

**THE HIGH COURT  
JUDICIAL REVIEW**

**[Record No. 2019/484 JR]**

**BETWEEN**

**ARTHUR CONNELL NUGENT**

**APPLICANT**

**AND**

**THE PROPERTY SERVICES REGULATORY AUTHORITY**

**RESPONDENT**

**JUDGMENT of Mr. Justice Barr delivered electronically on the 17th day of September, 2020**

**Introduction**

1. In these judicial review proceedings, the applicant seeks an order of prohibition, together with certain other declaratory reliefs, in respect of a pending prosecution in the District Court for offences contrary to s. 28 of the Property Services Regulation Act, 2011.
2. On 15th July, 2019, being two days prior to the date on which the matter was to be relisted for mention before the District Court, the applicant obtained leave to proceed by way of judicial review and an order was made restraining his further prosecution in the District Court pending the outcome of these proceedings.
3. In summary, the applicant seeks to prevent his trial going ahead on the following grounds:-
  - (i) It is argued that having regard to the nature of the investigation carried out by the respondent, it lacks jurisdiction to prosecute him for the alleged offences. In particular, the applicant argues that because the investigation was commenced pursuant to s. 89 of the Property Services Regulation Act, 2011 (hereinafter referred to as "*the Act*"), as an investigation (non-licensee) into Edward Paul Nugent Limited/Castleblayney Livestock Sales, the respondent was not entitled to rely on the report produced by the inspectors who carried out the investigation into the company to ground her decision to prosecute the applicant for alleged offences contrary to s. 28 of the Act (the jurisdiction point).
  - (ii) It is submitted by the applicant that the caution which was administered by the inspectors who were investigating the company, which caution was administered at an inspection carried out by them of the company premises on 9th March, 2018, whereby he was informed that they were carrying out an investigation into the company and that he was not obliged to say anything, meant that the respondent was precluded from using any of his answers to their questioning, because the applicant had never been told that as a result of his answers, he could become the subject matter of a prosecution. It was argued that having regard to the terms of the caution that was issued by the inspectors on that occasion, it would be unfair to admit any statements made by him as a result of that caution having been administered to him (the caution point).

- (iii) It was submitted that because the inspectors had transcribed the handwritten notes of what had transpired at the site inspection on 9th March, 2018, into typed notes and had then shredded the handwritten notes made by one of the inspectors, the court should exclude all the evidence contained in the typed version of the notes, because the applicant had been deprived of the opportunity to adequately challenge same by virtue of the fact that the original handwritten notes had been deliberately destroyed by the inspectors (the missing evidence point).
  - (iv) In the statement of grounds, the applicant sought an extension of time within which to bring his judicial review application.
- 4. In very brief terms, the respondent's reply is in the following terms: it is argued that the applicant is out of time to bring the judicial review proceedings and has not provided any evidence which would enable the court to find that there was good and sufficient reason why the application seeking leave was not brought until 15th July, 2019 and, accordingly, the court cannot extend the time within which the proceedings can be brought and, therefore it should rule that the proceedings are out of time.
- 5. The respondent further argues that the reliefs sought by the applicant are in effect an attempt to get the High Court to rule on issues regarding the admissibility of evidence which may be led by the prosecution at the trial and, as such, these are issues that more properly lie within the jurisdiction of the trial judge and, on this basis, the court should refuse to grant the reliefs sought.
- 6. The respondent also made substantive arguments as to why the reliefs should not be granted. Very briefly stated, in relation to the jurisdiction point, it was submitted that while the initial investigation was an investigation pursuant to s. 89 of the Act in respect of the activities of the company, that did not preclude the respondent from making the decision to prosecute the applicant in respect of the alleged offences, on the basis of evidence that came to light in the course of the investigation by the respondent into the activities of the company.
- 7. In relation to the caution point, it was submitted that when the inspectors entered the premises on 9th March, 2018, they were in fact carrying out an investigation (non-licencee) into the company pursuant to s. 89 of the Act. The caution very clearly informed the applicant of that fact and further informed him in very clear terms that he was not obliged to say anything unless he wished to do so. In those circumstances, it was submitted that the admissions that were freely made by him in the course of the inspection of the premises, was evidence which could be used by the respondent to ground a prosecution against the applicant. In addition, there was other evidence, apart from the admissions made by the applicant, which the prosecution was entitled to call at the trial to establish that the applicant had committed the alleged offences. In particular, there would be evidence from the two inspectors that they returned to the premises later on the same day, 9th March, 2018 and witnessed the applicant carrying out livestock sales at the premises at a time when neither he nor the company had a licence to do so.

8. Finally, in relation to the missing evidence point, it was submitted that there was not in fact any evidence "missing". What had happened was that the handwritten notes, which contained abbreviations and shorthand notes made by one of the inspectors, Ms. Gavin, had been transcribed into a typed format, without any shorthand abbreviations. These had then been signed by both of the inspectors as a true record of what had occurred and of what they had seen at their inspection on the particular day. It was only after the typed written notes had been drawn up, that the handwritten notes were shredded.
9. It was submitted that the notes drawn up by the inspectors were not evidence. They were merely a record as to what the inspectors would state had occurred in the course of their interview and site inspection on 9th March, 2018. The inspectors would give viva voce evidence as to what had occurred on that day. It was further asserted that it was not sufficient for the applicant to simply assert that he could not get a fair trial due to the absence of the original handwritten notes, without in any way engaging with the substance of the typed notes. In particular, he had not stated at any stage that the typed notes were inaccurate or incomplete in any way.
10. That is a very brief summary of the issues before the court on this judicial review application.

### **Background**

11. The Property Services (Regulation) Act, 2011, established the Property Services Regulatory Authority to control and supervise the providers of property services; to investigate and adjudicate on any complaints against persons providing such services and to bring prosecutions against persons, be they licence holders or not, who contravened the provisions of the Act. The respondent's function is stated in s. 11 to be to "*control and supervise licensees and maintain and improve standards in the provision by them of property services*".
12. The respondent's specific functions include issuing and renewing licences permitting persons to perform property services; specifying and enforcing qualification requirements for the issue or renewal of licences; specifying and enforcing standards to be observed in the provision of property services by licensees; conducting investigations, where appropriate, into the provision of property services by licensees or other persons and establishing and administering a system of investigation of licensees.
13. The term "property service" is defined in the Act to mean the provision, for consideration, within the State in respect of property located within or outside the State of any of the following:-
  - (a) The auction of property other than land;
  - (b) The purchase or sale, by whatever means, of land;
  - (c) The letting of land (including a letting in conacre or for the purpose of agistment);  
or

- (d) Property management services, by a property services employer, an employee of a property services employer, a principal officer of a property services employer or an independent contractor.
14. Section 28 of the Act enjoins persons from providing property services or holding themselves out or representing themselves as being available to provide property services unless they are the holder of a licence. A person who contravenes s. 28 (1) is guilty of a criminal offence.
15. Section 89 of the Act provides that the Authority may carry out an investigation into any person not being a licensee, who is suspected of having contravened or is contravening s. 28 (1). The section provides for the appointment of inspectors to conduct any such investigation and for the preparation of an investigation report for submission to the respondent following its completion. Inspectors so appointed are afforded wide-ranging powers pursuant to s. 66 of the Act. At the conclusion of their investigation, the inspectors submit a report to the CEO of the Authority.
16. Section 89 further provides that the Authority, having considered the investigation report (non-licensee) submitted to it, can take a number of courses, including making a decision to prosecute the non-licensee for breach of the Act. It should be noted that s. 89 specifically provides that its provisions are without prejudice to the generality of s. 94 of the Act. Section 94 (7) authorises the respondent to prosecute persons who have contravened s. 28, while s. 94 (8) provides for a time limit in respect of such prosecutions.

**Background to the Present Case**

17. Edward Paul Nugent Limited (hereinafter referred to as "*the company*") is a private company limited by shares, which was incorporated on 30th December, 1980. The company entered liquidation on 9th April, 2018. Prior to its liquidation, the applicant was a director and employee of the company. Ms. Elizabeth Nugent, was the company's secretary.
18. The company held licences under the Act for the periods 11th February, 2013 to 30th June, 2015, and from 20th February, 2016 to 19th February, 2017.
19. On 21st February, 2017, a letter was issued to the applicant, being the principal of the company, to inform him that the company's licence had expired. All eight of the employees of the company (including the applicant), who were licensed individually under the Act, had applied to renew their individual licences in January, 2017. However, following the failure of the company, being their employer, to renew its licence, their applications were deemed withdrawn. They were informed of that by way of correspondence from the respondent in June and July, 2017.
20. By letter of appointment dated 19th February, 2018, the respondent appointed two inspectors, Mr. William O'Gorman and Ms. Antoinette Gavin, to carry out an investigation into the activities of the company and Castleblayney Livestock Sales, which appeared to

be its trading name, which carried on business from Muckno Street, Castleblayney, County Monaghan.

21. On 9th March, 2018, the two inspectors attended at the company's premises in Castleblayney, County Monaghan. Affidavits have been sworn by Mr. O'Gorman and Ms. Gavin in relation to what occurred in the course of that site inspection. There was also a typed written set of notes running to just over two pages setting out the inspectors' account of what had occurred during the inspection. It is common case that during that inspection, the inspectors spoke to both Ms. Maura Nugent and, some short time later in the morning, to the applicant. It is common case that prior to engaging with either of these people, they were cautioned in the following terms:-

*"I, William O'Gorman, am an inspector appointed pursuant to s. 27 of the Property Services (Regulation) Act, 2011. I was appointed pursuant to s. 89(2) of the 2011 Act to carry out an investigation (non-licensee) into EP Nugent Limited, Castleblayney Livestock Sales. You are not obliged to say anything unless you wish to do so, but whatever you do say will be taken down in writing and may be given in evidence."*

22. The inspector stated that both Ms. Nugent and the applicant indicated that they understood the terms of the caution. They each signed the caution and were given a copy of same for their records.
23. Ms. Nugent had also been given a copy of ss. 28 and 66 of the Act and Mr. O'Gorman had gone through the contents of those sections with her. According to the inspectors, the applicant arrived at the premises at 11:23 hours. At this time, Mr. O'Gorman explained that they were inspectors from the PSRA and were investigating trading without a licence, an offence under s. 28. The applicant then brought them into an office. Mr. O'Gorman cautioned the applicant at that stage in the same terms as he had done with Ms. Nugent. Mr. O'Gorman states that he gave copies of the meaning of what constituted "property service" under the Act, together with ss. 27, 66 and 89 thereof and went through the documentation with the applicant. In the course of the inspection, the applicant furnished an amount of documentation to the inspectors. It was noted that there was a mart scheduled to take place at 13:00 hours that afternoon. In the course of the interview, the inspectors stated that the applicant acknowledged that he was an auctioneer and was the principal of the company EP Nugent Limited and Castleblayney Livestock Sales.
24. In their affidavits, the inspectors stated that they left the premises at approximately 11:52 hours, having informed the applicant that they would be returning to observe the mart taking place at 13:00 hours.
25. During the course of the site inspection and interview, handwritten notes were taken by Ms. Gavin.
26. The inspectors go on in their affidavit to state that they returned to the premises at 13:00 hours on 9th March, 2018 and there observed a mart taking place. The applicant was the

auctioneer and he was assisted by Ms. Maura Nugent. Two young cattle were sold during the time that the inspectors observed the mart. They left the premises at 13:30 hours. They did not take any notes while they were present at the mart, but Ms. Gavin wrote up her notes when they were sitting in the car having left the premises. On 12th March, 2018 Ms. Gavin stated that she directly transcribed the handwritten contemporaneous notes that she had taken on 9th March, 2018 into a typed record of the notes. Anything that she had written in shorthand she transcribed into long hand. When that had been done, she printed out the typed note and she signed it and it was signed by Mr. O’Gorman. She then placed the signed typed record of the handwritten notes on the file. Once that procedure had been completed and both she and Mr. O’Gorman were satisfied that she had on file an accurate typed record of the handwritten contemporaneous notes that she had taken, she then destroyed her handwritten contemporaneous notes by shredding them.

27. Pursuant to s. 89 of the Act, the inspectors furnished a report to the CEO of the respondent on 29th August, 2018.
28. Having considered the content of the inspectors’ report, Ms. Maeve Hogan, CEO of the respondent, was satisfied that sufficient evidence to suggest a contravention of s. 28 of the Act on the part of the applicant had been disclosed and on that basis on 24th September, 2018 the respondent decided to bring summary proceedings against the applicant. Ms. Hogan issued a certificate on 24th September, 2018 stating that having considered the investigation report prepared by the inspectors she was satisfied that there was sufficient evidence of a breach of s. 28 of the Act by the applicant to justify proceedings being instituted. She therefore decided to bring summary proceedings against the applicant pursuant to s. 94 (7) of the Act. She confirmed for the purposes of s. 94 (9) and s. 94 (8) (b) of the Act, that the evidence sufficient in her opinion to justify proceedings came to her knowledge as of the date of that certificate.
29. The respondent applied to the District Court for the district area of Carrickmacross for the issue of a summons against the applicant alleging that he had committed the following offences:-
  - (a) That on the 8th day of March, 2018, the applicant, at Muckno Street, Castleblayney, Co. Monaghan, did provide property services within the meaning of s. 2 of the Property Services (Regulation) Act 2011 by conducting an auction of livestock and at the time of so doing was not the holder of a licence which was in force for the said property services in contravention of s. 28 (1) (a) of the Property Services (Regulation) Act 2011.
  - (b) That on the 9th day of March, 2018, the applicant, at Muckno Street, Castleblayney, Co. Monaghan, did hold himself out in person as being available to provide property services within the meaning of s. 2 of the Property Services (Regulation) Act 2011 and at the time of so doing was not the holder of a licence which was in force for the said property services in contravention of s. 28 (1)(b) of the Property Services (Regulation) Act 2011.

### **The Proceedings Against the Applicant**

30. On 14th December, 2018 the summons issued from the District Court. It was served on the applicant on 20th December, 2018.
31. On 18th February, 2019 the applicant was provided with disclosure, to include the inspectors' report and the CEO's certificate. On 26th February, 2019 the applicant sought disclosure of the original of the inspector's notes. By letter of the same date, the applicant's solicitors were advised that the original notes had been destroyed. That was confirmed by counsel on behalf of the respondent at a hearing in the District Court on the following day, 27th February, 2019.
32. On 6th March, 2019, the applicant's solicitors noted in correspondence that disclosure was complete. On 24th May, 2019 the applicant's solicitors wrote requesting that the prosecution be withdrawn. On 28th May, 2019, the applicant's solicitors threatened judicial review if the proceedings were not withdrawn. By letter dated 30th May, 2019, the respondent refused to withdraw the prosecution.
33. By letter dated 28th June, 2019 the applicant's solicitors proposed making a preliminary application to dismiss the prosecution on 17th July, 2019 before the District Court. By letter dated 3rd July, 2019 the respondent confirmed that it would not object to the court hearing a preliminary application to dismiss the prosecution, but it would not agree to the hearing that day being limited to that issue.
34. On 15th July, 2019, the applicant obtained leave from the High Court to proceed by way of judicial review.

### **Conclusions**

35. Having regard to the conclusions that I have reached in this case, it is not necessary to set out the elaborate argument that was made on behalf of the applicant to the effect that as the original investigation into the company had proceeded as an investigation (non-licensee) under s. 89 of the Act, the respondent did not have jurisdiction to initiate proceedings against the applicant for a breach of s. 28 of the Act. Nor is it necessary for the court to set out the elaborate argument that was put forward on behalf of the applicant on either the caution point, or the so called missing evidence point. This is due to the fact that having considered the evidence, the exhibits to the affidavits and the legal submissions of the parties, I have come to the conclusion that I must refuse the applicant's application herein because it has been brought out of time.
36. Order 84, rule 21 (1) of the Rules of the Superior Courts, provides that an application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose. There is provision in the rules for that period to be extended. Order 84, rule 21 (3) is in the following terms:-

*"(3) Notwithstanding sub-rule (1), the Court may, on an application for that purpose, extend the period within which an application for leave to apply for judicial review may be made, but the Court shall only extend such period if it is satisfied that:*

- (a) *There is good and sufficient reason for doing so, and*
- (b) *the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either (i) were outside the control of, or (ii) could not reasonably have been anticipated by the applicant for such extension."*

37. In relation to the jurisdiction point raised by the applicant, the respondent has argued that time ran from when the summons issued. In this regard the respondent relied on the decision in *Irish Skydiving Club Limited v. An Bord Pleanála* [2016] IEHC 448, where it was held that "*the running of time in judicial review is not based on a consideration of when an applicant became aware of the decision sought to be challenged*", but rather it was linked with the "*making of the decision*". Based on that decision, it was submitted by the respondent that the relevant date was not that on which the applicant became aware of the initiation of the prosecution, namely on 20th December, 2018 when the summons was served on him, but was the date on which the summons had issued, being 14th December, 2018.
38. I do not think that the respondent's contention in this regard is well founded. The *Irish Skydiving Club* case was a planning case. It is well settled that in planning matters, time runs from the date of the decision by the planning authority, irrespective of when the applicant learns of the making of that decision. However, that is explicable by virtue of the fact that in making its decision, the planning authority, or An Bord Pleanála, is exercising a statutory function and the decision that they make is made public. In such circumstances, it is entirely reasonable that time runs from when the decision was made.
39. Here, the application for the summons was done without notice to the applicant. He was not aware that summonses had issued against him until they were served upon him. Accordingly, it seems to me that time could only run at the earliest from when the summons was actually served on the applicant. This would mean that for the jurisdiction point and the caution point, time started running on 20th December, 2018 and the relevant time limit for bringing judicial review proceedings therefore expired on 19th March, 2019. Even if one were to extend the commencement of that period to when disclosure of documentation was made, this would only bring the period out to 18th February, 2019, meaning that the period expired on 17th May, 2019. Accordingly, on even the best analysis of dates from the applicant's point of view, he was still approximately two months out of time when he made the leave application on 15th July, 2019.
40. In relation to the missing evidence point, it could be argued that that period might have commenced a little later on 26th February, 2019, when it was confirmed to the applicant that the original handwritten notes had been destroyed. If that date was adopted, it would mean that the period for bringing the application expired on 25th May, 2019, so again the applicant was circa seven weeks out of time when he brought his application seeking leave to proceed by way of judicial review on 15th July, 2019.



41. The wording of O. 84, r. 21 (3) is very clear. The court "*shall only extend such period if it is satisfied*" of the matters set out in that sub-rule, being that there is good and sufficient reason for extending the period and that the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either were outside the control of, or could not reasonably have been anticipated by the applicant for such extension. Thus, the court has to be satisfied that there is "*good and sufficient reason*" for extending the period within which to bring the application.
42. This requirement on the court was considered by the Supreme Court in *M.O'S. v. The Residential Institutions Redress Board* [2018] IESC 61. In delivering the majority judgment of the court, Finlay Geoghegan J. stated as follows at paragraph 60:-

*"I have concluded that the case law cited above, insofar as it applies to the extension of the time specified under O. 84 for the bringing of judicial review proceedings, makes clear that the jurisdiction which the Court is to exercise on an application to extend time is a discretionary jurisdiction which must be exercised in accordance with the relevant principles in the interests of justice. It clearly requires an applicant to satisfy the Court of the reasons for which the application was not brought both within the time specified in the rule and also during any subsequent period up to the date upon which the application for leave was brought. It also requires the Court to consider whether the reasons proffered by an applicant objectively explain and justify the failure to apply within the time specified and any subsequent period prior to the application and are sufficient to justify the Court exercising its discretion to extend time. The inclusion of sub-rule (4) indicates expressly that the Court may have regard to the impact of an extension of time on any respondent or notice party. The case law makes clear that the Court must also have regard to all the relevant facts and circumstances, which include the decision sought to be challenged, the nature of the claim made that it is invalid or unlawful and any relevant facts and circumstances pertaining to the parties, and must ultimately determine in accordance with the interests of justice whether or not the extension should be granted. The decision may require the Court to balance rights of an applicant with those of a respondent or notice party. The judgments cited do not, in my view, admit of a bright line principle which precludes a court taking into account a relevant change in the jurisprudence of the courts when deciding whether an applicant has established a good and sufficient reason for an extension of time. Further, the judgments cited above do not envisage any absolute rule in relation to what may or may not be taken into account or constitute a good reason or a good and sufficient reason. The Court, in an application for an extension of time, is exercising a discretionary jurisdiction and in the words of Denham J. in *de Roiste*, '[t]here are no absolutes in the exercise of a discretion. An absolute rule is the antithesis of discretion. The exercise of a discretion is the balancing of factors - a judgment."*

43. In this case, the issue in relation to the applicant being out of time in bringing his application, had been clearly pleaded at paragraph 9 of the statement of opposition. Yet

no evidence has been put forward on behalf of the applicant to explain or justify the delay in bringing his judicial review proceedings until 15th July, 2019. This was an issue that had occurred to him, as an extension of time was one of the reliefs that was specified in his statement of grounds. Even after receipt of the statement of opposition which had raised the point, the applicant did not seek to put in any further affidavit to explain the delay.

44. The court cannot extend time unless the requirements of Order 84, rule 21 (3) are satisfied, so as to enable the court to make an order extending the time within which the judicial review application can be brought. The applicant has simply not put before the court anything that would enable this Court to enlarge the relevant period. He has not provided any evidence why he could not bring his application prior to 15th July, 2019. Accordingly, the Court cannot find that there is good and sufficient reason to extend the period to that date.
45. Furthermore, Order 84, rule 21 (5) provides that an application for an extension referred to in sub-rule (3) shall be grounded upon an affidavit sworn by or on behalf of the applicant which shall set out the reasons for the applicant's failure to make the application for leave within the period prescribed by sub-rule (1) and shall verify any facts relied on in support of those reasons. No such affidavit has been filed in this case.
46. The applicant has simply ignored the fact that he is out of time under the rules to bring this judicial review application. He has not complied with the provisions of the rules in relation to the grounds on which the court could enlarge the time within which he could bring these judicial review proceedings. Accordingly, the court must hold that the applicant's application herein has been brought out of time and no legal basis has been put forward to the court to enable it to extend the time within which such proceedings can be brought. The court must therefore refuse to entertain the application brought by the applicant, as it has been brought outside the time period provided for in Order 84, rule 21 of the Rules of the Superior Courts.
47. Even if the court is wrong in reaching that conclusion, the court would have refused the application for relief herein on the basis that the issues raised by the applicant concerning the jurisdiction of the respondent to bring the prosecution against him under the Act; the issues regarding the admissibility of evidence having regard to the nature of the caution that was given and the issue concerning whether he can get a fair trial having regard to the destruction of the original handwritten notes of the site inspection on 9th March, 2018, are all quintessentially matters that fall within the jurisdiction of the judge presiding over the trial.
48. There are a number of decisions of the Irish courts which establish, that while judicial review proceedings are not prohibited in relation to certain aspects concerning a criminal prosecution, where the object of the proceedings is primarily to render inadmissible either all, or a portion of the prosecution evidence, the preferable course is to allow such issues to be ventilated before the trial judge.

49. In *Byrne v. Grey* [1998] I.R. 31, there was a challenge to the validity of a search warrant which had been issued by a Peace Commissioner under the Misuse of Drugs Acts. Hamilton P. held that the predominant purpose of the application was to have the evidence that had been obtained on foot of the search warrant declared inadmissible at the trial. He stated as follows at page 41:-

*"In this case, the warrant was issued on the 3rd August 1986 and as appears from the affidavit of the applicant it was executed by the members of the Garda Síochána therein named a short time thereafter. Consequently, the warrant sought to be impugned is spent and the only interest which the applicant has in seeking to have the said warrant quashed by way of certiorari is to seek to have rendered inadmissible in the course of his trial the evidence obtained as a result of the said search. It is his interest and the only matter in issue. In my view, the objective of achieving a just resolution of this matter is in the course of his trial. It is a matter for the trial judge to decide whether the evidence sought to be admitted is admissible or not. Consequently, I will refuse the application made on behalf of the applicant."*

50. In *Blanchfield v. Harnett* [2002] 3 I.R. 207, the Supreme Court refused to quash an order made in the District Court under the Bankers Books Evidence Act, 1879, which had been made in the context of criminal proceedings that were pending against the applicant. In the course of his judgment, Fennelly J. stated as follows at page 226:-

*"Once the judge at trial possesses any necessary powers and once, as in Clune v. Director of Public Prosecutions [1981] ILRM 17, it must be presumed that he will exercise those powers fairly and justly, there is no need for the High Court to intervene. It is usually preferable to allow the trial judge to hear evidence concerning all the elements bearing on the issue of whether evidence should be admitted than to take one issue such as the validity of an order to be dealt with in isolation. It should also be borne in mind that the illegality of such an order is not, in any event, determinative of the issue of admissibility. Taking the issue out of its proper context may create a misleading impression as to its impact. I do not accept that the two decisions of Hamilton J. were incorrect. They correctly applied the principles relevant to the exercise of discretion."*

51. Broadly similar statements have been made more recently by Twomey J. in *Foley and D2 v. Workplace Relations Commission* [2016] IEHC 585 (see paragraphs 9, 35 and 40) and by Ni Raifeartaigh J. (sitting as a judge of the High Court) in *Silvergrove Nursing Home Limited v. Chief Inspector of Social Services* [2019] IEHC 774 (see paragraphs 51 and 52).
52. Academic opinion also supports the proposition that such questions are quintessentially a matter for the trial judge. In *Administrative Law in Ireland* (5th Edition, 2019), Messrs Hogan, Morgan and Daly state the following opinion at paragraph 18-220:-

*"The dominant view is that the courts do not generally approve of applications for judicial review which would, in effect, seek 'to have rulings made in advance of a trial as to the interpretation of the applicable statutory provisions' because 'the forum for ruling on the law applicable in criminal trials is the criminal court itself. The courts are equally reluctant to make advance rulings by means of judicial review on issues such as the admissibility of evidence, given that it may never actually be necessary to determine such an issue. Furthermore, issues such as the validity of search warrants (whether by reference to statutory vires or to the Constitution) and other similar orders can be adjudicated upon by the court of trial without the necessity for such warrants and orders to be quashed separately in judicial review proceedings."*

53. Accordingly, I hold that even if the present application had been brought within time, it would be inappropriate for this Court to rule on the issues raised in these judicial review proceedings because they are more properly matters that should be dealt with by the trial judge in the course of the criminal trial.
54. Having regard to the conclusions reached on these two aspects, it would be inappropriate for this Court to express any opinion on the substantive issues raised by the applicant in these judicial review proceedings. For the reasons set out herein, the court refuses the reliefs sought by the applicant in his statement of grounds.