



COURT OF APPEAL

**Neutral Citation No. [2021] IECA 184
Court of Appeal Record No. 2020/165
High Court Record No. 2018 32 CAB**

**Noonan J.
Murray J.
McGrath J.**

BETWEEN

CRIMINAL ASSETS BUREAU

APPLICANT/RESPONDENT

- AND -

JOHN MCCORMACK

RESPONDENT/APPELLANT

JUDGMENT of Mr. Justice Murray dated the 18th day of June 2021

Background

1. Section 1(1) of the Proceeds of Crime Act 1996, as amended, ('the Act') defines '*the proceeds of crime*' broadly. It means any property obtained or received at any time by or as a result of or in connection with criminal conduct. The provisions of the Act apply not merely

to such property, but also to property that was acquired in whole or in part with or in connection with property that directly or indirectly constitutes the proceeds of crime. Under s. 3 of the Act, application may be made to the High Court by *inter alia* the Criminal Assets Bureau ('CAB') for orders prohibiting a named respondent from disposing of or dealing with such property. To that end CAB may rely upon evidence of the belief of certain members of the Gardaí that the property in question falls within this description.

2. On 20 July 2020 the High Court made an order pursuant to s. 3 of the Act in respect of three properties located at 26 Purcell Park, Shannon, Cloontra West Co. Clare and Claughan Fort, Garryowen, Limerick ('Purcell Park', 'Cloontra' and 'Claughan Fort' or collectively 'the properties'). Each of the properties was owned by the respondent to the proceedings, and appellant in this appeal. I will refer to him throughout as the appellant. The reasons for the Order were set forth in a detailed judgment delivered on the same date which, in turn, followed a three day hearing the previous month ([2020] IEHC 361).

3. In summary, the trial Judge concluded that the evidence adduced on behalf of CAB established on a *prima facie* basis that the appellant had for many years been involved in serious criminal activity, that the nature of that activity was such that it was likely that he gained financially from it, and that the income so generated was likely to have been the source of the funds with which each of the properties was acquired. The evidence on which the Judge based this conclusion included affidavits from two Chief Superintendents of an Garda Síochána (Detective Chief Superintendent Patrick Clavin and Detective Chief Superintendent Michael Gubbins) attesting to their belief that the properties in question had been acquired with the proceeds of crime. The court found much of the evidence adduced by the appellant (who was

cross-examined in the course of the hearing) to be lacking in credibility, and held that it did not displace the inference thus arising from that presented by CAB.

The evidence

4. It will be necessary to return later to the detail of some of the evidence adduced at the hearing. For present purposes it suffices to say that while neither Chief Superintendent Clavin nor Chief Superintendent Gubbins were cross-examined at the hearing of the matter, each relied upon *inter alia* the affidavit evidence of Detective Mark Davis and Detective Sergeant Kevin O'Hagan as the basis for their belief. Detective Garda Mark Davis outlined 28 previous convictions of the appellant (who was born in 1972). 14 of these were for Road Traffic matters. The others included convictions for malicious damage and larceny in 1987, demanding money with menace, burglary, aggravated burglary and malicious damage in 1988, assault in 1989, handling stolen property and possession of housebreaking implements in 1991 and possession of housebreaking implements in 1994.

5. Detective Sergeant O'Hagan (who was cross-examined in the course of the hearing) had been in charge of the Detective Branch in Shannon since 2010. He said that from sources which, for operational reasons, he did not wish to disclose he knew the appellant to be one of the biggest suppliers of illegal drugs based in the mid/west of Ireland and that, with others, the appellant had been responsible for the importation into Ireland of '*vast quantities of drugs ... since the late 1990s*'. He said that having started to sell drugs in the Shannon area in the 1990s, the appellant fell foul of a subversive organisation active in the area resulting in him leaving Ireland. He said that the appellant had involved himself in a criminal organisation operating

in Limerick in 2001 and soon became the leader of that group, which then became involved in the large scale importation and distribution of drugs into the State. He referred to the following:

- (i) On June 15 1999, 37 kilogrammes of cannabis was seized by Gardaí at Rolagh, Ballina, County Tipperary resulting in the arrest and conviction of certain persons. Detective Sergeant O'Hagan said that the appellant had direct involvement with the sourcing and movement of these drugs up and until their seizure
- (ii) On March 11 2002, the appellant's wife was found in possession of £9,500 counterfeit sterling near her home in Shannon. Detective Sergeant O'Hagan expressed the view that this currency was to be used by the appellant as part of his criminal enterprise.
- (iii) The crime group led by the appellant planned and intended to execute a 'Cash in Transit' robbery in Clare on 24 June 2005. That operation was interrupted by the Gardaí and a number of persons were arrested and convicted in relation to it. The investigation determined that the appellant had been involved in the planning of this crime and had sourced the van used by those arrested as they travelled to the location of the proposed robbery.
- (iv) An investigation carried out by the Garda National Drugs Unit in 2005 established that 1.5 kilos of cannabis and 500 kilos of cocaine were to be purchased on mainland Europe for importation into Ireland and that the appellant and another male brought €270,000 to Spain for the purchase of those drugs.
- (v) On 21 February 2008 Gardaí recovered €8,500 of stolen Canterbury Rugby clothing from a vehicle stopped leaving the appellant's property at Cloontra. That clothing

had been stolen from Dublin Port six months previously. A search was then conducted of a lock-up owned by the appellant on the same lands and more of the same clothing was recovered. CCTV on the site was viewed and it showed the appellant orchestrating the transportation of the stolen clothing utilising two of his gang members, including a George Carmody. Arising from this operation, the appellant was charged with the offence of handing stolen property but was acquitted at the direction of the trial Judge.

- (vi) While Gardaí were searching the Cloontra property on this occasion 2.5 kilos of cannabis valued at €30,000 was found hidden on the premises. CCTV showed an employee of the appellant hiding the cannabis seized. Detective Sergeant O'Hagan said that Gardaí believed that these drugs were originally brought into the jurisdiction by a Polish employee of the appellant on his orders. He said that the appellant hired two Polish men to bring this person back from Poland (where he had fled following the seizure of the drugs) in an attempt to avoid prosecution in connection with the seizure.
- (vii) Detective Sergeant O'Hagan gave evidence that a George Carmody was one of the appellant's right hand men. Mr. Carmody thereafter took his own life, following which Gardaí conducted a search of lands near Mr. Carmody's home in Newmarket on Fergus Co. Clare, recovering €168,000 of cocaine. Detective Sergeant O'Hagan said that he believed that this was to be distributed by the appellant.

6. The properties were acquired between 1995 and 2011 and were, at the time of the institution of the proceedings, unencumbered. It was CAB's case that during that period the appellant did not have any lawful source of income that would have accounted for his

expenditure on these, and other, assets. At the time of the application to the High Court Cloontra was, according to CAB, valued at €150,000 (although the Judge did not accept fully this valuation having regard to the absence of development consent for some of the structures on it). Claughan Fort was valued at €55,000. The appellant's evidence was that Purcell Park had a value of €80,000 as of 2015. In the period from October 2008 to January 2013, the appellant and his wife also purchased four properties in Fuerteventura at a combined cost of €403,178 with a mortgage of €139,459 drawn down against same. These properties were not the subject of these proceedings, although the fact that the appellant had purchased them was clearly relevant to the issues that arose as to the income and assets available to him during this time. The Judge specifically observed (at para. 19) that the evidence relating to business activities and sources of income contained little which could suggest an explanation for how the appellant and his wife could purchase the four properties in Fuerteventura, later noting (at para. 58) that the source and method of funding for some of the mortgage repayments for these properties was '*unclear*'. The evidence also disclosed that at the time he acquired the property in Purcell Park, the applicant was also the owner of another house at Glasgow Park, Limerick.

Sections 3, 4 and 8

7. Both sections 3 and 8 of the Act refer to applications by, and the evidence of, '*a member*' or an '*authorised officer*'. These are respectively defined as a member of the Garda Síochána not below the rank of Chief Superintendent, and an officer of the Revenue Commissioners authorised in writing by the Revenue Commissioners to perform the functions conferred by this Act on authorised officers. Section 3 then provides for the making of what it terms an '*interlocutory*' order, as follows :

‘3.—(1) where, on application to it in that behalf by a member, an authorised officer or the Criminal Assets Bureau, it appears to the Court on evidence tendered by the applicant, which may consist of or include evidence admissible by virtue of section 8 -

(a) that a person is in possession or control of—

(i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or

(ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and

(b) that the value of the property or, as the case may be, the total value of the property referred to in both subparagraphs (i) and (ii) of paragraph (a) is not less than €5000,

the Court shall, subject to subsection (1A) make an order (“an interlocutory order”) prohibiting the respondent or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value, unless, it is shown to the satisfaction of the Court, on evidence tendered by the respondent or any other person—

(I) that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, or

(II) that the value of all the property to which the order would relate is less than €5000

Provided, however, that the Court shall not make the order if it is satisfied that there would be a serious risk of injustice.'

8. Section 8(1) provides :

(1) Where a member or an authorised officer states—

(a) in proceedings under section 2 on affidavit or, if the Court so directs, in oral evidence, or

(b) in proceedings under section 3, on affidavit or, where the respondent requires the deponent to be produced for cross-examination or the court so directs, in oral evidence

that he or she believes either or both of the following, that is to say:

(i) that the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, proceeds of crime,

(ii) that the respondent is in possession of or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and that the value of the property or, as the case may be, the total value of the property referred to in both paragraphs (i) and (ii) is not less than €5000 then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matter referred to in paragraph (i) or in paragraph (ii) or in both, as may be appropriate, and of the value of the property.

9. These two provisions fall to be construed together with s. 4. It provides that where an interlocutory order has been in force for not less than 7 years in relation to specified property, the Court, on application to it in that behalf by the applicant, may make an order (“a disposal order”) directing that the whole or, if appropriate, a specified part of the property be transferred, subject to such terms and conditions as the Court may specify, to the Minister or to such other person as the Court may determine. Under s. 4A, all concerned parties can consent to such an order being made at any time after an order has been made under s.3.

10. The sections thus combine to define the conditions under which certain persons in possession of property alleged to constitute the proceeds of crime will be required to either prove to the satisfaction of the court that that property was obtained lawfully and without recourse to the proceeds of criminal conduct, or face the prospect of having that property frozen and, eventually, forfeited to the State. In order to impose that onus, the applicant must first establish a *prima facie* case that the property was the proceeds of crime or comprised property acquired with the proceeds of crime. This does not require it to either rely upon specific crimes or to relate items of property sought to be attached to the commission of particular offences (*FMcK v. AF* [2005] IESC 6, [2005] 2 IR 163) and, as s.8 makes clear, reliance may be placed for this purpose upon opinion evidence from a Chief Superintendent of an Garda Siochana.

11. To that end, the court may receive hearsay evidence not as proof of its content, but instead to demonstrate that there are reasonable grounds for the belief evidence thus tendered (*Criminal Assets Bureau v. Murphy* [2020] IECA 40 at para. 65). Thus ‘*the effect of the expression of an admissible belief under the section, if it is not undermined in cross-examination, is to create a prima facie case which may be answered by the defendant if he has a credible explanation as to how he lawfully came into possession or control of the property in question, and establish this in evidence*’ (*McK v. TH* [2007] 1 ILRM 338, 346 per Hardiman

J.). Given that a person in possession or control of property should be in a position to give evidence to the court as to its provenance, there will be no injustice in enabling the applicant in a s.3 application to adduce evidence of this kind where (as in this case) the respondent to the proceedings is the person asserting ownership of the property (*Murphy v. GM* [2001] 4 IR 113 at 155).

12. In the course of his judgment in *F.J. McK v. G.W.D.* [2004] IESC 31, [2004] 2 IR 470 (at para. 70), McCracken J. outlined the correct procedure to be followed by a judge in addressing such an application. First, the court should consider the position under s.8. It should examine the evidence given by the member or authorised officer of his belief, and at the same time consider any other evidence, which might point to reasonable grounds for that belief. Second, if the court is satisfied that there are reasonable grounds for the belief, it should then make a specific finding that the belief of the member or authorised officer is evidence. Third, only then should it go on to consider the position under s. 3. The court should at that point consider the evidence tendered by the applicant. From there, and fourth, the court should make a finding whether this evidence constitutes *a prima facie* case under s. 3, and if it does so find, the onus shifts to the respondent or other specified person.

13. It is at this, fifth, stage that the court should consider the evidence furnished by the respondent or other specified person and determine whether it is satisfied that the onus cast upon the respondent or other specified person has been fulfilled. If the court is – sixthly - satisfied that the respondent or other specified person has satisfied his onus of proof then the proceedings should be dismissed. If the court is not so satisfied, it should proceed to consider whether there would be a serious risk of injustice in making the order sought.

The approach adopted by the trial Judge

14. It is clear that the approach adopted by the trial Judge reflected this analysis. He began by making a specific finding that the material presented by CAB had sufficient probative force to enable him to accept the belief of the Chief Superintendents as *prima facie* evidence of the matters which CAB sought to prove under s. 3(1)(a), (i) and (ii) of the Act in relation to each of the three properties (see para. 11 of the judgment). In particular, he noted that the material on the basis of which the belief evidence was tendered included the evidence of Detective Sergeant O'Hagan whose oral evidence the Court found '*persuasive*' (at para. 12). This, together with information on the social welfare and tax history of the appellant and his wife, and as to their bank and credit union accounts and assets abroad, provided '*strong circumstantial support*' for the case advanced by CAB.

15. Thus, the Court expressed its view that the appellant was involved as a senior figure in the serious criminality which Detective Sergeant O'Hagan had described in his affidavit, observing in particular that the appellant's departure for the Canary Islands in May 1999 into 2000 coincided with the evidence of CAB witnesses that the appellant was forced to leave the jurisdiction as the result of a confrontation with other criminals (at para. 14). The Judge explained – noting that the appellant had the resources to emigrate in this way – that he was satisfied that over the years and going back to the 1990s, the appellant had access to substantial proceeds from criminal activities of the sort described by the CAB witnesses (at para. 15). In this regard he noted the assets acquired by the appellant and his wife, the absence of any evidence relating to business activities or sources of assets that could suggest an explanation of how the appellant and his wife acquired the assets they did – particularly those in Fuerteventura - together with the evidence of their bank accounts from 2002 which, the Judge

said, presented the absence for many periods of what one would expect to see where a person uses a bank account to pay for items in day to day spending (at paras. 18 and 19).

16. Having thus explained why he was accepting the belief evidence, the Judge proceeded to record that there was ample material presented by CAB which persuaded him that he must reach a '*provisional conclusion*' under s. 3(1) of the Act that each of the properties was acquired in whole or in part with or in connection with property that directly or indirectly constituted proceeds of crime (at para. 20). He proceeded as he dealt with the individual properties to reconstitute that exercise in respect of each (see para. 28 and 66 regarding Purcell Park, para. 75 regarding Cloontra and para. 77 and 78 regarding Claughan Fort).

17. Having so concluded, the trial Judge moved to the fifth stage identified by McCracken J., that is whether the appellant had discharged the onus of proving that on the balance of probabilities any of the three properties were not acquired in whole or in part with or in connection with property that, directly or indirectly, constituted proceeds of crime. In that regard, he found the appellant's explanations in his affidavits and in his oral evidence to be '*contrived and unconvincing*' and the reliance placed by him on certain documents, questionable.

18. The judge noted that the appellant's approach was to show he had sources of income from a variety of sources such as personal injury awards, gifts, trading activities, sale of steel sheds, working in the Channel Islands, rents, monies paid by lodgers, stud fees, dog sales and sales of business to relations which allowed him to purchase property. However, the court found that the appellant did not link payments to legitimate sources of income in that he did not show the legitimacy of the sources of finance which he used to establish and operate various business activities which could have accounted for the wherewithal to buy and develop the

properties and to pay the mortgage on Purcell Park. A suggestion that the mortgage on Purcell Park was repaid through the proceeds of the sale of the house at Glasgow Park was '*improvised*' (at para. 102). Evidence as to stud fees and sales of horses was offered without any explanation of how this business was set up and financed (at para. 103). Documents advanced to support claims of horse related income were '*unconvincing*' (at para. 104). Explanations tendered in relation to the works and structures put on the site at Cloontra were '*vague and unsatisfactory*' (at para. 111).

19. Here also the judge was careful to address each aspect of the acquisition of the properties, rejecting the appellant's explanation as to how he had funded the deposit on Purcell Park (at para. 97), the mortgage repayments on that property (paras. 98 to 107), the acquisition of Cloontra (at paras. 108 to 111) and the purchase of Claughan Fort (at para. 117).

20. Finally, the court looked at the interests of justice. Having regard to the conclusions reached by the court that the acquisitions of the three properties in issue were funded from the proceeds of crime, the Judge said that in light of the findings made in the judgment there was no basis on which he could be satisfied that there was a serious risk of injustice to the appellant and his family by the making of such orders (at para. 122).

21. One of the arguments advanced by the appellant is that the trial judge failed to properly approach the application having regard to this test and that he failed to explain his conclusions in accordance with the decision in *Doyle v. Banville* [2012] IESC 12. I believe these contentions to be utterly misplaced. It seems clear to me from both the foregoing, and from his careful analysis of the source of funding for each of the properties (to which I will return further below) that the trial Judge (a) applied the correct legal test in construing and operating s.3 (b)

did so in the manner envisaged in the judgment of McCracken J. in *F.J. McK v. G.W.* and (c) explained the reasons for his conclusions in respect of each aspect of the approach thus adopted by reference to the evidence before him and, in particular, his appraisal of the oral evidence of the appellant. I will return later to the detailed consideration by the Judge of each of the properties the subject of the application.

Belief evidence

22. Next, the appellant challenges the treatment by the court of the belief evidence. Chief Superintendent Clavin swore his affidavit in December 2018, at which time he was the Chief Bureau Officer of CAB. There, he rooted his stated belief that the properties comprised the proceeds of crime or property acquired with or in connection with property that directly or indirectly constituted the proceeds of crime, upon four factors. These were (a) the involvement of the appellant in serious crime including the distribution of controlled drugs and extortion and the fact that criminality of this kind generated significant sums of money, (b) the fact that it has not been possible to identify legitimate sources of income sufficient to explain the acquisition of the properties and their maintenance, (c) the fact that at one point Cloontra West was searched and drugs and other illicit materials were found there and (d) the fact that the appellant's lifestyle (in particular the acquisition of various properties in the Canary Islands) was difficult to reconcile with the legitimate identified sources of income available to the appellant. This belief was referenced to his knowledge and experience together with information, documents and other material obtained by bureau officers and the information contained in the other affidavits sworn for the purposes of the application.

23. The affidavit of Chief Superintendent Gubbins was sworn on June 4, shortly before the hearing of the s.3 application was due to begin. He explained there that he made the affidavit as successor to Patrick Clavin as Chief Bureau Officer. He adopted the grounds relied upon by Chief Superintendent Galvin, referring specifically to the affidavits of Detective Garda Mark Davis, Detective Sergeant Kevin O’Hagan and Bureau Forensic Accountant No.4.

24. The appellant did not seek to cross-examine either of the witnesses who tendered belief evidence. Counsel for CAB says that no objection was taken at the trial as to the admissibility of any of that evidence, whether on the basis that it comprised hearsay or otherwise, and this was not contradicted by the appellant (who presented his appeal by reference to some – but not all – of the affidavits exchanged between the parties, none of the exhibits and none of the transcripts). The appellant makes a general assertion that the trial Judge ‘*cannot have been satisfied that there were reasonable grounds for the belief and he should therefore not have made a specific finding that the belief of the member or authorised officer was evidence*’. However, that is unsubstantiated in the submissions, and I cannot see any basis for the contention.

25. From there, the appellant advances three more specific propositions regarding this evidence. Each of these must be viewed in the light of the particular application to proceedings of this kind of the general principle articulated in *Hay v. O’Grady* [1992] 1 IR 210, [1992] ILRM 689 and 217/694 – ‘*the credibility of the belief and the finding that there were reasonable grounds for it appear ... to be primarily matters for assessment by the learned trial judge*’ (*McK v. TH* [2007] 1 ILRM 338, 347 (per Hardiman J.)).

26. First, he objects to the reliance placed by CAB on hearsay evidence. In this regard, his written submissions focus upon the reliance placed within the belief evidence upon the

evidence of Detective Garda O'Hagan. It is said that Detective Garda O'Hagan had not been in charge of the Detective Branch in Shannon during the periods of time in relation to which he gave evidence that the appellant was involved in criminal activity. Therefore, it is said, the trial Judge grounded his decision to shift the burden of proof onto the appellant on hearsay upon hearsay. Objection is also taken to the fact that he did not identify the sources of the information relied upon by him.

27. The authorities make it clear that this contention is ill founded. There is no reason why the basis for the belief evidence tendered in accordance with s. 8 cannot consist of information that comes to the applicant officer from a third party or which is otherwise outside his own direct knowledge without the necessity of that third party coming to court to give that evidence directly (see *Criminal Assets Bureau v. Murphy* [2016] IECA 40 at para. 66). As explained in that decision '*the admissibility of hearsay evidence for the purpose of supporting the prima facie evidence of belief does no violence to the Act, and has been found to be constitutional*'. It follows that CAB is not necessarily precluded from relying upon sources of information which are not identified for the purposes of belief evidence under s.8. The cases also make it clear that the reliance by Detective Garda O'Hagan upon information which he did not wish to disclose for operational reasons did not in itself preclude the admission of such evidence (see *PB v. AF and JPMF* [2012] IEHC 428), although of course the weight to be attached to such evidence is inevitably diminished where the respondent to the proceedings cannot meaningfully challenge it.

28. However, the material available to the Court in this case did not depend only upon evidence of this kind. The involvement of the appellant in criminal activity before the acquisition of Purcell Park was evidenced by his convictions. The evidence tendered by

Detective Garda O'Hagan as to the appellant's alleged involvement in serious crime thereafter was amply corroborated by the apparent and varied connections between the appellant and the recovery of stolen property from Cloontra, the finding of a substantial quantity of drugs there, the peculiar circumstances attending the production by the appellant of the Polish national to the Gardai to provide an explanation for that seizure and the finding of a substantial sum in counterfeit bank notes in a car close to the appellant's house, that vehicle being associated with the appellant's wife. The judge viewed all of these circumstances as critical to his conclusion (see para. 17 of the judgment) and it is impossible to my mind to see how it can be said he was not entitled so to do. And, of course, that across the entire period covered by the application, the appellant was accumulating very substantial assets the source of which he was unable to explain, augmented the evidential basis for these conclusions.

29. Second, the appellant claims that the belief of Chief Superintendent Gubbins cannot be relied upon because of his recent appointment to the position, the fact that his affidavit was only sworn shortly before the hearing and the consequence that he had '*little time*' to familiarise himself with the case. These contentions are only relevant if they establish that the deponent had not properly formed his opinion at all. If that was the case the appellant wished to make, it was a matter for him to cross examine the deponent. Not having done so, I do not see that it was open to the trial Judge to do other than accept that the belief had been formed and was held by the witness (as he deposed).

30. Third, the appellant says that insofar as the evidence of belief was based upon the evidence tendered by Detective Garda O'Hagan that he failed to consider the evidence of the appellant that he had not been questioned, charged or convicted of any allegations of criminal activity save and except a change of handing stolen property of which he was acquitted by

direction of the trial Judge. This submission also misconceives the proper operation of s. 8(1). The fact that there were points the appellant had to make in his favour is, clearly, relevant to any defence he proposes to advance to the application where a *prima facie* case is found to have been made out and, obviously, the matters to which he refers may be taken into account by the court in considering whether the belief is well founded. However there is no basis on which it can be said that the trial Judge failed to consider these matters. The appellant's submission appears to assume that they negated the prospect of the belief formed by the witnesses being reasonably founded, which they clearly did not.

The findings of the court as regards the acquisition of the properties

31. From there the appellant presents a more general attack on the evidence underlying the application. The challenge was diffuse, but from the oral and written submissions made to this Court it can be reduced to a number of propositions. They all fall to be considered in the light of the precise basis for the trial Judge's conclusions in relation to each of the properties. Here, it is necessary to return to the evidence before, and conclusions of, the Court.

32. Purcell Park, a residential property, was at the time of the application occupied by the appellant, his wife and their two daughters. It was purchased in 1995 with a deposit of IR£3,791 and a loan from ICS Building Society ('ICS') for IR£25,650 secured by a registered charge. A conservatory was added to the house in 2005 at a cost of IR£18,600, although the Judge said that there was no evidence before him that it had in fact added to the value of the property and that he was thus not taking this into account as an improvement. Monthly repayments were made in respect of this debt, and the loan was repaid in full in 2015. The total of mortgage payments made in respect of the property was between €50,000 and €55,000.

33. The findings made by the Court in relation to Purcell Park were this:

- (i) The Judge recorded in his judgment that in 1988 the appellant was involved in a series of offences involving demanding money with menace, burglary, aggravated burglary and malicious damage. In 1991 he was convicted of handling stolen property and possession of housebreaking implements. At the beginning of 1994 he was convicted of possession of housebreaking implements. It was, the Court found, thus clear from his criminal record that the appellant was involved in criminal activities of housebreaking and serious burglary right up to very shortly before he purchased Purcell Park. He returned no taxable income during this period and was in receipt of unemployment assistance.
- (ii) In these circumstances the absence of any convincing record of sources of legitimate income during the period when Purcell Park was purchased was found to be evidence which supported the belief of the CAB witnesses that the money paid for the property (comprising the deposit and legal fees) came from the proceeds of crime.
- (iii) Mortgage repayments were made in respect of the loan used to purchase this property between 1995 and 2002 at a time when there was no evidence from tax and social welfare records of any source of income that would have given the appellant the capacity to make such repayments.

- (iv) From October 2002, payments were made to ICS in discharge of the mortgage loan from an account with Allied Irish Banks in the name of Midwest Joinery. Midwest Joinery was alleged to be engaged in the business of hiring out plant and machinery. There was nothing in the bank accounts which gave any indication of the source of funds used to set up Midwest Joinery or to provide that business with working capital. While settlement cheques from personal injury awards were lodged to this account in June 2008 and September 2008, these proceeds were gone by November 2008.

- (v) From July 2011 to the final discharge of the ICS loan, it was paid from an account in the name of Oatfield Kennels. A settlement cheque from a personal injury awards lodged to this account in April 2013, was gone within a month.

- (vi) In the light of the foregoing, the Court's overall assessment was that the belief of the Chief Superintendents that the sources of the mortgage payments came from the proceeds of the appellant's criminality over the years was well founded. While receipts attributed to dog sales, sales of sheds, and possibly spray painting, hairdressing and renting of plant and machinery made their way into bank accounts over the years and while some of these were part of credit balances which funded mortgage payments, the overall information available showed no legitimate assets or income streams available to the appellant from which he financed the establishment and operation of these income streams. There was little evidence from bank accounts that rental income contributed to payment of the ICS mortgage. Even where rentals were shown as lodged to

accounts used to pay the mortgage, other evidence established *prima facie* that these rentals were derived from assets acquired using the proceeds of crime.

34. Cloontra was purchased in 2005 for €18,000. At the time of the application to the High Court it comprised a concrete yard, a sand arena, a large shed, stables for horses and kennels for dogs. The evidence from CAB was that it was unoccupied save for two units which were let to tenants. The court found as follows:

- (i) The Court had difficulty in identifying the source of the €18,000 recorded as the price paid for this property in November 2005. The only relevant payment the Judge could identify was €24,139.70 debited to the Munster Joinery account on October 24 2005. This included a bank draft for €17,000. There had been earlier withdrawals from that account which, it was possible, may have related to the €1,000 balance of the price and legal fees.
- (ii) The sources of lodgements to the Munster Joinery account in the period prior to this were unexplained. The revenue records at this time for assessable profits on the appellant's businesses for 2004 and 2005 did not disclose any basis on which he could have generated €18,000 plus the fees to fund the purchase of Cloontra.
- (iii) The cost of developing the facilities installed at Cloontra had not been quantified. While it was clear from the description of those facilities that they had involved considerable expenditure, the source of the funds for that expenditure was unknown and there was no indication of savings or other

sources of income which could explain the source of funds used to develop this property.

- (iv) The obvious explanation for the source of the money used to buy and develop Cloontra was the Munster Joinery bank account, in turn comprising undisclosed assets which were the proceeds of crime. That being so, the Court concluded that the CAB had advanced sufficient evidence to support as well founded the beliefs of the two Chief Superintendents that Cloontra was acquired and developed using money which either came directly from the proceeds of crime or was derived from the proceeds of crime, and the Court accepted that evidence.

35. Claughan Fort (also a residential property) was purchased in 2011 for a price of €55,000. At the time of the application to Court it was occupied by the appellant's daughter and her four children. The conclusions of the trial Judge in relation to Claughan Fort were thus:

- (i) There was no evidence that when in 2011 Claughan Fort was purchased for €55,000, the appellant was earning any income beyond what was shown as lodged into the Oatfields Kennels bank account and what was returned to the Revenue Commissioners by his wife for that business and rent for the year.
- (ii) The bank accounts showed nothing suggesting that any payment of €55,000 or any other sum was made in order to pay the vendor and close the sale. Nothing was available which indicated that the wherewithal to buy the property came

from a compensation payment or other legitimate source such as savings or the sale of a property acquired using a non-criminal source of income.

- (iii) Therefore, *prima facie*, the CAB evidence was sufficient to persuade the Judge that the wherewithal used to acquire the property must have come from the proceeds of crime.

The specific objections to the evidence

36. I think that the complaints in relation to the evidence generally can be reduced to six headings. Each is presented on the basis that the court failed ‘*to take account*’ or ‘*have regard*’ to various matters and at some points it is said that the judge failed to engage with key elements of the case. However as the complaints are matched against the court’s ruling, it is apparent (a) that in fact the Judge did address the matters in issue and (b) explained in terms that appear to me to be quite clear the reason he dismissed or discounted them. No basis has been laid in argument for the suggestion that this court can or should interfere with the conclusions reached by the judge under any of these headings.

37. First it is said that while the Judge did not accept that the appellant could have had the funds to pay the deposit for Purcell Park, the evidence was that he had received what was termed in submissions as ‘*an advance personal injury settlement of €5,000*’ and this was used for the deposit. This, counsel submitted, was ‘*credible evidence*’ of the source of the deposit.

38. In point of fact, the account tendered by the appellant of the source of the funds applied to the deposit for this property constantly shifted. As explained by CAB in its submissions (in

an explanation that has not been contradicted) it was originally the contention of counsel for the appellant that the deposit came from a compensation award received by the appellant. On affidavit the appellant identified the alleged award as being the payment of €5,750 received by him in settlement for a personal injury suffered by him on 10 July 2003 with the settlement cheque dated 12 July 2004. The trial Judge observed in the course of the hearing that this post-dated the payment of the deposit by ten years, whereupon the Court was provided with documents relating to a different case, *McCormack v. Aherne*, and this was identified as the source of the monies. The Judge then observed that this case was still ongoing when the deposit was paid, whereupon the appellant alleged that his then solicitor had advanced the money on foot of an ongoing claim. This had not been mentioned previously in either oral evidence or on affidavit. No explanation was given as to how the money for the payment of legal fees or stamp duty was sourced, and the Judge expressed the view that it was '*unlikely*' that there had been such an advance paid as the deposit amounted to nearly four fifths of the eventual settlement amount (the solicitor who was alleged to have made the '*advance payment*' was deceased). The Judge noted that the uncontradicted evidence from CAB was that the deposit was paid in cash (at para. 97). He said that the explanation tendered by the appellant was '*unlikely to be true*' and that it was '*improvised by him during the course of his evidence to fit in with what the documents relating to the Aherne litigation showed*' (at para. 97). There was, in my view, no reviewable error here.

39. From there it is said that there was evidence of a loan from ICS Building Society for €25,650 for the purchase of this property and this '*would go to the credibility of the Appellant having funds to secure the purchase*' of Purcell Park. The trial Judge also addressed this. He noted that the ICS documents included undated certificates purporting to come from the principal of '*Shannonside Printers*' which purported to indicate that the appellant was

employed for three years and had an annual salary of IR£12,500. There was, the Judge noted, nothing in revenue records to indicate that he was employed at that level of salary in the years leading up to the purchase of Purcell Park. On that basis the Judge concluded that based on the evidence adduced by CAB there was nothing reliable to indicate that the appellant had any legitimate source of income taxed or untaxed in the period leading up to the purchase of Purcell Park. It has not been explained in submission why this was wrong.

40. Third it was said that there was evidence from the Bureau itself showing that an individual (a Mr. Kennedy) had received a loan from the appellant, that loan being paid back through a company in support of works carried out to Purcell Park. In circumstances in which the trial Judge decided that it had not been established that the addition of the conservatory to this property materially increased its value, it is not evident to me that the trial Judge needed to address this issue.

41. Fourth, in relation to the purchase of Claughan Fort, the evidence tendered by the appellant was that a Mr. McNamara had exchanged this property for machinery with a value of €55,000. It is said that the appellant gave evidence that he originally purchased this machinery *via* a vouched credit union loan for €20,000 and a credit repayment scheme with the vendor in 2005. This is then said to be supported by an affidavit from a Michael McNamara (an employee of a cash and carry business). This affidavit (which was delivered during the trial) was received by the trial judge *de benne esse*. In it, Mr. McNamara explained how he had previously owned this property, and had transferred it to the appellant in return for heavy plant machinery. CAB had not, counsel stressed, contended that this machinery was the proceeds of crime. To that extent it is said that the Judge erred in failing to consider the affidavit of Mr. Michael McNamara.

42. This was addressed in some detail by the trial Judge (at paras. 113 to 117) the court concluding that the appellant's explanation for the transaction was '*implausible*' (at para. 114).

In this regard, he noted the following :

- (i) No contract to this effect was exhibited.
- (ii) That this was the consideration for the transaction was never disclosed to Revenue, even though it was relevant to the correct assessment of duty on the transfer.
- (iii) A non-cash consideration was not consistent with the terms of the transfer itself.
- (iv) The explanation depended on machinery that was mostly second hand when purchased in 2005 with a supposedly VAT inclusive value of €66,600 was still worth €55,000 when it was sold in 2011.
- (v) It also depended on the proposition that an employee of a cash and carry business was prepared to swap a house for plant and machinery.
- (vi) The Court had grave doubts as to whether one of the invoices alleged to evidence the acquisition of this machinery was genuine.
- (vii) The explanations given as to how the machinery had been acquired in the first place was vague and unsatisfactory, as was the evidence as to how the alleged plant and machinery business had been funded in the first place.

43. For all of these reasons it was, the Judge said, unlikely that Claugan Fort was paid for with used machinery – '*it is likely that it was paid for in some other way which has not been*

explained in evidence'. I can see no basis on which the Judge was not entitled to reach this conclusion which was clearly and fully reasoned. The fact that an affidavit had been tendered from Mr. McDonald during the trial and without leave, and received by the judge *de benne esse* did not preclude the judge from reaching the conclusion he did having regard to the totality of the appellant's evidence (including his oral evidence).

44. Fifth, the appellant says – and having regard to the third stage in the test – that the trial judge *'failed to take into account'* what are described as *'numerous'* mathematical and basic accounting practice errors of one CAB witness – Bureau Accountant No. 4 – as highlighted under cross-examination. He says that the trial Judge could not have been satisfied that the onus undertaken by the appellant had not been fulfilled given that Bureau Accountant No. 4 had arrived at her findings having accepted that her observations in relation to the businesses carried on by the appellant and his wife were only partial and that further investigation was required. He says that absent *'a thorough and full analysis'* into the appellant's accounts coupled with the errors of the witness the Judge could not possibly arrive at an accurate and true finding that the onus undertaken by the appellant had not been fulfilled.

45. In fact, the trial Judge specifically addressed this issue in the course of his judgment (paras. 44-45) noting that this witness conceded that there may be errors in the figures she used from the revenue details of turnover, observing that while it had been suggested to the witness that the total of receipts relating to the appellant came to €710,000 rather than the €650,695 which she had tabulated, counsel for the appellant was unable to direct the witness as to where these figures giving rise to the alleged discrepancy came from. In the course of her evidence the accountant made it clear that she was necessarily looking at the records of the business

from the outside and in a partial way. She, necessarily, had a more limited purview and perspective on the evidence than a person who was actually involved in its operation.

46. While the judge observed that he was not sure that the witness' figures included all of the receipts to the Oatfield Kennels account he did not do his own calculation as he felt it unnecessary. He explained this (at para. 45):

'The exercise which this witness performed is of limited assistance and she pointed this out in her evidence. Her essential point is that the receipts shown in the bank accounts are difficult to reconcile with what is shown in the tax returns and that the bank accounts and other information available suggest that the resources available for the acquisition of the three properties targeted by the Bureau are unexplained.'

47. What the judge thus described as this witness' '*essential point*' was not and could not have been the subject of any serious dispute. Receipts shown in the bank accounts were difficult to reconcile with the information presented in the appellant's tax returns, and if there was a basis on which the judge was not entitled to conclude that the bank accounts and other information suggested that resources available for the acquisition of the properties targeted by the Bureau were unexplained, it has not been identified to this Court. That being so I cannot see how the trial Judge's findings can be vitiated by any errors on the part of this witness.

48. In particular, when the appellant submits – as he does – that the trial Judge could not properly rely on this witness' calculation considering the errors she made, he ignores the limited reliance placed by the Judge on that evidence. As is clear from the summary I have outlined earlier, the conclusion of the Court that CAB had established a *prima facie* case was

based not upon the evidence of this witness, but upon (a) the evidence of criminal activity by the appellant, (b) the fact that there was no obvious lawful source of the funds used to acquire the properties and (c) the failure of the appellant to establish any such source.

49. Sixth, and in the same vein, it is claimed, the judgment does not engage with key elements of the case, specifically the appellant's awards from personal injuries claims and the Redress Board. It is said in particular that the evidence shows that the appellant received €104,441.14 in awards during the period from 1993 to 2013. However, the Judge did address these. He specifically concluded (at para. 65) that the personal injuries award amounts credited to accounts used to pay the ICS mortgage made '*a minimal impact on repayment*'. He explained why he reached this conclusion – that the sums were in those accounts for very short periods. Similarly, he explained in relation to Cloontra Park that there was no evidence that this was purchased from compensation payments or other legitimate sources (at para. 78).

Risk of Injustice

50. On the final day of the hearing in the High Court counsel for the appellant handed written submissions into the Court in which the basis for his claim that the making of the orders would result in a serious risk of injustice was outlined. These were relied upon for the purposes of the appeal. The arguments advanced in this regard arose from the fact that the appellant resided (it is said) at Purcell Park with his wife, daughters and a grandchild and that daughter, her partner and four children (including an infant) lived at the Claughran Fort property and went to local schools. To make the orders sought under s.3 in these circumstances would, it was said, amount to an injustice insofar as it would affect the interests and rights of those persons.

51. This argument suffers from numerous difficulties. The onus is on a party seeking to assert an injustice under s.3 to establish it. However, no affidavit evidence was tendered to the High Court in support of these claims. The Court was not in a position to determine whether there were other properties available to the occupants of the two dwelling houses or other assets available to them from which they could acquire alternative accommodation. The evidence was that the applicant's wife was, at the time of the application, in Spain where - as has been noted - the applicant and his wife owned other properties. She did not seek to be joined to the proceedings for the purposes of asserting any interest of hers, and neither did the appellant's two adult daughters. It was never suggested that any of these persons were unaware of the proceedings.

52. All of this is aside from the fact that the case law makes it clear that it would significantly undermine the legislative intent if a person were entitled to defeat an otherwise well-grounded application under s. 3 because a third party claimed a right to benefit from an asset acquired with the proceeds of crime (see *Criminal Assets Bureau v. O'B and O'B* [2010] IEHC 12). This follows from the consideration that generally '*a person in possession of the proceeds of crime can have no constitutional grievance if deprived of their use*' (per Keane CJ in *Murphy v. GM* [2001] 4 IR 113 at 153). Thus, the policy of the legislation is to ensure that persons do not benefit from assets which were obtained with the proceeds of crime irrespective of whether the person benefitting actually knew how such property was obtained with the proceeds of crime but subject to whether or nor such person may have been a bona fide purchaser for value, where different considerations may apply (*Criminal Assets Bureau v. Kelly and anor.* [2012] IESC 64 at para. 32. In *FJ McK v. TH and ors* 17 October 2008 Feeney J. said:

'The fact that the notice party and her family need a home cannot of itself operate to defeat the public interest ... of depriving a person of property representing the proceeds of crime. There is no basis for treating a person in a position such as the notice party and her family on a more favourable basis than a family who lose their home as a result of a possession order following an inability to discharge mortgage repayments or as a result of an inability to pay rent. The notice party and her family have no entitlement to the use of a particular premises. If it were not for the use of the premises obtained from the proceeds of crime the notice party would have had to have provided for herself or have provided for her alternative accommodation. The fact that the notice party and her family would be placed in the position ... where she would have to seek alternative accommodation is, of itself, not a basis for discharging the section 3 .. Orders.

53. In these circumstances, I cannot see that the appellant has made out any basis for the claim that the orders in issue ought not to have been made because of a risk of injustice within the meaning of the section.

Legal aid

54. The fourth general point made by the appellant relates to the issue of legal aid. It is said that the court erred in fact and in law in failing to hear an application for legal aid under the applicable *ad hoc* legal aid scheme. That scheme provides that the grant of legal aid is for the Court dealing with the case to address, and is subject to the court being satisfied that :

- (i) The means of the Applicant for Legal Aid are insufficient to enable him or her to obtain legal representation on their own behalf, and
- (ii) By reason of the exceptional circumstances it is essential in the interests of justice that the Applicant should have Legal Aid in the preparation and conduct of the case.

55. The appellant explains how (he says) his application for legal aid was dealt with as follows (para. 15 of the appellant's written submissions) :

'The matter came before the Court for hearing on the 15th day of June 2020. On that occasion Counsel for the Appellant sought to deal with an application for Legal Aid under the ad hoc Legal Aid Scheme. Counsel informed the Court that the matter had previously come before the Court for hearing but due to a pending hearing before the Tax Appeals Commission the Respondent was not in a position to proceed with the application until a determination by the Commission had been given. Counsel also advanced some submissions in support of the Respondent/Appellant's application and the Court indicated that it would deal with this aspect at a later stage.'

56. The Court sought and was provided with a copy of the transcript of the hearing of the first day of the trial, June 15 2020. From this it appears that the appellant first issued an application for legal aid in March 2019. This was grounded on an affidavit sworn by the applicant on March 5 2019. That affidavit was extremely brief, comprising eight paragraphs of which only one purported to address the appellant's need for legal aid and averring shortly to his being in receipt of unemployment and supplementary welfare allowance, and to his

means being insufficient to enable him to obtain legal representation on his own behalf. He provided no details whatsoever of the assets available to him. This application came in the first instance before Stewart J., who commented on the paucity of information provided in the affidavit grounding it. The appellant did not renew that application until the first day of the trial. At that stage, new solicitors had come on record. He swore a further affidavit in relation to his legal aid application on 11 June 2000 – four days before the hearing was due to commence.

57. The transcript of the first day of hearing shows, clearly, that the appellant's counsel fully opened his application for legal aid at the commencement of the trial. Both affidavits were read to the Court and submissions made by counsel. The appellant's application alone covers 56 pages of the transcript. As counsel so presented the application, the trial Judge expressed concern as to why legal aid would be given to a person owning four properties in Fuerteventura, also noting that the evidence contained reference to a Bank of America dollar denominated credit card, and observing the paucity of evidence regarding both. He commented upon the lack of information in relation to these matters noting (when counsel sought to suggest that there were amounts due on some of these properties) that the affidavits did not address any of them. Counsel for CAB, in his reply, complained of the late delivery of the appellant's second affidavit and of the fact that his client had not had an opportunity to investigate or address its contents. Substantively, he said that the application should be refused because the appellant had failed to commit on affidavit explanations as to why, notwithstanding the ownership of substantial properties in Spain, legal aid should be afforded. The application, it was said, ought to have explained what assets the appellant had available to him.

58. In the course of the reply to CAB's submissions, the Judge advised counsel for the appellant of his concerns arising from the absence of information in the affidavit as to the appellant's assets at the time of the hearing. He said the following :

'What I want to know is what is there now to deal with the matter and your client has self-evidently not addressed that I have to say. Do you want me to leave it over until the end of the case and I will deal with whether you are going to get legal aid or not, you can take your chances or I will deal with it now.

59. Counsel then made it clear that he did not wish to proceed with the application at that point. A discussion occurred around this, and around whether the appellant might be permitted to deliver a further affidavit with counsel for CAB objecting to the delivery of any further evidence on the legal aid application and counsel then taking instructions. Matters concluded with the following exchange :

'[COUNSEL] : Thank you, Judge. In terms of the situation we are in a position to proceed and determination with respect to legal aid can be determined at the close of the determination of the s.3. For what it is worth and my instructions I must ask the Court would it allow me to submit an affidavit and it will set out what is the situation with the properties in Spain.

[JUDGE] Well I do not think I can entertain that at this stage. The case has to proceed at this stage.

[COUNSEL] Yes I would proceed but in support of a legal aid application.

[JUDGE] I am saying that the time for that has passed.

60. When judgment was handed down on July 20, the appellant's counsel asked the judge if he would '*entertain an application for legal aid at a later juncture*'. The judge responded that he would not be inclined to do this, saying '*I think it has to be disposed of on the basis of the material that is here*'. Counsel sought to suggest that there were reasons why the assets were not available, whereupon the judge observed that those reasons had to be put at the time of the application. Counsel having said that the Court had indicated that it would deal with the legal aid at a later stage, the judge said as follows :

'I know that, yes, but I indicated that in the context of the material that was available and that I would review it at the end of the case but I could entertain no position where one would have a rolling endless application for legal aid with bits and pieces being put in even after the judgment in the case sure the courts could not function if such latitudes were provided'

61. The appellant makes a number of points arising from the foregoing. To begin with he repeatedly suggested that the application for legal aid was never moved. Counsel said that on the 15 June '*there were some submissions*' in relation to legal aid and that the trial Judge indicated that he would deal with the matter at a later stage. He said that he '*had never at any point in time went through the affidavits of Mr. McCormack in support of an application for legal aid.*' He said that the application for legal aid '*was entertained*' at the outset of the hearing on 15th June but (he said) there were '*extremely few or very little submissions and the court had indicated it would get back to us*'.

62. This does not correspond with my reading of the transcript. It appears to me that counsel did move the application for legal aid, he did open the affidavits and he did make submissions. These were duly replied to by counsel for CAB. The Court made it clear towards the conclusion of the appellant's submission that it felt the appellant's application was deficient, in that it was clear that he had assets and that he had not explained why he could not use those to pay his legal fees. The appellant had a choice : it was open to him to proceed with the application on the first day of the trial and to bring it to conclusion. He determined not to do this, presumably because it was clear that the application was not going to succeed having regard to the identified evidential difficulties with it. Having regard to the late stage at which the application was brought the trial Judge was entirely justified in refusing to allow the adduction of further affidavit evidence.

63. It was seemingly by way of explanation for that delay in bringing the application that the appellant referred to his appeal before the Tax Appeal Commission. His counsel repeatedly said that the fact that there was, in tandem with these proceedings, an appeal pending before the Tax Appeal Commission, meant that he could not advance his application for legal aid. This '*predicament*' (as it was described) was that if the appellant had proceeded with such an application he would have been relying upon inaccurate information, as the Tax Appeal Commission eventually reduced the assessments to tax made of the appellant by €30,000. Then, it was said that the appellant had made a choice that he did not wish to move the application until the Tax Appeal Commission had decided the matter.

64. I have had some difficulty in understanding the point being made in this regard. The appellant felt able to move his application in March 2019. At that point also he was told by the presiding Judge of evidential deficiencies in his application. However, the Tax Appeal Commission delivered its decision in September 2019, and the applicant swore a further

affidavit in relation to his legal aid application on 11 June 2000 (shortly before the trial). There was no reason this affidavit could not have been delivered after the Tax Appeal Commission decision but well before the trial.

65. In short, it is clear that the applicant had every opportunity to advance an application for legal aid before the trial began, and has disclosed no good reason for not doing so. He was allowed to move his application for legal aid at the opening of the trial, and did so. He decided not to bring that application to conclusion on that date because it was pointed out to him that his client had failed to provide any proper explanation on oath as to why he could not resort to assets that were not in play in the proceedings for the purposes of discharging his legal fees.

66. Nor do I believe that the trial judge can be criticised for the manner in which he addressed the issue following the delivery of judgment. It was clear that the application for legal aid could not be advanced without the provision of an explanation for the inability of the appellant to discharge legal costs from his other assets. It is not suggested that any other evidence had emerged at trial that affected this issue, so that explanation would have to have been committed to affidavit. The court had decided that it was not going to receive any more evidence. Therefore the appellant application for legal aid had to be refused. This, it must be said, was a result (1) of the appellant's failure to submit a proper affidavit at the time of his initial application, (2) his failure to supplement this in a timely manner following the decision of the Appeal Commissioners and (3) the fact that when he did supplement it he failed to explain how an application for legal aid could be made by a person with other assets available to him outside the jurisdiction.

Conclusion

67. No good reason having been advanced in this Court as to why the trial Judge erred in the orders made by him, this appeal should be dismissed. It is my provisional view that having been wholly successful in this appeal, CAB is entitled to its costs. If the appellant wishes to contest this provisional view, he should advise the Court of Appeal Office within ten days of the date of this judgment whereupon the court will fix a hearing on the issue of costs.

68. Noonan J. and McGrath J. are in agreement with this judgment and the order I propose.