My name is Peter Bredin. I'm a partner in the Commercial Litigation team at Dillon Eustace. The Irish Supreme Court has recently handed down an important decision concerning old, inactive cases.

This decision in a case called Kirwan v Connors introduces new benchmarks for applications to the courts by defendants wishing to have such cases dismissed for want of prosecution. For the past 30 or so years, the courts have applied the so-called Primor test to these applications.

That test derives from a case by that name reported in 1996. The Kirwan case was the first occasion that the Supreme Court had an opportunity to consider the test since the establishment of the Court of Appeal in 2014.

In judgments delivered on the 30th of May 2025, a seven judge panel of the Supreme Court upheld decisions of the High Court and Court of Appeal, both of which had applied the Primor test in dismissing Mr Kirwan's case.In their judgments, Chief Justice O'Donnell and Mr Justice Murray set out a range or spectrum of periods of delay and the approach which Courts should take from now on â€“ depending on which end of the spectrum the case before it lies. I will come to that approach in a moment, but first I will look at some details of the Kirwan case.

In Kirwan, the events giving rise to the proceedings occurred in 2005 and 2006 and involved transactions relating to property in Wexford. Mr Kirwan issued proceedings in 2012 and 2013. He claimed to have served a notice for particulars in 2014 but that was disputed. There then followed a period of total inactivity of more than four years until 2018 when the defendants issued motions to dismiss the proceedings for want of prosecution, which were heard in the High Court in 2019. The defendants did not point to any specific or concrete prejudice resulting from Mr Kirwan's delay. The High Court dismissed Mr Kirwan's proceedings, as did the Court of Appeal, applying the Primor test.

That test involves three limbs or prongs, as follows:

- Has the delay been inordinate?
- If so, was the delay inexcusable?
- If so, does the balance of convenience favour dismissal?

In reaching its decision, the Supreme Court noted the extensive jurisprudence on the question of whether an old inactive case should be dismissed for want of prosecution and also noted the absence of a uniform approach - especially on the question of the balance of convenience.

That approach has led to significant uncertainty for litigants and has frequently resulted in motions to dismiss adding extra years to the life of an already old case. Four judgments were delivered by the Supreme Court judges.

Those of the Chief Justice and Mr Justice Hogan represent the majority judgments. As mentioned, the Supreme Court set out a new and simplified approach to applications to dismiss cases for want of prosecution, which is driven principally by the length of the period of inactivity. In summary, the new approach is as follows:

Where there has been less than two years of inactivity, a case should only be dismissed if it is an abuse of process or a fair trial would not be possible; If there has been two years of inactivity, a case may be dismissed if there is some prejudice or other factor justifying dismissal; After four years of inactivity, the case should be dismissed if it is dependent on oral evidence, unless the plaintiff shows compelling reasons not to dismiss.

Prejudice to the defendant need not be proven, but will help in obtaining a dismissal; After five years of inactivity, the courts should feel free to dismiss unless there are exceptional circumstances,

for example an educational disadvantage on the part of the plaintiff or where there has been serious misconduct by the defendant in the conduct of the proceedings. Justices Collins and Murray agreed with the majority that Mr Kirwan's case should be dismissed but dissented from the majority on certain discrete issues.

Of those, the more significant appears to be the view of Mr Justice Collins that defendants bear a responsibility to progress litigation against them. The majority disagreed with this. Defendants and insurers will be gratified to hear the comments of the Chief Justice: that a plaintiff has a responsibility for bringing a case to trial, a defendant does not.

However, a defendant who encourages a plaintiff to do nothing, or acquiesces in a plaintiff's delay will probably find that this counts against him if he later attempts to dismiss the case on grounds that the plaintiff has delayed.

We consider that the decision considerably strengthens the hand of the defendant in applications to dismiss for want of prosecution, but that there will as always be marginal cases which might survive an application to dismiss even if they appear to meet the new Kirwan tests. We are interested to see how the High Court deals with such applications coming before it in the near future and whether the Supreme Court's desire to bring clarity to this issue will be met.

It is also anticipated that changes will be made to the Rules of the Superior Courts to bring further clarity.