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2 Bill No: 2020 No 271 JR

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THE HIGH COURT

11

BEFORE THE HONOURABLE MS JUSTICE DEIRDRE MURPHY

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21 April 2020

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GEMMA O'DOHERTY AND JOHN WATERS

26

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v.

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THE MINISTER FOR HEALTH IRELAND AND THE ATTORNEY GENERAL

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Counsel for the Respondent:

Mr G Meehan, BL

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1 Gemma O'Doherty and Anor v. The Minister for Health Ireland and Anor
2 21 April 2020

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1 REGISTRAR: In the matter of O'Doherty and Another v. The Minister for Health.

2 JUDGE: Yes.

3 MR MEEHAN: Yes, Judge, my name is Gerard Meehan and I appear on behalf of --

4 JUDGE: Gerard?

5 MR MEEHAN: Meehan.

6 JUDGE: Meehan, yes, Mr Meehan.

7 MR MEEHAN: And I appear on behalf of the State respondents, and I believe
8 Mr Waters, I've spoken to Mr Waters and Ms O'Doherty.

9 JUDGE: Yes.

10 MR MEEHAN: And we've made some progress, there are two issues I have and
11 we've managed to agree one of them and the other one we haven't agreed. But
12 I believe the applicants wish to make an application in relation to opening the courts,
13 so I'm going to let them do that.

14 JUDGE: To opening the court?

15 MR MEEHAN: It's not up to me to let them do that.

16 JUDGE: Yes.

17 MR MEEHAN: But in relation to the restriction, Mr Waters indicated to me that he
18 wanted to do that.

19 JUDGE: Yes.

20 MR MEEHAN: So ...

21 JUDGE: Yes, Mr Waters.

22 MR WATERS: Yes, Judge, my name is John Waters, this is Gemma O'Doherty, my
23 fellow applicant.

24 JUDGE: Yes.

25 MR WATERS: Judge, in relation to the -- which we understand that the courts -- the
26 public has been prevented from entering the court. Article 34 of the Ireland --
27 Constitution of Ireland says that, "Justice shall be administered in courts established
28 by law by judges appointed in the manner provided by this Constitution and save in
29 such special and limited circumstances as may be prescribed by law shall be
30 administered in public".

31 JUDGE: Yes.

32 MR WATERS: I wonder can you tell us what law you're using in order to put --

33 JUDGE: Well, if you -- did you bring me a copy of the Constitution, Mr Waters?

34 MR WATERS: I beg your pardon?

1 JUDGE: Did you bring me a copy of the Constitution, have you got a copy of the
2 Constitution, I can't use yours Mr Waters, in the circumstances.

3 MS O'DOHERTY: We can lend it to you momentarily.

4 JUDGE: Very -- just a moment. Well, of course this is being administered in public,
5 Mr Waters.

6 MR WATERS: Yes.

7 JUDGE: Yes, because the press are here, I understand; is that right? Yes, Mr -- I see
8 --

9 MR WATERS: I would not accept, Judge, that the press represent an adequate
10 fulfilment of the requirements of the Constitution.

11 JUDGE: Not only that, Mr Waters, every single word we speak in this court is being
12 recorded on the digital audio recording system.

13 MR WATERS: And where will that be published?

14 JUDGE: Sorry?

15 MR WATERS: Where will that be published, Judge?

16 JUDGE: Well, it can be made public if you wish, if you want a copy of the DAR of
17 this proceeding, I'll probably facilitate you. It's a digital audio recording, every
18 single word we speak in this courtroom --

19 MR WATERS: I don't think that's the point, I beg your pardon.

20 JUDGE: -- is recorded, Mr Waters.

21 MR WATERS: I don't think that the point is that we would have a copy, I mean
22 that's another issue. But the question is that the public are entitled to walk in and
23 hear justice carried out and to observe justice because justice which happens in
24 private is not justice.

25 JUDGE: It's not in private, Mr Waters, that's my point to you. We have a bona fide
26 member of the press here to observe what is going on, every single word we speak is
27 being recorded on the digital audio recording system.

28 MR WATERS: Judge --

29 JUDGE: There is guidelines issued by the Chief Justice who -- and the presidents of
30 all of the courts that it is appropriate for judges in cases where they consider it
31 necessary to comply with the obligation that justice be administered in public by
32 means of allowing only bona fide members of the press to be present in court. That's
33 the current situation, Mr Waters.

34 MR WATERS: Well, to put on record, Judge, that if this hearing was to last for

1 three hours --

2 JUDGE: Sorry, you'll have to speak up, I'm afraid this Perspex isn't very helpful?

3 MR WATERS: Yes, if this court -- if this hearing was to last for three hours.

4 JUDGE: Yes.

5 MR WATERS: That would amount to over 300,000 words.

6 JUDGE: So?

7 MR WATERS: The press, with the best will in the world will not publish probably
8 more than 500.

9 JUDGE: Well, that's why we have the digital audio recording, Mr Waters.

10 MR WATERS: Yes. Well, that is not available to the public.

11 JUDGE: Oh it can be made available to the public, don't worry about that.

12 MR WATERS: On what medium is it?

13 JUDGE: If the Court -- if the Court considers it appropriate, the Court can make that
14 available to the public, Mr Waters. So I'm -- I'm rejecting that portion of your
15 application.

16 MR WATERS: Very well, Judge.

17 JUDGE: The matter, it is being conducted in a courtroom in which every single
18 word is being recorded, it is being observed by a bona fide member of the press. The
19 Chief Justice and the President of the High Court have directed that in the current
20 circumstances that social distancing be maintained in the courts, and that does not
21 allow therefore for a large number of people to gather in a courtroom. You say that's
22 unconstitutional, so be it, that's your argument. But as matters stand, that is the
23 position, Mr Waters.

24 MR WATERS: Very well, Judge, I do -- I do continue to hold that it's
25 unconstitutional, thank you.

26 JUDGE: Very good, I've no issue with that, Mr Waters, that is your argument.

27 MS O'DOHERTY: And Judge, we would like to put on the record that we believe
28 that members of the press here are representing organisations that are biased, they are
29 not in favour of the public interest, they have shown that to be the case in their
30 reporting of this particular coronavirus epidemic. So we do not contend in any way
31 or agree with you that any members of the press present here will be in any way
32 objective in their coverage of this hearing. And to suggest that the DAR is sufficient
33 means this is after the event. Now, we know --

34 JUDGE: It's not after the event, it is recording as we speak, Ms Doherty.

1 MS O'DOHERTY: But the public do not have access currently, Judge.

2 JUDGE: Yes.

3 MS O'DOHERTY: And they must have, justice must not only be done but it must be
4 seen to be done, Judge.

5 JUDGE: I agree.

6 MS O'DOHERTY: And we know that that is a fundamental tenet of our democracy.
7 The Irish people own these courts.

8 JUDGE: Yes.

9 MS O'DOHERTY: And there are people outside who have travelled from every
10 corner of this country to be here today, Judge, and I would ask you to please allow
11 them access, we can organise the social distancing. They are the people who pay all
12 of your salaries here today, not ours, we are here voluntarily, we do not have any
13 salary. But I am asking you that you are their servants, they are your masters, and
14 that you allow them access to this court, Judge.

15

16 JUDGE: Well, Ms Doherty, say there were a thousand people outside and they
17 couldn't all fit in, would I have to move to the Convention Centre to hear the case?

18 MS O'DOHERTY: Well, I mean if we were --

19 JUDGE: Would I?

20 MS O'DOHERTY: Well, you know there may be grounds for that, but we are not
21 asking for that.

22 JUDGE: No, no, no, you see, Ms Doherty --

23 MS O'DOHERTY: We are not asking -- we are asking for a sample --

24 JUDGE: -- there are -- there are limits to the amount of people this courtroom can
25 hold.

26 MS O'DOHERTY: And we are very --

27 JUDGE: And it would not -- it would not be acting outside the public interest if
28 a courtroom is full and no more people can fit in, right. So there are --

29 MS O'DOHERTY: But Judge, can we reach a compromise --

30 JUDGE: -- Ms Doherty, I've actually ruled on this, there are restrictions in place, I
31 am satisfied that this hearing is being conducted in public and there is, as I keep
32 saying, a word for word recording of everything that is said in this court.

33 MS O'DOHERTY: Okay.

34 JUDGE: I note your objection to the press who are in attendance, that's your -- you

1 are entitled to that opinion, Ms Doherty, but I am complying with the provisions of
2 the guidance given by the Chief Justice and the presidents of the various courts that
3 for the time being and pending your action and challenge to the constitutionality of
4 recent legislation, that these courts shall be conducted in public in the manner
5 provided.

6 MS O'DOHERTY: Well, they're not being -- this Court is not being conducted in
7 public, and you will know that your former colleague, Ronan Keane said that courts
8 that are held in private tend towards corruption. I'm sure that's not going to be the
9 case here.

10 JUDGE: I agree, that's why I'm holding it in public, Ms Doherty, that's why I'm
11 holding it in public.

12 MS O'DOHERTY: It's not -- there is no public here. Would we -- could we agree,
13 Judge, that a sample representative come in?

14 JUDGE: No.

15 MS O'DOHERTY: No, okay.

16 JUDGE: I'm complying with the guidance given by the Chief Justice --

17 MS O'DOHERTY: But they're not social distancing there.

18 JUDGE: -- and the presidents of the courts.

19 MS O'DOHERTY: They're not.

20 JUDGE: I'm sorry?

21 MS O'DOHERTY: They're not social distancing.

22 JUDGE: Who?

23 MS O'DOHERTY: These people behind, members of An Garda Síochána, so the
24 rules aren't --

25 JUDGE: Well, they look -- they look to be six feet apart to me from where I'm
26 observing.

27 MS O'DOHERTY: But you could facilitate other people in here, you could facilitate
28 other members of the public who own this courtroom.

29 JUDGE: Yes. But you see, other people have to use this courtroom as well,
30 Ms Doherty. So the risk of contamination of the courtroom by the presence of
31 numbers of people is something that I have to consider. So I'm satisfied --

32 MS O'DOHERTY: Okay.

33 JUDGE: -- I am satisfied, Ms Doherty, that these proceedings are being held in
34 public.

1 MS O'DOHERTY: Okay, and you are going to allow the DAR --

2 JUDGE: And I will facilitate you in relation to the DAR of this hearing in due
3 course.

4 MS O'DOHERTY: Okay. So when will the DAR be available, Judge?

5 JUDGE: That's a registrar's issue, very promptly I think.

6 MS O'DOHERTY: How soon can we make it available to the public?

7 JUDGE: Sorry?

8 MS O'DOHERTY: How soon can we make --

9 JUDGE: Just -- would you just wait a minute, Ms Doherty, please, I just want to
10 check with the registrar. Very good, apparently the registrar would have to draw up
11 an order, Ms Doherty, that the Court has given you access to the DAR and then that
12 will take a day or two and then when that -- you have that order, you can bring it to
13 the company. Normally it requires an undertaking to pay the cost of the DAR, I
14 don't know what that is.

15 MS O'DOHERTY: Ah well --

16 JUDGE: No, sorry, Ms Doherty --

17 MS O'DOHERTY: The judge -- the --

18 JUDGE: Ms Doherty --

19 MS O'DOHERTY: O'Doherty.

20 JUDGE: -- we have power to waive that, and in this circumstance I will waive it.

21 MS O'DOHERTY: Thank you.

22 JUDGE: Now, I've made my order, let's get on, please?

23 MS O'DOHERTY: Judge, could you return my copy of Bunreacht na hÉireann to
24 me, please?

25 JUDGE: Certainly.

26 MS O'DOHERTY: Thank you very much.

27 JUDGE: Very good. Now, the actual application?

28 MR MEEHAN: Very well, Judge. Well, I'm sure you're aware that your colleague
29 Judge Sanfey ordered that the State be put on notice of this application.

30 JUDGE: Yes, I have had a brief look at the -- it seems to have disappeared now, yes,
31 thank you.

32 MR MEEHAN: And the matter is in --

33 JUDGE: Yes, I've had a brief look at the statement that has been filed.

34 MR MEEHAN: Yes, and you are aware then, Judge, that it's in for mention today

1 and that it's quite a substantial matter, there's quite a lot in it.

2 JUDGE: Well, it consists it seems to me of a chronology. There is a challenge to the
3 manner in which the legislation was enacted.

4 MR MEEHAN: Correct.

5 JUDGE: And then there's a challenge to the legislation itself.

6 MR MEEHAN: Itself.

7 JUDGE: Yes.

8 MR MEEHAN: That's absolutely correct.

9 JUDGE: Yes, that that's -- yes.

10 MR MEEHAN: And we received draft papers on Friday evening.

11 JUDGE: Yes.

12 MR MEEHAN: And I think we're going to get a filed copy immediately, I make no
13 issue about that. But there are a number of complex issues and the proceedings seek
14 to challenge the entirety of two Acts of the Oireachtas, two sets of regulations and
15 the Health Act 1947 order, the (Affected Areas) Order of the Court. And I've spoken
16 to the applicants and I've set out the Attorney's view, which is that a number of the
17 grounds of challenge set out in the quite lengthy draft statement of grounds are not
18 properly matters for these respondents. And I'm talking specifically about what you
19 described, Judge, as the manner in which the legislation was enacted, the
20 composition of the Dáil, the fact that it was an incoming Dáil and an outgoing
21 Seanad, those issues and we --

22 JUDGE: What, he's challenging their standing in relation to that, is that it?

23 MR MEEHAN: Well, I think he's standing the procedures that were adopted on foot
24 of a suggestion, it's called a suggestion in a letter from the Ceann Comhairle dated
25 the 13th of March.

26 JUDGE: Yes.

27 MR MEEHAN: Wherein he suggested a limited number of TD's attend the Dáil to
28 abide by social distancing guidelines.

29 JUDGE: Yes.

30 MR MEEHAN: And that that -- the applicant's case there seems to be that the Dáil
31 wasn't properly constituted. It's also described as a caretaker Dáil. Now, I think it
32 was the current Dáil that was elected on the 8th of February.

33 JUDGE: Yes.

34 MR MEEHAN: But I think -- anyway, that's what it's described as.

1 JUDGE: Yes.

2 MR MEEHAN: And then there's the idea that the Seanad was the outgoing Seanad.

3 JUDGE: Yes.

4 MR MEEHAN: Anyway, those issues, the Attorney's view is, and I've suggested
5 and I don't think there's any issue about this, are more properly issues for the Ceann
6 Comhairle, the Dáil and the Seanad.

7 JUDGE: Yes.

8 MR MEEHAN: And subject to the Court, I would apply for a direction pursuant to
9 Order 84 Rule 24, and I have a copy for the Court.

10 JUDGE: Yes.

11 MR MEEHAN: That those parties would be put on notice of this application for
12 leave.

13 JUDGE: Yes.

14 MR MEEHAN: And --

15 JUDGE: Well, I have a more fundamental question I have to say, Mr Meehan?

16 MR MEEHAN: Yes.

17 JUDGE: I don't know that a court under the judicial review rubric can quash an Act
18 of the senate -- of the legislature.

19 MR MEEHAN: Well, that's -- that is an issue that -- we had a consultation yesterday
20 with the Attorney General, it's an issue that came up. I wasn't going to raise it today,
21 but my instructions are, now that the Court has raised it, to --

22 JUDGE: This should be a plenary summons.

23 MR MEEHAN: Well, that may well be the case, but we would seek to make that
24 argument, if indeed we do make it, at the application for leave itself, today is
25 obviously for mention.

26 JUDGE: Yes.

27 MR MEEHAN: But I think the Court may well be right, it may well be an issue that
28 the Attorney General seeks to raise in its -- and the Attorney General and the
29 Department of Health do intend to oppose the application for leave, I should say that.

30 JUDGE: Yes, yes.

31 MR MEEHAN: But we're not seeking to make that argument today, but we do
32 reserve our right to make that argument at the leave stage.

33 JUDGE: Yes. Do you understand that, Mr Waters, Ms Doherty?

34 MR WATERS: Ye, we understand that, yes, thank you, Judge.

1 JUDGE: Yes, you're looking for an order of certiorari, that's the only order you've
2 looked for.

3 MR WATERS: Yes.

4 JUDGE: Yes.

5 MR WATERS: I understand.

6 JUDGE: And a court in my view cannot certiorari Acts of the Oireachtas.

7 MR WATERS: I understand, Judge, I think --

8 JUDGE: All a court can do is give a declaration that a particular Act in appropriate
9 circumstances is repugnant to the Constitution, that is the power the court has.

10 MR WATERS: Yes.

11 JUDGE: And I bring it up now rather than have a court proceed down a -- what may
12 well be a cul-de-sac, Mr Waters, do you understand?

13 MR WATERS: I understand the point, I'm not certain that it would be a cul-de-sac
14 necessarily.

15 JUDGE: Very good, very good. I've raised the issue, so very good.

16 MR MEEHAN: May it please the Court, and then so the first issue is that those
17 parties would be put on notice pursuant to Order 84 Rule 24, and I believe there's
18 consent to that.

19 JUDGE: I see.

20 MR MEEHAN: I'm sure if there isn't, Mr Waters and Ms O'Doherty will correct me.

21 JUDGE: Sorry, let me look at 84.

22 MR MEEHAN: The second application --

23 JUDGE: Well, yes, sorry now 84, rule?

24 MR MEEHAN: Rule 24.

25 JUDGE: 24.

26 MR MEEHAN: (1), so it's on page 5 of 8, I printed it out there this morning. The
27 Court hearing an application for leave --

28 JUDGE: Just a moment now.

29 MR MEEHAN: Sorry, sorry, Judge, apologies. So these are the new rules that were
30 brought in, 2011 --

31 JUDGE: Sorry, I'm just, 23, 24, right, "The Court hearing an application for leave to
32 apply for judicial review may, having regard to the issues arising, the likely impact
33 of the proceedings on the respondent or another party, or for other good and
34 sufficient reason, direct that the application for leave should be on notice, and

1 adjourn the application for leave on such terms as it may direct, and give such
2 directions as it thinks fit as to the service of notice of the application for leave, and
3 copies of the statement of grounds, affidavit and any exhibits on the intended
4 respondent and on any other person. The mode of service and the time allowed for
5 such service." Very good, "The Court may with the consent of all parties ..." -- so
6 this isn't actually an application for leave yet, is it?

7 MR MEEHAN: No, no, it's not.

8 JUDGE: No.

9 MR MEEHAN: It's only for mention today, Judge, so that's the first, that I would
10 ask you to exercise the jurisdiction conferred on you by that rule to put the Ceann
11 Comhairle, the Seanad and the Dáil and I'm instructed that they are the correct
12 parties, the Ceann Comhairle, the Dáil and they are the correct entities, and the
13 Seanad on notice of this application.

14 JUDGE: Well, on the basis that that application is on consent, I will make the order
15 with the caveats that I've already identified.

16 MR MEEHAN: Absolutely, absolutely.

17 JUDGE: Very good.

18 MR MEEHAN: Now, the second direction I seek, Judge, isn't on consent, the
19 respondents to this case will need to prepare a detailed substantial affidavit to oppose
20 this application.

21 JUDGE: Yes.

22 MR MEEHAN: And that will require substantial input from officials in the
23 Department of Health.

24 JUDGE: Yes, yes.

25 MR MEEHAN: Now, that will take some time and it --

26 JUDGE: I wonder, I wonder why would there be -- I mean really the issues raised
27 and there is a useful chronology, I have to say in the statement of grounds.

28 MR MEEHAN: There is a useful chronology in the statement of grounds.

29 JUDGE: Yes.

30 MR MEEHAN: And the Department of Health are anxious to add to that
31 chronology.

32 JUDGE: Yes.

33 MR MEEHAN: There are certain other important matters that aren't included in that
34 chronology.

1 JUDGE: I see, yes.

2 MR MEEHAN: That set out the rationale.

3 JUDGE: Yes.

4 MR MEEHAN: The reasons for what is -- I don't think anybody would argue,
5 anything other than extremely unusual legislation.

6 JUDGE: Yes.

7 MR MEEHAN: Primary legislation and secondary legislation.

8 JUDGE: Yes.

9 MR MEEHAN: And the Department of Health will require time to put together an
10 affidavit explaining, as they must explain, the rationale.

11 JUDGE: Yes, yes.

12 MR MEEHAN: And it's going to take some time because the statement of grounds
13 by its nature, it seeks to challenge the entirety of the two Acts.

14 JUDGE: Yes.

15 MR MEEHAN: The Health (Preservation and Protection and Other Emergency
16 Measures in the Public Interest) Act 2020, not just -- not just specific provisions.

17 JUDGE: Well, it's -- there are three elements to it, it seems to me.

18 MR MEEHAN: Yes.

19 JUDGE: One is the element of the issue of an emergency.

20 MR MEEHAN: Yes.

21 JUDGE: The second is the -- and in relation to that, that certainly seems to -- the
22 manner in which the emergency, the existence of the emergency and the manner in
23 which the Dáil was convened and so on is one area, and the next is the challenge to
24 the two pieces of legislation and the regulations made thereunder; isn't that right?

25 MR MEEHAN: Yes.

26 JUDGE: But they're interlinked obviously.

27 MR MEEHAN: Yes, but the challenge to the legislation itself is substantial, it relies
28 on a number of provisions of the Constitution.

29 JUDGE: Yes.

30 MR MEEHAN: And European Convention of Human Right.

31 JUDGE: Yes.

32 MR MEEHAN: And the European Charter of Fundamental Rights and the European
33 Communities (Free Movement of Persons) Regulations 2015. There is a huge
34 amount of law and fact in this, and it will require a substantial effort by the

1 Department of Health --

2 MS O'DOHERTY: Judge, could I intervene here?

3 JUDGE: No, Ms Doherty, just you'll get your chance to speak.

4 MR MEEHAN: Just in relation to the Department, the input required by the
5 Department of Health, there are a number of complexities, first of all, the size of the
6 task here. Secondly, the logistical difficulties where people are working from home,
7 they don't have access to offices, they don't have access necessarily to files. There is
8 just -- it just takes a bit longer to do everything at the moment, anything that requires
9 sort of office input. And thirdly, Judge, the people in the Department of Health are
10 quite busy at the moment. So I think for all those reasons, a very short period of
11 time in which this can be prepared would be two weeks. And we would ask for two
12 weeks to prepare the affidavit.

13 JUDGE: Yes.

14 MR MEEHAN: And at that stage, to put it in for mention again.

15 JUDGE: Yes.

16 MR MEEHAN: So that the Court can direct an exchange of submissions, because
17 legal submissions are going to be required in this as well.

18 JUDGE: Well, from what you say, again it underpins the Court's preliminary view
19 that certiorari is not an appropriate remedy, that challenges to constitutionality of
20 legislation are normally brought by way of plenary summons. And the difficulties
21 being outlined by you now seem to the Court, to underpin that position. However,
22 your -- all you're asking me to do is to allow two weeks for the filing of an affidavit
23 in relation to the statement of grounds. Now, I note also that the -- Ms O'Doherty
24 and Mr Waters have filed what's called a verifying affidavit, which is not the
25 process, that's not the proper and appropriate process --

26 MS O'DOHERTY: Well, Judge, you are aware --

27 JUDGE: Ms O'Doherty, just -- I'm going to let you speak, just if you wait a moment.
28 A verifying affidavit is what is usually sworn in relation to plenary proceedings,
29 that's the normal course in plenary proceedings, that what I have pleaded in my
30 plenary summons is correct and I'm standing over the truth of it. A verifying
31 affidavit is not the appropriate procedure in a judicial review. In a judicial review
32 you set out at length in affidavit what it is the underlying basis on which you say you
33 are entitled to the remedies that you're seeking, do you understand? Yes, now, first
34 of all would you -- you can address counsel's application for two weeks to file

1 a replying affidavit.

2 MS O'DOHERTY: Yes, Judge Sanfey -- sorry, Judge, can I just state on the record

3 --

4 JUDGE: Yes.

5 MS O'DOHERTY: -- that Judge Sanfey last Tuesday in here --

6 JUDGE: Sorry?

7 MS O'DOHERTY: Last Wednesday in here, Judge Sanfey --

8 JUDGE: Yes, yes.

9 MS O'DOHERTY: -- asked us for an affidavit of verification.

10 JUDGE: Oh I see.

11 MS O'DOHERTY: And also that order has not been issued, I am not sure why we
12 were not told by the court last week that the paperwork was not in order. I believe
13 that it is, we should have been told as lay litigants, it is on the obligation of the judge
14 to inform the lay litigants.

15 JUDGE: Well, I am informing you of my view of the matter, Ms O'Doherty.

16 MS O'DOHERTY: Well, I'm not sure why the Court didn't inform us of this last
17 Wednesday.

18 JUDGE: Sorry?

19 MS O'DOHERTY: We could have -- because -- I'm not sure why the Court did not
20 inform us -- inform us of this last Wednesday.

21 JUDGE: Because the Court perhaps in a truncated and a short hearing is faced with
22 a document that runs to -- there's no page numbers, a very substantial document. It
23 may not have struck the Court, Ms O'Doherty, I don't know.

24 MS O'DOHERTY: Well, it's on the opening.

25 JUDGE: But I am -- it's now before me, I've had an opportunity to have a look at it
26 --

27 MS O'DOHERTY: Well, how can we remedy this, Judge?

28 JUDGE: -- and I am making certain observations, which may be to your benefit,
29 Ms O'Doherty, I don't know, I am just making certain observations.

30 MS O'DOHERTY: Could I in --

31 JUDGE: Now, on the -- as matters stand it is proceeding as an application for leave
32 to seek judicial review, as matters stand. You've consented to the houses of the
33 Oireachtas being joined, which is going to make matters even more complicated in
34 my view, which wouldn't arise in plenary proceedings, but so be it. They will

1 undoubtedly be looking -- coming in on the next mention date looking for time to file
2 an affidavit. At the moment, the person that you have named, the Minister for Health
3 Ireland and the Attorney General are looking for two weeks to put in an affidavit.

4 Now, that's the application before me, what -- what do you say in relation to that?

5 MS O'DOHERTY: Well, first of all I say that is an outrageous waste of public
6 money.

7 JUDGE: Why?

8 MS O'DOHERTY: Every single one of you here is being paid by the public who
9 you deny entry to their own court. To add extra --

10 JUDGE: Sorry, we've dealt with that application, Ms O'Doherty.

11 MS O'DOHERTY: Well, can I speak, Judge?

12 JUDGE: I want you now to deal with this application.

13 MS O'DOHERTY: Yes, I want to make the point that by adding the extra parties to
14 the proceedings is -- how many more barristers and solicitors are going to be
15 involved in that?

16 JUDGE: I don't know.

17 MS O'DOHERTY: How much is that going to cost the Irish taxpayer? How much is
18 this lockdown costing the Irish taxpayer? An absolute fortune, the likes of --

19 JUDGE: Ms Doherty -- Ms O'Doherty --

20 MS O'DOHERTY: Judge, may I speak?

21 JUDGE: You may, as long as --

22 MS O'DOHERTY: The likes of which will --

23 JUDGE: As long, Ms O'Doherty, as you're speaking to the matter before the Court.

24 MS O'DOHERTY: Well, I am because I'm coming to that.

25 JUDGE: This is not an opportunity --

26 MS O'DOHERTY: Because I'm coming to that, I'm coming to that.

27 JUDGE: -- for you to make a speech to the people of Ireland.

28 MS O'DOHERTY: I'm sorry, Judge, I have a right to speak in this courtroom.

29 JUDGE: You do indeed.

30 MS O'DOHERTY: So can I speak?

31 JUDGE: And I have a right to ask you to address the issue that's been raised. The
32 issue that's been raised is they're looking for a two week adjournment to put in an
33 affidavit in response to your very substantial document. Now, what is your attitude
34 in relation to that?

1 MS O'DOHERTY: Okay. Well, I want to put it on the -- yes, we managed to
2 prepare this in less than four days.

3 JUDGE: Very good.

4 MS O'DOHERTY: The country was turned upside down by the Department of
5 Health in a matter of hours, they had this legislation ready in a matter of days, in fact
6 less.

7 JUDGE: So?

8 MS O'DOHERTY: They were able to turn this situation, this scenario whereby we
9 have the country, the people of our country are effectively under mass house arrest at
10 the moment, they are afraid to go out on to their streets for fear of meeting a member
11 of An Garda Síochána who will interrogate them as to where they are going. This is
12 a fundamental breach of their right to privacy, their right to --

13 JUDGE: You're making a speech again, Ms O'Doherty.

14 MS O'DOHERTY: -- their right to assembly, I'm sorry, I -- you know, this is the
15 way I speak, Judge.

16 JUDGE: Indeed.

17 MS O'DOHERTY: If you -- I mean, I'm not interfering with the manner in which
18 you speak.

19 JUDGE: Well, and nor should you, Ms O'Doherty.

20 MS O'DOHERTY: But I am -- I do not want to be here today, but we are here
21 because we are going to defend this book. Now, many other things are being
22 interfered with as well, many other fundamental rights, such as the right to the
23 children of Ireland to have an education, one of the basic fundamental rights laid out
24 in this Constitution. People also have a right to private family life. What is currently
25 being suggested is that members of An Garda Síochána may enter, break and enter
26 into homes to investigate as to whether people with this virus, which there still is no
27 actual test for, this is where this legislation is going. We also know that there are
28 very serious discrepancies in relation to the Mental Health Act, the fact that only one
29 person now, a barrister, solicitor can ascertain if somebody has -- if there are
30 concerns about their mental health. Outrageous attacks on our fundamental freedoms
31 are taking place as we speak. The entire working population is being denied the right
32 to earn a living, who is paying for all of that? The taxpayer. This €350 that people
33 are getting, somebody is going to have to pay for that further down the line. The
34 Irish people are currently in debt of about €240 billion, €50,000 on the head of every

1 Irish man, woman and child from the last disaster. We are now going to head into
2 another recession that will make the Celtic Tiger look like a teddy bear's picnic if this
3 continues. The economy must be re-opened. The people of Ireland must be -- must
4 be allowed to go about their business. Our parks must be re-opened. Our beaches
5 must be re-opened. The streets of our country, our roads must be re-opened. These
6 illegal garda check-points must cease and normal life must resume. Not least, Judge,
7 because in doing that, the 99.5 percent of the population who is utterly unaffected by
8 coronavirus will go out and build up herd immunity. Now, you Judge, surely --

9 JUDGE: Now, Ms O'Doherty, I've given you I think more than five minutes to make
10 a speech. You've made your speech, we are issue -- the issues that are in play here
11 are the balancing of issues such as people's right to life with other freedoms, that's
12 the balancing exercise --

13 MS O'DOHERTY: There is no threat to life.

14 JUDGE: Sorry, Ms -- Ms O'Doherty --

15 MS O'DOHERTY: There is no threat to life.

16 JUDGE: That is the balancing that is going on, you may not like it, you may think
17 it's unlawful, that's why you've brought your application. Now --

18 MS O'DOHERTY: Well, what are the -- there is no threat to life.

19 JUDGE: -- now Ms O'Doherty, please, I've let you -- I've let you make your speech
20 for more than five minutes. The application before the Court is for a -- to allow two
21 weeks for the respondents to your application to file an affidavit. Now, I am
22 disposed to grant that, I want to know what your attitude to that is.

23 MS O'DOHERTY: Well, I just want to finally say --

24 JUDGE: And I don't want a speech from you, Ms O'Doherty --

25 MS O'DOHERTY: -- never in the history of humanity have the healthy been
26 quarantined, that is endangering life, Judge.

27 JUDGE: Very good, you're entitled to your view, Ms O'Doherty.

28 MR WATERS: Judge, what we would say, Judge, is -- on that particular matter is
29 that this is way too long, this is an extraordinarily urgent matter as Ms O'Doherty has
30 said, for all the reasons she has said and for others.

31 JUDGE: Yes.

32 MR WATERS: It is unprecedented as you know in our civic life.

33 JUDGE: I am and I'm not -- I'm not, I'm not disputing that, Mr Waters.

34 MR WATERS: No, I understand, Judge, but can you just -- okay, well with all that

1 in mind then, I think two weeks, I mean we prepared the document you have which
2 is over 30-pages in less than four days and we are not lawyers, you know. The other
3 -- the State has had possession of these papers for now five days, which is more than
4 the time it took us to prepare our papers. So I would think that this is --

5 JUDGE: Well, I think they're taking -- the issue really, the issues of law are the
6 issues of law arising. You are saying that the legislature wasn't properly passed and
7 that it's repugnant to the Constitution for all of the reasons you've set out, that's clear.
8 You've also set out a detailed chronology of the events that gave rise to what you say
9 are the unconstitutional events. The State is saying that there is more to the
10 chronology than you have set out. They may be right, they may not be right, I don't
11 know. But they want time to address that issue.

12 MR WATERS: Well, Judge --

13 JUDGE: And it appears to me that you have two people who are focused, working
14 together. We are dealing with a more amorphous group of when you're dealing with
15 for example the Department of Health and the gathering of the appropriate
16 information. It may take a little time, Mr Waters.

17 MR WATERS: Can I just make one --

18 JUDGE: And they have other matters on their plate as we all know.

19 MR WATERS: Yes, well we all have, Judge, but what I would make a response to
20 the particular issue of the chronology. It strikes me that if somebody can look at our
21 chronology and see that it is deficient, they immediately know what parts are missing
22 and it would be the work of half an hour to fill those in.

23 JUDGE: I mean, there may be -- there may be many people involved, Mr Waters.

24 MR WATERS: There are many people, Judge, who are deeply traumatically
25 effected by these -- by this legislation.

26 JUDGE: Yes.

27 MR WATERS: There are people dying alone without the comfort of their loved
28 ones because of this legislation --

29 JUDGE: You have chosen -- yes, I know that, I am aware of that and I think it's
30 perhaps one of the true tragedies of this whole situation, there's no doubt about that.

31 MR WATERS: Yes, and this is precisely why this is the most urgent matter I think
32 that your court will face in many a long year, regrettably, in this country.

33 JUDGE: Well, you see, Mr Waters, if you had gone by way of plenary summons
34 route, then the procedures and the issues will be joined much more quickly. If you're

1 going, as you have, by way of a judicial review looking for certiorari, then what's
2 going to happen is the parties against whom you are seeking relief are entitled to put
3 in replying affidavits.

4 MR WATERS: Well, yes, Judge.

5 JUDGE: And you can take it, Mr Waters, that when the houses of the Oireachtas and
6 whoever we have joined now by -- the houses and the Oireachtas and the Ceann
7 Comhairle, I think, is it?

8 MR MEEHAN: Yes, the Dáil, the Seanad and the Ceann Comhairle, Judge.

9 JUDGE: Yes.

10 MR WATERS: Yes, Judge.

11 JUDGE: You can anticipate --

12 MR WATERS: But, Judge --

13 JUDGE: -- I can tell you, Mr Waters, that there will be an application for affidavits
14 to be put in by those parties as well.

15 MR WATERS: Yes, Judge, can I say this, we made this application ex parte almost
16 a week ago. And at that point our understanding was that if there was some
17 deficiency in our case, the Court had a responsibility to draw our attention to it there
18 and then.

19 JUDGE: Well, the Court may not have had an opportunity to -- you come into court,
20 you come into court with a document, a court doesn't necessarily have an opportunity
21 -- I had an opportunity to go through your document and to observe certain matters
22 and I've made those observations. It's a matter for you what you do with those
23 observations, Mr Waters.

24 MR WATERS: Well, Judge, can I ask you a question, is it open to you now to
25 redirect us in this matter.

26 JUDGE: No, I'm not directing you, Mr Waters, that is certainly not my job.

27 MR WATERS: Well -- well, well --

28 JUDGE: But I am making an observation, Mr Waters, that as a matter of law, it
29 appears to me that a court under our Constitution cannot certiorari Acts of the
30 Oireachtas --

31 MR WATERS: Well, it seems to me, Judge --

32 JUDGE: -- it can only declare them to be repugnant.

33 MR WATERS: It seems to me, Judge, that this Court -- this hearing then is
34 completely useless, it --

1 JUDGE: It's a matter for you, it's a matter for you, Mr Waters.

2 MR WATERS: Well, we applied on Wednesday and we understood that at that
3 point these matters would be clear, that this -- we would get judicial review or
4 whatever, if the judge wished, he or she, he in this case, was free to direct us to go
5 a different route.

6 JUDGE: No, no, no judge is going to direct you, Mr Waters.

7 MR WATERS: That did not happen, but instead we are a week down the road in the
8 most urgent --

9 JUDGE: Mr Waters, I am making an observation, Mr Waters.

10 MR WATERS: Yes. Well, this is --

11 JUDGE: Which you may think is useful or not, it's a matter for yourself. I am not
12 directing anyone.

13 MR WATERS: What concerns me here is that there is a degree of already clear
14 signs of procrastination, prevarication, filibustering on the behalf of the State and
15 I believe that it is incumbent upon -- the only protection we have, Judge, is you and
16 other judges who will put an end to this and not allow this to characterise this case --

17 JUDGE: But you chose this route, Mr Waters, they didn't.

18 MR WATERS: Yes indeed.

19 JUDGE: You chose this route.

20 MR WATERS: And if you believe, Judge, if we -- we should be before a judge, we
21 were before a judge a week ago.

22 JUDGE: Yes.

23 MR WATERS: And that was the time when that judge ought to have informed us
24 that we were going down the wrong road and to redirect us.

25 JUDGE: Well, he may -- he may not have even adverted to it because you come in
26 with a set of papers, you make an application to a judge, the judge gets a 30 plus
27 page document. I had a chance to read the document, I'm not sure that Judge Sanfey
28 had a chance to read the document before you came into him.

29 MR WATERS: But as you know, Judge, this is precisely what an ex parte
30 application is.

31 JUDGE: Yes.

32 MR WATERS: It's done on the hoof, it's not a --

33 JUDGE: On the hoof, yes.

34 MR WATERS: So at that point, instead we were sent down the road of a mention

1 which seems to be pointless and then --

2 JUDGE: No, it's not pointless because you now have what Judge Sanfey said was
3 that at least if you're bringing an application, the State should be on notice, that's
4 what Judge Sanfey said.

5 MR WATERS: Yes.

6 JUDGE: So they have been put on notice.

7 MR WATERS: Yes.

8 JUDGE: And now they come in and they are saying, there is a lot of detail in these
9 -- this document, there are certainly complex and many issues of law and they want
10 an opportunity to put in an affidavit. Any court is going to give them that
11 opportunity, Mr Waters.

12 MR WATERS: Indeed, indeed, yes, Judge, but I think that two weeks is excessive
13 and in these particular circumstances.

14 JUDGE: When did you serve the papers on the State?

15 MR WATERS: On Friday.

16 JUDGE: Friday, you were in before Judge Sanfey on Wednesday?

17 MR WATERS: Wednesday, yes.

18 JUDGE: So you served the papers on --

19 MR WATERS: We were waiting for the order to issue and it did not issue.

20 MS O'DOHERTY: We were waiting.

21 JUDGE: What do you mean the order to issue?

22 MR WATERS: We were waiting to be sent a copy of the order, we requested it.

23 JUDGE: Yes.

24 MR WATERS: And it did not come and nobody explained to us that there would be
25 no order forthcoming, this is again an example I believe of the procrastination and
26 filibustering of the State, and it really has to stop, Judge.

27 JUDGE: When did you serve them on the State, Friday afternoon?

28 MR WATERS: Friday afternoon, yes.

29 JUDGE: Very good. So we've had Saturday, Sunday, Monday since you served
30 them?

31 MR MEEHAN: I believe it was Friday afternoon, Judge.

32 JUDGE: Yes, Mr Waters has agreed that that is so. So they have had Friday,
33 Saturday, Sunday -- sorry, Saturday, Sunday, Monday. It does appear to me, they
34 are telling me, Mr Waters, they have to gather information from a wide range of

1 sources in order to deal with the factual matters raised in your application, do you
2 understand? So it appears to me and it is not unusual or unreasonable for the State to
3 look for a period of two weeks in order to put in a replying affidavit to your
4 extensive document. What I will do for you, Mr Waters, is this, I will direct that the
5 notice parties be served today, the houses of the Oireachtas and the Ceann
6 Comhairle, whoever, the additional notice parties, that you serve them today and
7 they also will have the same period. So that when it comes back in two weeks' time,
8 you won't have a fresh application from them for two weeks for an affidavit, do you
9 understand? So yes, Mr Meehan?

10 MR MEEHAN: I was just going to take instructions.

11 JUDGE: Yes.

12 MR MEEHAN: I just wanted to clarify with the Court, to whom is the direction to
13 serve those third parties?

14 JUDGE: Well, I think really as a matter of common sense, it's really the State should
15 do it.

16 MR MEEHAN: So be it.

17 JUDGE: Yes, I think that's just as a matter of common sense.

18 MR MEEHAN: I think we can do that.

19 JUDGE: Let the State serve the houses of the Oireachtas because it's at the State's
20 application that they are being joined as a notice party. Let the State serve those
21 today and they too will have two weeks to file -- from today, a replying affidavit and
22 that will --

23 MR WATERS: Judge, I --

24 JUDGE: -- and that will obviate, Mr Waters, the necessity at the next mention date
25 for them to come in and look for two weeks to file a replying affidavit, do you
26 understand?

27 MR WATERS: Judge, I have to say that I am deeply -- we're deeply concerned
28 about this process, since we entered this --

29 JUDGE: You chose this process, Mr Waters.

30 MR WATERS: Yes.

31 JUDGE: And I have expressed by views about the process.

32 MR WATERS: We are citizens seeking to defend the Constitution.

33 JUDGE: Yes.

34 MR WATERS: We have come here in good faith.

1 JUDGE: Yes.

2 MR WATERS: Trusting the system, trusting the court, trusting the judges.

3 JUDGE: Yes.

4 MR WATERS: Since we entered this building a week ago, we have met nothing but
5 prevarication and procrastination. Clearly there are vested interests at play in this
6 entire process which are serving to frustrate the desires of the public and of our -- us
7 representing whoever we represent in the public, which is a great number of people,
8 to have their -- these instruments, these laws scrutinised for the first time, Judge.

9 They were not scrutinised in Dáil Eireann, they were not scrutinised in Seanad
10 Eireann.

11 JUDGE: Yes.

12 MR WATERS: They were not scrutinised by the President or the Council of State,
13 they were not referred to the Supreme Court. It is -- it falls to us two citizens to do
14 what the entire apparatus of the Irish State and its media that you speak so highly of,
15 have failed to do.

16 JUDGE: What did I say about it, what did I say about the media?

17 MR WATERS: Well, I am saying that there is procrastination, prevarication,
18 filibustering of this entire process and this is the -- this is clearly the --

19 JUDGE: Mr Waters --

20 MR WATERS: But let me say that we will not be frustrated by this.

21 JUDGE: -- you chose the process, you chose the process. If you launch judicial
22 review proceedings --

23 MR WATERS: We chose the only remedy open to us was to issue an ex parte.

24 JUDGE: Well, were you?

25 MR WATERS: And we have got no guidance whatsoever, no assistance except the
26 --

27 JUDGE: Well, you may have been told that, you might want -- you might want to
28 reconsider that.

29 MR WATERS: -- the ball being kicked down the road as much as possible and the
30 will of the people and the needs of the people being frustrated minute by minute in
31 what is the most grievous and urgent situation that has ever confronted this country
32 in freedom.

33 JUDGE: Well, I'm attempting to dovetail matters for you, Mr Waters. Clearly if
34 a State party or anybody gets as detailed a document as you have prepared, and I've

1 commended you for your -- the detail that you have put in it. They have to have an
2 opportunity to answer it. Within the judicial review process, that is done by way of
3 affidavit, do you understand? So they are going to have to have time for affidavits.

4 MR WATERS: Our --

5 JUDGE: Now, sorry, Mr Waters, what I've done, what I have done is said that the
6 parties that have now been joined as notice parties will be served today, and they will
7 also be notified that any affidavit they want to put in, they must put in or grounds of
8 opposition, they must put in within the two weeks as well so that you won't have
9 a repeat application, the next party wants two weeks and the next party wants two
10 weeks. So I have attempted to facilitate an early joining of the issues, shall we say.
11 However, you have to take responsibility for the fact that you decided, I know you
12 are lay litigants, but lay litigants have to inform themselves if they want to bring
13 proceedings before the court.

14 MR WATERS: Well, indeed, Judge.

15 JUDGE: And you clearly have.

16 MR WATERS: Indeed, Judge, but --

17 JUDGE: However, it seems to me and I've again observed it, that the process that
18 you have chosen to deploy may not be the most efficient process, so be it. However,
19 I am now going to give them the two weeks to put in -- now, there's a statement of
20 grounds, what about a statement of opposition?

21 MR MEEHAN: The statement of opposition only arises, Judge, in circumstances if
22 and when leave is granted.

23 JUDGE: Where leave is given, so leave hasn't yet been granted.

24 MR MEEHAN: It's for a replying affidavit.

25 JUDGE: So what you are doing is you are opposing, just so Ms O'Doherty and
26 Mr Waters can be clear, that you are opposing their application for leave, do you
27 understand that?

28 MR WATERS: Yes.

29 JUDGE: Do you understand that Ms O'Doherty?

30 MR WATERS: Yes, Judge.

31 MS O'DOHERTY: Oh we understand that very clearly.

32 JUDGE: Very good. They are -- they are --

33 MS O'DOHERTY: We know exactly what's going on, Judge.

34 JUDGE: Sorry, sorry, Ms O'Doherty, you chose this process, the State didn't choose

1 this process, so they are opposing your application for leave and you are now -- I can
2 tell you, on notice that one of the grounds upon which it may well be objected to is
3 that it's an inappropriate process. It's a matter for yourselves what you do about that.

4 MS O'DOHERTY: Well, there are appropriate processes and you know, we are not
5 in here, Judge, to feather our nests or to keep in with the State, you know, make sure
6 that we --

7 JUDGE: Sorry, sorry, Ms O'Doherty, where is that coming from?

8 MS O'DOHERTY: We are not, we are here to defend this book, Judge, and that's it.

9 JUDGE: Yes, Ms O'Doherty, that's fine --

10 MS O'DOHERTY: So no matter what --

11 JUDGE: -- my job is to uphold that book, Ms O'Doherty.

12 MS O'DOHERTY: I'd like you to let me speak, I will remind the Court that this
13 legislation was enacted without so much as a vote, by an unelected government that
14 the people of Ireland had firmly rejected, they do not want them anymore.

15 JUDGE: Ms O'Doherty, that's your case, we're not now arguing --

16 MS O'DOHERTY: This is -- this is -- these are the facts.

17 JUDGE: We are not now arguing --

18 MS O'DOHERTY: These are the facts.

19 JUDGE: -- we are not now arguing your case.

20 MS O'DOHERTY: These are the facts, these are the fundamental facts.

21 JUDGE: That is your view, you're entitled to the view.

22 MR WATERS: And that is why, Judge, you should be sitting up there today and
23 saying, this is an outrage.

24 JUDGE: Should I?

25 MS O'DOHERTY: The Irish people are under effective mass house arrest, they are
26 being traumatised every single day, every single day yet another senior medic around
27 the world comes out and says this lockdown is utterly uncalled for, if anything it is
28 endangering the health of the people of the world. These are very very senior
29 medics, some of whom will be part of our case when it does come eventually before
30 the courts.

31 JUDGE: Very good.

32 MS O'DOHERTY: The damage that is being done to this country and its people and
33 the exchequer as a result of all of this filibustering and delay, it'll be on your call, it'll
34 be your responsibility not ours because we have tried. The State was so frightened,

1 the Dáil was so frightened of this, the unelected government and the unelected
2 Taoiseach, they did not even declare a state of emergency because they knew it
3 wouldn't pass muster.

4 JUDGE: Ms O'Doherty, forgive me, Ms O'Doherty --

5 MS O'DOHERTY: They did not even declare --

6 JUDGE: -- but you are again going into the merits of your case.

7 MS O'DOHERTY: -- so this so called -- I'm telling you, I'm giving you on the DAR,
8 which you said will be released.

9 JUDGE: Yes, yes.

10 MS O'DOHERTY: This all must be put on the record so that you are fully informed
11 of the action -- the backdrop against which you are making this decision.

12 JUDGE: Ms O'Doherty, I don't think there's any person in this country who is not
13 aware of the backdrop.

14 MS O'DOHERTY: No vote, an unelected Seanad, an unelected government, how
15 many TD's were in the Dáil? We don't know, the Oireachtas won't even tell us, but
16 we suspect less than 50 members of Dáil Eireann were present when this legislation
17 was being enacted without even a vote.

18 JUDGE: That, Ms O'Doherty, that is the -- that is the issue that you want to --

19 MS O'DOHERTY: Without a vote.

20 JUDGE: -- ventilate in your case, so be it. You are entitled to make the argument
21 but not today and not before me.

22 MS O'DOHERTY: So grant us leave, all we want is leave for a judicial review.

23 JUDGE: I am only here to deal with getting the application for leave ready for
24 hearing, I anticipate and I expect that it will be ready for hearing this day two weeks,
25 because you'll have all of the affidavits from any interested party before the Court on
26 that day.

27 MR WATERS: Judge, can I ask a question?

28 JUDGE: Yes.

29 MR WATERS: My understanding is that on Wednesday last, it was open to Judge
30 Sanfey to simply grant us leave for judicial review; is that correct?

31 JUDGE: Yes, yes.

32 MR WATERS: Yes.

33 JUDGE: Well, you can -- a judge has a discretion.

34 MR WATERS: Do you have that discretion?

1 JUDGE: What do you mean do I have that discretion?

2 MR WATERS: Do you have the discretion to grant us leave?

3 JUDGE: No, because the matter has now been -- Judge Sanfey made an order
4 directing that the State, having regard -- as I think in fairness, Mr Waters, any judge
5 would do in circumstances as serious as this, that the State should be put on notice,
6 and a judge has a power and discretion to do that. Judge Sanfey did that, I would
7 probably have done exactly the same myself. Now, having done that, the matter
8 that's now before the Court is getting your application for leave to seek judicial
9 review ready for hearing.

10 MR WATERS: Yes, Judge.

11 JUDGE: Not your application for judicial review.

12 MR WATERS: Yes, Judge.

13 JUDGE: Your application for leave to seek it.

14 MR WATERS: Yes, Judge.

15 JUDGE: And I've given the State two weeks, but I am also requiring that any
16 affidavit to be filed by the houses of the Oireachtas also be furnished in that time. So
17 there won't be a further delay in two weeks' time, do you understand?

18 MR WATERS: Yes, Judge, I could reverse what you said in relation to the urgency,
19 I mean that a judge looking at this case and as you said, in view of the urgency of the
20 matter or the gravity of the matter, would put the other side on notice. You might
21 have just as easily say that given the gravity and urgency of the matter that the
22 permission for a leave to -- for a judicial review should have been granted instantly
23 because the State, the other side will have ample opportunity in that process in which
24 to raise -- to make their case. And I don't see why this has to be part of the
25 preliminary process of the granting of leave for what is clearly, manifestly self-
26 evidently an extraordinarily vital case to place before the courts at the earliest
27 possible moment.

28 JUDGE: Very well, Mr Waters, I hear what you say.

29 MR MEEHAN: Judge, two points.

30 JUDGE: Yes, Mr Meehan?

31 MR MEEHAN: First of all, a practical point, in relation to the Court's direction that
32 the Chief State Solicitor's office would serve those notice parties, despite the
33 allegations of procrastination, prevarication, filibustering, we still haven't received
34 sworn and filed papers. So in order to properly serve them we would need them,

1 now we can serve them with a draft.

2 JUDGE: Well, what was served on you on Friday?

3 MR MEEHAN: By e-mail, we received unsworn -- an unsworn affidavit and an
4 unfiled statement of grounds.

5 MR WATERS: Yes, excuse me, Judge, that was the instruction --

6 MR MEEHAN: So sorry, I just want to be --

7 JUDGE: Just a moment, yes, just -- Mr Waters, I'll hear you in a moment.

8 MR WATERS: That was the judge's instruction to us, the judge's instruction was
9 precisely that.

10 MR MEEHAN: Very good, I'm not -- I'm not making an issue --

11 MS O'DOHERTY: E-mail, e-mail.

12 MR MEEHAN: I'm not criticising anybody, I'm just saying in order for us to
13 properly notify those parties, those documents may be required. Now, there's no
14 difficulty serving them with the drafts today by e-mail in the same way. But I just
15 wanted to flag that to the Court that perhaps --

16 JUDGE: Well, what was Judge Sanfey's order?

17 MR MEEHAN: I don't know.

18 JUDGE: Well, you better find out because if Judge Sanfey gave leave to notify by
19 e-mail, so be it.

20 MR MEEHAN: No, no, I'm not criticising.

21 JUDGE: Yes.

22 MR MEEHAN: I'm just saying we don't have the file and sworn copies to serve on
23 to the third parties.

24 JUDGE: Well, I'll just -- that's a matter of --

25 MR MEEHAN: Yes, I'm sure -- I'm sure it's something that there is a way around.

26 JUDGE: Well, it has a record number, so it obviously has been through the process.

27 MR MEEHAN: It has been through the process.

28 JUDGE: Yes.

29 MR MEEHAN: We just don't have the filed copies.

30 JUDGE: 2020/271JR.

31 MS O'DOHERTY: Judge Sanfey was very clear that we were to e-mail as a result of
32 your Covid legislation, we were to e-mail them to you.

33 MR MEEHAN: As I said --

34 JUDGE: That's -- Ms O'Doherty, there's no issue about that.

1 MR MEEHAN: I'm really not criticising, I really meant, I'm just saying that we need
2 them to serve them, that we need the filed and sworn copies to serve them on to the
3 notice parties.

4 JUDGE: I'll just ask the registrar, is there something on file? Yes, well what's on
5 file is a statement required to ground judicial review and an affidavit of verification
6 dated the 15th of April. Now, I am going to -- I'm not going to vary the order, you
7 can take up the copy from the central office if you want, I mean what --

8 MR MEEHAN: That's fine, we can get a copy of the order there's no difficulty with
9 that at all.

10 JUDGE: Yes.

11 MR MEEHAN: Yes.

12 JUDGE: And a copy of any order made by Judge Sanfey.

13 MR MEEHAN: Yes.

14 JUDGE: Yes, very good.

15 MR MEEHAN: And we'll get the sworn copies of the affidavit and the filed copy of
16 the statement of grounds from the applicants, that's all.

17 JUDGE: Why do you want, why do you want that, why do you want it from the
18 applicants? I can tell you now looking at the file there is a statement of grounds filed
19 and there is an affidavit of verification filed as of the 15th of April.

20 MR MEEHAN: Okay, very well.

21 JUDGE: Now, what do you want, you want them to --

22 MR MEEHAN: We just want to make sure that what we have is what's filed in front
23 of the Court.

24 JUDGE: Okay. Well, I'll tell you what, given the strange circumstances in which
25 we are, I'm going to ask the registrar to give you a copy of that.

26 MR MEEHAN: Very good.

27 JUDGE: That would be the quickest way of dealing with that.

28 MR MEEHAN: That's perfect, that's perfect.

29 JUDGE: Very good.

30 MR MEEHAN: Now, the other matter and this is very important, the -- the Court
31 today has ordered that the affidavits all be furnished within two weeks and that's no
32 difficulty.

33 JUDGE: Yes.

34 MR MEEHAN: I think we're going to adjourn it for mention for two weeks' time

1 because it will be --

2 JUDGE: No, I'll put it in for mention in a week, put it in for mention in a week to
3 ensure that everything will be ready to go then on the date two weeks later.

4 MR MEEHAN: Well, as I said, I spoke to the Attorney General about this
5 yesterday, it was a teleconference and it will be required, and I'm sure the notice
6 parties will also wish to do this and presumably the applicants, to put in detailed
7 legal submissions in addition.

8 JUDGE: Will it though?

9 MR MEEHAN: So those --

10 JUDGE: Legal submissions on the application for leave?

11 MR MEEHAN: Absolutely.

12 JUDGE: Yes.

13 MR MEEHAN: Absolutely, because what we have is and I don't mean this in
14 a disparaging way, I appreciate we have lay litigants, it's a slightly scatter gun
15 approach, in that a myriad of constitutional provisions, a myriad of other provisions
16 are all said to apply to the entirety of two different Acts and three pieces of
17 secondary legislation. That is, if it were to be argued out, a massive exercise and the
18 provision of detailed legal submissions will be able to focus on where leave --

19 JUDGE: No, this is an application for leave now.

20 MR MEEHAN: Absolutely.

21 JUDGE: This is only an application for leave.

22 MR MEEHAN: Absolutely, but in order to get leave, as the Court will be aware,
23 from the Court a certain threshold has to be met.

24 JUDGE: Yes, yes.

25 MR MEEHAN: And it will need to be shown where that threshold cannot be met.

26 JUDGE: Yes.

27 MR MEEHAN: And if it's the case and I'm certainly not conceding that it is, where
28 it can be met. And that is an important -- that's an important legal exercise that we
29 require detailed legal submissions.

30 JUDGE: Yes, yes.

31 MR MEEHAN: And so I mean --

32 JUDGE: So get on with it.

33 MR MEEHAN: Pardon?

34 JUDGE: Get on with it.

1 MR MEEHAN: Well, certainly -- certainly that process has already begun.

2 JUDGE: Very good.

3 MR MEEHAN: There are other lawyers in this case other than me and they have
4 begun that exercise.

5 JUDGE: Yes.

6 MR MEEHAN: But that will need -- that will need by its very nature the closing of
7 the affidavits before it can be completed sometime later.

8 JUDGE: What do you mean the disclosing of the affidavits?

9 MR MEEHAN: The closing of the affidavits, the affidavits will have --

10 JUDGE: No, well okay, well let's look at this now, I am saying two weeks for the
11 affidavits in response, in relation to the application for leave because that's all that's
12 going on.

13 MR MEEHAN: Absolutely.

14 JUDGE: I'll put it in for mention for this day week to see how you're getting on,
15 because if -- the idea would be that the Court in two weeks' time would be in
16 a position to hear the application for leave, do you understand?

17 MR MEEHAN: I understand that.

18 JUDGE: Yes. So in order to facilitate that, the affidavits would probably have to be
19 as a minimum to the applicants by certainly the Friday before the following Tuesday,
20 we're looking at next Tuesday, Tuesday after. So they would probably have to have
21 the affidavits by Friday.

22 MR MEEHAN: Well, Judge, I think I've already outlined why it will take two weeks
23 to prepare these affidavits.

24 JUDGE: Yes, yes.

25 MR MEEHAN: And I don't need to repeat it, I think the Court understands.

26 JUDGE: Well, I think you're just going -- you're just going to -- this is only an
27 application for leave, it's not the hearing itself.

28 MR MEEHAN: No.

29 JUDGE: So an application for leave, it should be possible for the State with its
30 resources to get itself in a position to deal with an application for leave within two
31 weeks, you've already had a week.

32 MR MEEHAN: Well, we haven't.

33 JUDGE: So I want -- I want a process whereby the State is ready to deal with the
34 application for leave this day two weeks. Now, how are we going to get there?

1 MR MEEHAN: Well honestly, Judge, and I've said this from the outset, it seems --
2 I understood the Court to be with me initially.

3 JUDGE: I am.

4 MR MEEHAN: That we will require two weeks to put in an affidavit.

5 JUDGE: Yes.

6 MR MEEHAN: But there will have to be an exchange of legal submissions after that
7 and that's something as I said at the outset.

8 JUDGE: Well, no, they could waive that if they want?

9 MR MEEHAN: Well --

10 JUDGE: They can waive it, I mean if you give them the affidavit on the Friday, I
11 don't know what the date is, the Friday before -- this day fortnight, they can either,
12 the applicants can either say, no, we'll take it on as it is here, we'll deal with the legal
13 submissions, we'll deal with the factual matters or they can come in and say, actually
14 no we need a little more time, Judge, in order to be ready for the hearing. That's at
15 their election it seems to me.

16 MR MEEHAN: Yes. But as I say, as I say, Judge, in view of the way the matter is
17 drafted where all of these provisions, constitutional and other provisions are said to
18 apply to all of the provisions of all of the Acts, it --

19 JUDGE: There is a core issue here, there is a core issue.

20 MR MEEHAN: No, no, of course there's a core issue, but it's -- it does facilitate
21 moving from one issue to another as one perhaps is successful or is unsuccessful, to
22 say well actually, you have to look at the European Convention of Human Rights and
23 we have to look at the Charter of Fundamental Rights, you know and then you're
24 back to the Constitution. It's important, I believe and the State believes and the
25 Attorney General certainly believes --

26 JUDGE: Sorry, the Charter and the Constitution are pretty much ad idem

27 Mr Meehan, it isn't as if the Charter protects rights that the Constitution doesn't in
28 general protect.

29 MR MEEHAN: Well, I --

30 JUDGE: It's not that complex.

31 MR MEEHAN: -- well, I'm not sure that they are ad idem, and perhaps they're ad
32 idem in that they --

33 JUDGE: There was a very interesting article published yesterday, you should have
34 a look at it, by FRA on the operation of special provisions of Covid 19 throughout

1 the European Union, very good article, balancing the right to life against the other
2 rights that exist under the Charter.

3 MR MEEHAN: Absolutely, Judge, and I --

4 JUDGE: And that's the core of it, isn't it?

5 MS O'DOHERTY: Judge, when you --

6 MR MEEHAN: Of course, of course, it is and these are -- these are really important
7 issues, I'm not pretending for a minute that they're not.

8 JUDGE: Yes, yes.

9 MR MEEHAN: They are important issues and they need to be properly -- they need
10 to be properly the subject of legal submissions, the Court needs to have the benefit of
11 those submissions before sitting down and deciding --

12 JUDGE: Sorry, sorry, it's an application for leave.

13 MR MEEHAN: Yes, but --

14 JUDGE: And you are saying leave should not be granted.

15 MR MEEHAN: That's --

16 JUDGE: That is -- that is a narrow issue, that is a narrow issue that leave should not
17 be granted.

18 MR MEEHAN: Well, with respect --

19 JUDGE: And if, and if the State can't get itself together to deal with that issue within
20 two weeks, the Court will be very surprised. What if -- what if this happened to have
21 been a plenary summons and an application for an injunction?

22 MR MEEHAN: Well, it's not.

23 JUDGE: I know it's not.

24 MR MEEHAN: It's not.

25 JUDGE: I know it's not, do you think -- I mean you've already had a week in the
26 sense of knowing --

27 MR MEEHAN: Well, we --

28 JUDGE: -- you've known about it, you got the papers on Friday. I would expect that
29 you would be in a position to deal with an application for leave in two weeks' time.
30 Now, how do we achieve that?

31 MR MEEHAN: Well, I simply think that is an unrealistic timeframe.

32 JUDGE: Very good.

33 MR MEEHAN: Given -- given that I have already set out to the Court, that will take
34 two weeks and that's going flat out to draft the affidavit, that's people from the

1 Department of Health who it's not as though they've nothing else to do.

2 JUDGE: But that's separate from the legal issues though, isn't it?

3 MR MEEHAN: No, the legal issues will emanate from the affidavits, it won't be
4 crystal clear what those legal issues are. Of course, we can make a start on it and we
5 will make a start on it. But --

6 JUDGE: I'll tell you what I'll do, I'll tell you what I'll do, you wanted two weeks for
7 the affidavit, I've given you two weeks. I assume that once that affidavit is in,
8 matters should be ready to go, as long as the houses of the Oireachtas are on board as
9 well. Matters should be ready to go at that stage at the end of two weeks; isn't that
10 right?

11 MR MEEHAN: Well, what about this, Judge, and perhaps this is where the Court is
12 going any way, that the matter be put in for mention in a week.

13 JUDGE: Yes.

14 MR MEEHAN: And that we've two weeks to put in our affidavit.

15 JUDGE: No, no, no, no, I've put it in -- I'm leaving it at two weeks from today to put
16 in your affidavit. It will depend, if -- you have to be ready to go with the leave
17 application in two weeks. If the applicants, having received your documentation,
18 your affidavit and your legal submissions, decide they need time, so be it. But
19 I expect the State to be in a position to address the leave application, just the leave
20 application in two weeks' time.

21 MR MEEHAN: No, no, Judge I'm sorry now, but Judge, the idea that the State
22 would put in legal submissions in the absence of submissions from the applicant, just
23 we are the respondent to this case.

24 JUDGE: Yes.

25 MR MEEHAN: The applicants have made a number of -- a number of assertions
26 both on paper and here today, they have to back them up.

27 JUDGE: Sorry hold on --

28 MR MEEHAN: No, no.

29 JUDGE: Sorry, no, no, you're conflating the hearing --

30 MR MEEHAN: No, I'm not.

31 JUDGE: -- with the leave application.

32 MR MEEHAN: I'm not, the leave, the leave application -- I'm -- the leave
33 application is all I'm talking about, it's all I'm talking about.

34 JUDGE: Yes, what legal submissions do they have to put in in relation to the leave

1 application?

2 MR MEEHAN: Well, if they want to submit that it meets the test in G v. the DPP or
3 whatever other law they want to rely on to say that they ought to get leave --

4 JUDGE: No, but you're objecting to the leave.

5 MR MEEHAN: Of course I am.

6 JUDGE: Yes.

7 MR MEEHAN: So -- but it's still --

8 JUDGE: So therefore it's for you to say they are not entitled to get leave.

9 MR MEEHAN: No, no, the onus to achieve leave is on the applicant, the onus to
10 prove to the Court that they should --

11 JUDGE: It's a very low threshold as we know.

12 MR MEEHAN: Well, it is, but it's still a threshold and it's up to the applicant to
13 meet that threshold, not to the State respondent. And they have the onus of proof
14 that this case reaches that threshold, it's up to them to put in their submission setting
15 out why and then the State can respond. It's not up to the State to say, well these are
16 the reasons why perhaps it might and these are the reasons we say it doesn't. We
17 have to have something to respond to.

18 MS O'DOHERTY: Sorry, the State has to, when presenting legislation --

19 JUDGE: Stop it, stop it, Ms O'Doherty.

20 MS O'DOHERTY: The country under mass house arrest, you should be able to
21 defend it.

22 JUDGE: Ms O'Doherty, we're discussing procedural matters, not the substance of
23 your complaint. We're discussing procedural matters, how we get this application
24 for leave on for hearing.

25 MR MEEHAN: Yes.

26 JUDGE: That is what I am doing.

27 MS O'DOHERTY: We have already presented our case.

28 JUDGE: Now, Ms O'Doherty, could you please just listen to me? What they are
29 saying is that before you get leave in this circumstance, you must show that you are
30 entitled to get leave for judicial review, do you understand?

31 MS O'DOHERTY: And that's your decision, Judge, and we have presented our case.

32 JUDGE: No, no, no, no, no, there is --

33 MS O'DOHERTY: Because the country is under mass house arrest.

34 JUDGE: -- there is a legal -- there is -- Ms O'Doherty?

1 MS O'DOHERTY: People are afraid to go out on to the streets.

2 JUDGE: Ms O'Doherty, there is -- obviously you have access to some legal input.
3 What you have to -- what the State is saying is you have to show the Court that in
4 these circumstances of your application, you are entitled to an order giving you leave
5 to seek judicial review, okay, and that's --

6 MS O'DOHERTY: And we know the bar --

7 JUDGE: And sorry, that is a procedural matter, okay. So do you want, do you want
8 --

9 MS O'DOHERTY: Well, that's not our -- that's not our understanding, Judge, our
10 understanding is that the bar is set fairly low.

11 JUDGE: It is, that's what I said, it's a low threshold.

12 MS O'DOHERTY: And we have made a case that this country, the people of our
13 country are under mass house arrest at the moment.

14 JUDGE: Ms O'Doherty --

15 MS O'DOHERTY: Are interrogated by members of An Garda Síochána every time
16 they go out on the roads, this is an outrageous attack on their fundamental --

17 JUDGE: Ms O'Doherty, Ms O'Doherty, again you are just going back to what your
18 claim is. What we are dealing with at the moment is the hearing of the application
19 for leave. Now, just --

20 MS O'DOHERTY: There should be no hearing, we have set out our grounds --

21 JUDGE: -- do you want, do you want, Ms O'Doherty --

22 MS O'DOHERTY: -- by now the courts should have granted us leave and you know
23 that and you all, all of you know that.

24 JUDGE: That's your view, Ms O'Doherty, that's your view Ms O'Doherty. Do you
25 want --

26 MS O'DOHERTY: And you will have this, when we go back into bankruptcy again
27 --

28 JUDGE: Ms O'Doherty?

29 MS O'DOHERTY: -- it'll be all of your fault.

30 JUDGE: Ms O'Doherty?

31 MS O'DOHERTY: Because you have -- you are messing with the fact that we are
32 not lawyers and that's a first year --

33 JUDGE: Ms O'Doherty, do you want -- Mr Waters, perhaps you might listen to me.
34 Do you want an opportunity to put in legal submissions on the issue of applying for

1 leave, that you are entitled to --

2 MS O'DOHERTY: Well, I believe we will be appealing this decision --

3 JUDGE: -- you are entitled to get -- do you want, do you want an opportunity to put
4 in submissions?

5 MS O'DOHERTY: I believe we will be appealing this decision.

6 MR WATERS: Clearly that is an attempt, as you intimated, an attempt to turn this
7 procedure, which is an application for leave --

8 JUDGE: Yes.

9 MR WATERS: -- into the substantive hearing.

10 JUDGE: No, no, no.

11 MR WATERS: That is clearly what's happening -- that is clearly what --

12 JUDGE: And that's exactly what I'm trying to -- that is --

13 MR WATERS: That is clearly what are -- it's clearly --

14 MS O'DOHERTY: Yes.

15 JUDGE: -- that's what I am trying to avoid, Mr Waters.

16 MR WATERS: Well, I would wish, very much wish to avoid it.

17 JUDGE: Yes, yes.

18 MR WATERS: Because that's what they're trying to achieve.

19 MR MEEHAN: No, no, Judge.

20 JUDGE: Now, it's a -- sorry, Mr Meehan, stop.

21 MR WATERS: It's quite clear.

22 JUDGE: Mr Waters, I have a simple question for you, do you want -- we're going to
23 have a hearing about the application for leave.

24 MR WATERS: Yes.

25 JUDGE: Not the leave itself, the application for leave, there's going to be a hearing,
26 do you understand?

27 MR WATERS: Yes, I understand, yes.

28 JUDGE: Now, you -- do you want an opportunity to put in legal submissions as to
29 why you say you are entitled to leave?

30 MR WATERS: We've already done so.

31 JUDGE: No, no, you haven't, no, that's the substantive, I'm just talking about the
32 leave application. Do you want an opportunity to put in legal submissions as to why
33 you and Ms O'Doherty are entitled to leave to seek judicial review?

34 MR WATERS: There's no difficulty, Judge, we can -- we can serve -- we can

1 respond within 24 hours of receiving whatever --

2 JUDGE: No, no, no, you have to -- the -- there is an issue now, are you or aren't you
3 entitled to get leave to seek judicial review. I'm just asking you a question, do you
4 want an opportunity to put in legal submissions as to why in the circumstances of
5 this case, you, Mr Waters and Ms O'Doherty, are entitled to get leave, entitled to get
6 leave, do you want to do that?

7 MS O'DOHERTY: We've done it already.

8 MR WATERS: I believe, I believe we've already done the necessary -- basically --

9 JUDGE: Do you want to do that?

10 MR WATERS: -- taking the basic steps, what is happening here, there is an attempt
11 to turn the application for leave into a pseudo trial of the substantive issue.

12 JUDGE: And I'm attempting to stop that, Mr Waters, I'm attempting to ensure that
13 doesn't happen, Mr Waters.

14 MR WATERS: It may well be that we will have no choice but to go to the Court of
15 Appeal on is this.

16 MS O'DOHERTY: Immediately, immediately.

17 JUDGE: Very good, well that's -- so be it, Mr Waters, that's -- so be it.

18 MS O'DOHERTY: You denied entry to the public, which is unconstitutional, this
19 has been a most important hearing because some of the statements that have been
20 made by the State in here today and by yourself, Judge, would leave a first year law
21 student embarrassed.

22 MR MEEHAN: Judge, there's a very simple --

23 JUDGE: Yes, Mr Meehan?

24 MS O'DOHERTY: We -- it's very clear what is going on in this courtroom.

25 MR MEEHAN: -- the question of leave.

26 JUDGE: Yes.

27 MR MEEHAN: Is what -- the application that was brought to Mr Justice Sanfey last
28 week.

29 JUDGE: Yes, and he said it should be on notice to you, so that you could be heard
30 on it?

31 MR MEEHAN: And he felt, he felt -- exactly. So, Judge, he felt that it was
32 a complex enough issue that --

33 JUDGE: I don't know what he felt.

34 MR MEEHAN: Well, he certainly --

1 JUDGE: What I do know is that he directed that you be put on notice.

2 MR MEEHAN: Exactly, he certainly felt --

3 JUDGE: And I have expressed the view that I think any judge of the High Court
4 would have done the same.

5 MR MEEHAN: And I believe the same, Judge. So he certainly felt that there was
6 a complex enough issue that the State should be entitled to, and it would be
7 beneficial for the court, whichever court hears this, to have the State's legal
8 submissions in relation to this. So --

9 JUDGE: In relation to leave?

10 MR MEEHAN: Yes, because otherwise --

11 JUDGE: Yes, and you have -- you have -- if Mr Waters and Ms O'Doherty want to
12 rely on the statement they've already supplied, so be it, you then put in your
13 response. I am just asking them, do they want an opportunity to make legal
14 submissions on their entitlement to seek leave to seek judicial review or not.

15 MR MEEHAN: Yes.

16 JUDGE: If they don't, so be it. You can then simply argue on the basis of what they
17 have done to date that they're not entitled to leave; isn't that right?

18 MR MEEHAN: Very well, I mean -- very well.

19 JUDGE: Yes, and they have -- I'm yet waiting for an indication from Mr Waters and
20 Ms O'Doherty whether they want that opportunity. Do you want that opportunity,
21 Mr Waters?

22 MR WATERS: Well, we certainly want to be able to avail of justice in this court.

23 JUDGE: Yes, I'm doing my best, Mr Waters.

24 MR WATERS: Certainly whatever procedure, whatever procedure, however
25 irregular it is and I am beginning to suspect it is deeply irregular, it is in process now,
26 we will certainly participate in it to the full, we will -- but --

27 JUDGE: Very good. Well, what you have to do, there is a very low threshold to be
28 --

29 MR WATERS: That doesn't -- that isn't what appears like.

30 JUDGE: Sorry, Mr Waters, can I just -- it might help you if you listen to me. There
31 is a low threshold for an applicant seeking leave for judicial review, a low threshold.

32 MS O'DOHERTY: Well, why don't you just give us leave?

33 JUDGE: Sorry, would you just -- do you want to give them a set of submissions
34 saying, we are over that threshold and here is why, okay, we meet the threshold for

1 judicial review and here is why. Now, if you want to do that, that's fine. If you don't
2 want to do that, that's also fine, I'm just asking you?

3 MR WATERS: Yes, but what concerns us is that there is an attempt, as we have said
4 already, to delay and prevaricate and prevent this matter being heard at all by a court.

5 JUDGE: Mr -- Mr Waters, have you listened to me at all in the last hour?

6 MR WATERS: So it will be postponed indefinitely into the future and in two years'
7 time --

8 JUDGE: Sorry, Mr Waters, I have worked hard over the last hour to ensure that that
9 doesn't happen by ensuring that all matters are ready to go this day two weeks. You
10 mustn't have been listening to me.

11 MR WATERS: I am listening to you very carefully, Judge.

12 JUDGE: Very good, very good.

13 MR WATERS: But as I say, it seems to me very strange that the State has had our
14 papers now for five days and they have not -- they are nowhere near started it
15 appears from what we were told with their response.

16 JUDGE: No, that's not -- that's not what he is saying. No, Mr Waters, I am anxious
17 to ensure that this matter comes before the court, the matter of your application for
18 leave comes before the court promptly. I am endeavouring to ensure that that will be
19 ready to go this day two weeks with all parties heard, including the houses of the
20 Oireachtas and the senate and the Dáil and so on, everybody will have their
21 opportunity to put in their papers by this day two weeks. Then the application for
22 leave will be heard, do you understand?

23 MR WATERS: I understand.

24 JUDGE: So that is the first hurdle, I am endeavouring to ensure that it is not kicked
25 off, as it were, into Never Never Land, but that there would be a focused application
26 ready for the court to hear in two weeks' time. To that end I'm going to put it in for
27 mention this day week for whoever is here this day week to ensure that matters are
28 proceeding a pace with the indication that the matter will be in for hearing this day
29 two weeks, not for mention. It'll be for mention next week to ensure that it will be
30 ready for hearing the week after. Is everybody clear?

31 MR MEEHAN: May it please the Court.

32 MR WATERS: Thank you.

33 JUDGE: Is that clear?

34 MR WATERS: Thank you, Judge, yes.

1 JUDGE: Very good, and I'm going to just -- I still haven't gotten a final answer to
2 from Mr Waters and Ms O'Doherty on whether they want to file legal submissions
3 on their entitlement to apply for judicial review.

4 MR MEEHAN: It's probably something we can discuss next week.

5 JUDGE: But if they -- I'll give them -- I'll give them until -- if you want to file those
6 legal submissions, Ms O'Doherty, Mr Waters, I'll give you to the end of the week to
7 do it.

8 MS O'DOHERTY: No, we already have and we've put it very clearly on the record
9 that these -- this legislation is repugnant to the Constitution.

10 JUDGE: We know that, Ms O'Doherty, Ms O'Doherty that's not --

11 MS O'DOHERTY: On a number of fronts, yes, so they should be grounds for you to
12 grant judicial review.

13 JUDGE: Well, that's -- well if that's your position, that's fine.

14 MS O'DOHERTY: Yes, oh so we've granted that already --

15 JUDGE: If that's your position, that's fine.

16 MS O'DOHERTY: I do want to put on the record of this Court, Judge, that you were
17 speaking about balancing the right to life against what we are saying, the rights and
18 our fundamental freedoms in our Constitution. You're clearly not keeping yourself
19 up-to-date with the mortality rates in relation to Covid 19, which are, as the
20 Department of Health will be well aware, are --

21 JUDGE: Ms O'Doherty, what I -- Ms O'Doherty --

22 MS O'DOHERTY: No, you -- you will not let me finish my sentence, Judge.

23 JUDGE: -- again you're going -- again you want to make a speech, Ms O'Doherty,
24 there is law in being, I am bound by the law that is in being --

25 MS O'DOHERTY: 100 people die in Ireland every day, Judge, you have put on the
26 record that we are in this court today to balance the right to life against the
27 fundamental freedoms laid out in Bunreacht na hÉireann.

28 JUDGE: No, I'm talking about what your general argument is --

29 MS O'DOHERTY: So you are suggesting that Covid 19 is a threat to our life, it has
30 clearly been shown it is not. The average age of death is up in the high 80s.

31 JUDGE: Sorry, Ms O'Doherty, Ms O'Doherty --

32 MS O'DOHERTY: These are people who are dying anyway --

33 JUDGE: -- the law --

34 MS O'DOHERTY: -- but the Department of Health is telling doctors put down

1 Covid 19. This will be a fundamental part of our case.

2 JUDGE: Very good, that's your case, Ms O'Doherty.

3 MS O'DOHERTY: The figures -- the Department of Health refuses to answer our
4 questions in relation to the registration of death, which all around the world have
5 been shown that the registration of death is being manipulated, Judge.

6 JUDGE: Ms O'Doherty?

7 MS O'DOHERTY: Manipulated.

8 JUDGE: I have to deal --

9 MS O'DOHERTY: 100 citizens die in this country everyday --

10 JUDGE: Ms O'Doherty?

11 MS O'DOHERTY: -- most of them are terminally ill or infirmed, now they have
12 Covid.

13 JUDGE: Very good, Ms O'Doherty, I have to deal -- I have to deal with the law as it
14 is. The law as it is has two legislative pieces --

15 MS O'DOHERTY: But you are, you are -- Judge, you have --

16 JUDGE: -- pieces of legislation passed by the Dáil, you say wrongly, you say un-
17 constitutionally. However, that is legislation, I am bound by that until such time as
18 a declaration is made that it is unconstitutional, and that is what I am doing,
19 Ms O'Doherty.

20 MS O'DOHERTY: Okay.

21 JUDGE: Very good.

22 MS O'DOHERTY: But I am very disturbed by the fact that you have said that this is
23 about the right to life.

24 JUDGE: Very good, yes, Ms O'Doherty, save your argument, thank you.

25

26 Court adjourned

1 Certified to be a complete and correct transcript of the record of the proceedings
2 herein*:

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13 (*The absence of a dedicated logger in court to provide a detailed log may result in
14 speaker names being omitted or unconfirmed.)

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