



## Court encourages alternatives to discovery

*Tobin v The Minister for Defence Ireland and The Attorney General [2018] IECA 230*

08 October 2018

Modern discovery rules and procedure came under more scrutiny in the recent Court of Appeal decision delivered by Judge Hogan on 09 July 2018.

### Background

The plaintiff was a mechanic with the Air Corps at Casement Aerodrome in the early 1990s. He alleges that he suffered personal injuries arising from exposure to toxic chemicals in the workplace. The plaintiff sought 15 categories of documents dating back almost 30 years from the Minister for Defence, 13 of which were granted by the High Court. The Minister for Defence challenged the High Court order on the basis that it would take 10 members of staff to be diverted from their duties and some 220 man hours to compile the discovery.

### Court of Appeal

In describing the operation of the current discovery regime as a “*crisis*”, Judge Hogan voiced judicial concerns regarding the breadth of discovery orders, the burden being imposed on parties, the consequent delays and increase in costs. The judge felt that in seeking to ensure that the discovery process does not potentially overwhelm the action or become unreasonably burdensome, it is necessary for the court to have regard to the expense and time involved, whether alternative means of achieving the same outcome are available and whether on the basis of the pleaded case it is appropriate to limit the discovery. Balancing the fact that this was a routine personal injuries case against the onerous and disproportionate burden placed on the Minister for Defence, the court

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concluded that the application for discovery was premature and refused most of the disputed categories.

### Alternatives to extensive discovery requests

Judge Hogan made it clear that extensive discovery requests should be a last resort and no such orders should be made unless all other options have been properly explored and shown to be inadequate. The judge advocated the use of interrogatories and notices to admit facts as alternatives. In relation to interrogatories, the judge encouraged co-operation amongst the parties to maximise their benefit. It was in the interests of the party being interrogated to facilitate the process and provide sufficient information.

Interrogatories are written questions, answerable on affidavit, which a party may, with permission from the court put to the other party to an action. Their purpose is to obtain admissions and to limit the scope of an opponent's case. Interrogatories are also intended to avoid injustice where one party has the knowledge and ability to prove facts which are important to the opposing party's case and that party does not have the knowledge or ability to prove these facts. Answers to interrogatories are binding.

### Conclusion

This decision represents a clear message from the judiciary that extensive discovery requests should be a feature of the past. Efforts are being made to steer legal practitioners towards alternative means of gathering information, in particular recommending the use of interrogatories. This underutilised procedure has the potential to obviate the need for discovery and narrow the issues between the parties, thereby saving costs.

### Comment

It remains to be seen whether this decision will discourage parties from making extensive discovery requests, particularly in circumstances where legal teams are simply acting within the parameters of the existing rules and practice to the benefit of their clients. Wider reform may be needed to achieve Judge Hogan's objectives.

The establishment of the Working Group on reviewing and reforming the administration of the Irish civil justice system, chaired by the President of the High Court, Mr Justice Peter Kelly, suggests that wider reform might not be too far down the line. The Commercial Litigation Association of Ireland has made recommendations to the Working Group as to how the discovery rules could be reformed to facilitate litigation being resolved in a more expedient and cost effective manner. We await developments with interest.

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