habiting for the purposes of the 1997 Act on the other. It was argued that cohabitation involves a committed and long-term relationship, and consequently is treated as a spousal relationship for the purposes of the 1997 Act. The respondent submitted that the fact that the A.F. and R.C. moved out of the house when A.F. felt he "could not cope" but otherwise continued their relationship demonstrated that any degree of cohabitation was due to A.F. having received compensation in respect of his infection and not due to the level of commitment in the relationship. He submitted that the key to understanding cohabitation is that it is marriage by any other name but without a ceremony.

Conclusions

47. The respondent in this case has firstly accepted that A.F. was infected with Hepatitis C and HIV as a result of receiving relevant blood products within the State, and therefore s. 4(8A)(a) of the 1997 Act is not in issue. Secondly,

the respondent has also accepted that the HIV was transmitted to R.C. from A.F., so therefore s. 4(8A)(b) is not in issue.

48. In essence, therefore, the issue for determination before the Court is whether R.C. constitutes a "spouse" within the meaning of s. 1 of the 1997 Act.

49. The starting point for interpretation of any statute is the literal approach; the precise words used should be interpreted using their plain and ordinary meaning. If the provision is obscure or ambiguous or if a literal interpretation would result in an absurd construction or one which fails to reflect the plain intention of the legislature, the Court should construe the provision in such a way as to reflect the plain intention of the legislature if that intention can be ascertained from the Act as a whole. If at that point the meaning of the statute is still not clear, then the Court should apply other rules of construction.

50. In *D.B. v. Minister for Health* [2003] 3 IR 12, the Supreme court held that the trial judge erred in taking a purposive approach to the interpretation of s. 5(9)(a) of the 1997 Act. Denham J., as she then was, stated:-

"It is necessary to consider the precise words of s. 5(9)(a). In construing statutes, words should be given their natural and ordinary meaning. The

approach taken by the courts to the construction of statutes was described by Blayney J in *Howard v. Commissioners of Public Works* [1994] 1 IR 101. He emphasised that the cardinal rule for the construction of statutes was that they be construed according to the intention expressed in the Acts themselves. If the words of the statute are precise and unambiguous then no more is necessary than to give them their ordinary sense. When the words are clear and unambiguous they declare best the intention of the legislature. If the meaning of the statute is not plain, then a court may move on to apply other rules of construction; it is not the role of the court to speculate as to the intention of the legislature. In that case I held that statutes should be construed according to the intention expressed in the legislation and that the words used in the statute declare best the intent of the Act. I took

a similar approach in *MO 'C v. Minister for Health* [2002] 1 IR 232, holding that it was well established that in construing statutes, effect should be given to clear and unambiguous words, for the words of the statute best declare the purpose of the Act. In addition, in that case, I noted that a purposive approach would have yielded a similar result." (at pp. 21- 22)

51. Section 5 of the 2005 Act puts this position on a statutory footing.

52. This approach was recently applied by this Court in *C.M v. Minister for Health* [2011] IEHC 132, where it was stated:-

"In seeking to construe the provisions of s. 5(15), the first decision I have to make is whether or not that provision is obscure or ambiguous or whether, on a literal interpretation, it can be considered either to be absurd or amounts to a provision which fails to reflect the plain intention of the Oireachtas. If it falls into any of these categories, the Court should then try to construe the provision in a manner that reflects the clear intention of the Oireachtas if that can be gleaned from the Act as a whole. If the interpretation of the provision is still at that stage unclear other rules of construction may be deployed. If, however, the provision is not obscure or ambiguous and the words are clearly capable of only one meaning, even if the provision may prove to be harsh or perhaps contrary to common sense, I must nonetheless apply the law as it stands. To do otherwise would be to usurp the role of the legislature. I am not entitled to commence my interpretation of the section by looking at the entirety of the Act and then, having considered concepts such as fairness or equity, to adopt my own subjective view as to the meaning of the words in the provision." (at para. 31)

53. In *Inspector of Taxes v. Kiernan* [1981] IR

117, Henchy J set out three rules of interpretation, stating:-

"Leaving aside any judicial decision on the point, I would approach the matter by the application of three basic rules of statutory interpretation. First, if the statutory provision is one directed to the public at large, rather than to a particular class who may be expected to use the word or expression in question in either a narrowed or an extended connotation, or as a term of art, then, in the absence of internal evidence suggesting the contrary, the word or expression should be given its ordinary or colloquial meaning. As Lord Esher put in *Urwin v. Hanson*, 1981 I.L.R.M 157, at p. 119 of the report:-

'If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words.'

...

Secondly, if a word or expression is used in a statute creating a penal or taxation liability, and there is looseness or ambiguity attaching to it, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language...

Thirdly, when the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or other literary sources should be looked at only when alternative meanings, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when

there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed..." (at pp. 121-122)

54. It is the view of this Court that the word "cohabiting" within the meaning of s. 1 of the 1997 Act is not obscure or ambiguous by reference to its ordinary or colloquial meaning and so the Court can rely upon a literal interpretation of the term.

55. Of some interest to how the court should view the term "cohabiting" in s. 1 of the 1997 Act is the Law Reform Commission Report on the Rights and Duties of Cohabitants (LRC 2006 at 26 and 27) which recommended defining cohabitants as "couples who live together in an intimate relationship, whether they are of the same-sex or opposite-sex". The Commission further recommended that, in establishing cohabitation, the general term 'living together' be used and that all the circumstances of the relationship should be taken into account, including: the duration of the relationship; the nature and extent of common residence; whether or not a sexual relationship exists; the degree of financial dependence or independence; any arrangements for financial support between the parties; the ownership and acquisition of property; the degree of mutual commitment to a shared life; the care and support of children; the performance of household duties and; the reputation and; public aspects of the relationship. In the case at hand, R.C. and A.F. were partners from the time they met in June 2003 until the relationship ended in November 2006. R.C. moved into A.F.'s apartment in Lucan and they spent six months living together. R.C. moved various possessions in with her and purchased further household items. They maintained a loving and committed relationship while living together. R.C. and A.F.

socialised together, spent the majority of their spare time in each other's company and at all times held themselves out as being in a relationship. Members of both R.C's and A.F.'s family viewed the pair as a couple and anticipated that they would get married. Assessing the relationship of A.F. and R.C. against the backdrop of the criteria advised by the Commission, it seems to me that one would have to consider that for the period of time when R.C. and A.F. were living together in Lucan that they were cohabiting.

56. Guidance as to the meaning of "cohabiting" for the purposes of s. 1 of the 1997 Act can also be gleaned from s. 172(1) of the 2010 Act, which defines "cohabitant" as "one of two adults...who live together as a couple in an intimate and committed relationship" and who are not related to each other, married to each other, or civil partners of each other. Section 172(2) provides that the court will take into account all the circumstances of the relationship, and sets out a non-exhaustive list of the factors to be taken into account in this regard, including the duration of the relationship, the basis on which the couple live together, the degree of financial dependence of either adult on the other and any agreements in respect of their finances, the degree and nature of any financial arrangements between the adults including any joint purchase of an estate or

interest in land or joint acquisition of personal property, whether there are one or more dependent children, whether one of the adults cares for and supports the children of the other and the degree to which the adults present themselves to others as a couple.

57. It is important to note at this juncture that the 1997 Act is concerned with health and safety concerns and the compensation of persons infected by relevant blood products, whereas the 2010 Act deals with property rights. It is entirely reasonable that living together in a committed relationship would be the only criterion for the purposes of health and safety issues, whereas the creation of property rights would require additional qualifying criteria. However, if guidance is taken from the aforementioned definition of cohabitant, it is my view that, having regard to the evidence heard on the present application, the court would nonetheless have to conclude that the parties were cohabiting at the material time.

58. It is relevant that the 1997 Act did not include a qualifying period of cohabitation for the purposes of s. 1. By contrast, ss. 172(5) of the 2010 Act lays down a minimum duration of cohabitation in relation to "qualified cohabitants" of 2 years where the couple are parents of dependent children, and 5 years in other cases.

Similarly, s. 47(1) of the Civil Liability Act 1961 provides for a time limit of three years in the case of cohabitants. The 1997 Act, as amended itself includes a time limit in respect of s. 4(1)(h), which provides that compensation for loss of consortium can be claimed by *inter alia* people who have lived together for a continuous period of not less than three years. S. 3C of the 1997

Act, as amended, provides that, for the purposes of ss. 3A and 38 (the former providing for claims for post-traumatic stress disorder and nervous shock and the latter providing for loss of society), the term "spouse" means *inter alia* a person who had been living with the deceased as husband and wife for a continuous period of not less than three years.

59. It is clear that if the legislature had intended that the right to compensation be dependent upon a particular period of cohabitation, then that would have been provided for in the 1997 Act. A spouse within the meaning of s. 4(1)(g) need not have been living with the person for any specific duration. The clear intention of the legislation, manifested by the distinction between the lack of a specified duration in s. 4(1)(g) on the one hand, and the specific periods of cohabitation provided for ins. 4(1) (h) and s. 3 on the other, was to include a wider range of applicant in respect of claims by persons diagnosed with HIV than the

narrower range of applicant in respect of claims for loss of consortium, post-traumatic stress disorder, nervous shock and loss of society.

60. Having regard to all the foregoing, I am satisfied that R.C. contracted HIV from A.F., on the balance of probabilities, during the time when R.C. and A.F. were living together in his apartment in Lucan. I am also satisfied that as a matter of law, R.C. is entitled to be compensated pursuant to s. 4(1)(g) of the 1997 Act. I reject the findings of fact which I have been asked to make on behalf of the respondent as to the nature of the relationship between R.C. and A.F. at the time material to her infection. I am satisfied on the facts of the case that R.C. and A.F. were at the time of her infection living together in a loving, committed and intimate relationship. The public and private aspects of their relationship were such that they must be considered as a couple. I believe that R.C. fully expected to marry A.F.; and that her relationship with him during the period of time they resided together in Lucan is consistent with that aspiration. I am satisfied that A.F. and R.C. were clearly cohabiting within the ordinary meaning of the term and that R.C. is therefore entitled to compensation under s. 4(1)(g) of the 1997 Act.