

**THE HIGH COURT**

[2021] IEHC 326

[Record No. 2019/254 JR]

**BETWEEN**

**SEAN FURLONG**

**APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**JUDGMENT of Mr. Justice Barr delivered electronically on the 12th day of May, 2021**

**Introduction**

1. This is an application by way of judicial review, whereby the applicant seeks, inter alia, an injunction restraining his continued prosecution by the respondent on two charges of assault causing harm, on grounds of delay. In particular, the applicant asserts that from the date of the alleged offences the respondent was on notice that the applicant was a minor, and due to blameworthy prosecutorial delay by the Gardaí and the respondent, the applicant has been deprived of the statutory protections afforded to him under the Children Act, 2001, by virtue of the fact that he reached the age of majority prior to being charged.
2. The prosecution in question is currently pending before the Circuit Criminal Court in Dublin. It arises out of an incident that occurred on 22nd May, 2017 at a Centra shop on La Touche Road in Bluebell, Dublin. It is alleged that the applicant was with a group of youths, who had entered the shop to steal items. When the applicant was asked to leave, he became abusive and aggressive towards the security guard, and threw a glass bottle at him. This hit the security guard, and deflected away and struck a 69 year old lady, who was in the shop. She was struck in the face and sustained serious injuries, including a damaged cornea, as well as extensive bruising and swelling.
3. The applicant was born on 17th May, 2000 and had just turned 17 years of age at the time that the alleged incident took place. A statement was taken from one of the injured parties, namely the lady who suffered facial injuries, seven weeks after the alleged incident on 27th July, 2017. However, no statement was taken from the second injured party, the security guard, until almost one year after the alleged offences.
4. From the date of the statement of the first injured party, a further unexplained period of three months elapsed until 3rd October, 2017, upon which date an appointment to arrest the applicant was made with the applicant's mother. However the applicant did not keep the appointment on 6th October 2017.
5. The applicant received a sentence of detention on the 25th October, 2017 in relation to an unrelated incident. Four months elapsed from that date until the applicant was arrested on 23rd February, 2018. The applicant turned 18 years of age on the 17th May, 2018. The applicant was charged with the first s.3 assault offence on 22nd August, 2018, one year and 3 months after the date of the alleged offence. The applicant was subsequently charged with the second s.3 assault offence on 19th December, 2018, one year and 7 months after the alleged offence.

6. Leave to apply by way of an application for judicial review for the reliefs sought in the notice of motion was granted on 29th April, 2019. The issues for determination by this court, having regard to the factual matrix of the case and the relevant legal principles to be outlined later in the judgment, are as follows:-
- i) Determine whether there was culpable or blameworthy prosecutorial delay present in the case; and,
  - ii) Conduct a balancing exercise as between the public interest in having serious charges investigated and prosecuted, and the prejudice to the applicant by way of the delay.
  - iii) Should the court refuse to grant an order of prohibition, is there another form of relief the court could award to address any possible prejudice?
7. When undertaking the balancing exercise, the court must have regard to the length of the delay, the age of the applicant at the time of the alleged offence, the seriousness of the charge, the complexity of the case and the nature of any prejudice to the applicant. The possible prejudice to the applicant includes losing the potential of having the charges dealt with in the District Court, as opposed to in the Circuit Court; the statutory entitlement to a probation report; anonymity; and the mandatory principle that a custodial sentence be a last resort, by reason of the fact that the applicant would have been a juvenile at the date of the trial.

**Chronology of the relevant dates**

|                     |   |
|---------------------|---|
| 17th May<br>2000    | Date of birth of the applicant  |
| 22nd May<br>2017    | Date of alleged offences; applicant arrested and detained in respect of public order offences arising out of the same incident; Gardaí speak to the two injured parties and view the CCTV |
| 10th July<br>2017   | Statement taken from the first injured party, the lady who suffered facial injuries   |
| 3rd October<br>2017 | Appointment for arrest of the applicant made with the applicant's mother  |
| 6th October<br>2017 | Appointment for arrest not attended by the applicant  |
| 23rd October<br>-   |   |
| 17th<br>November    | Investigating garda (Garda O'Reilly) attends a training course and is unavailable   |

|                          |   |
|--------------------------|---|
| 2017                     |   |
| 25th October<br>2017     | Applicant sentenced to detention for eight months arising out of an unrelated incident  |
| 20th<br>November<br>2017 | Garda O'Reilly sought warrant for the detention of the applicant for interview in order to advance the investigation  |
| 2nd February<br>2018     | Application for the warrant was made to the District Court  |
| 23rd February<br>2018    | Applicant is detained on foot of the warrant for the purpose of investigation.  |
| 25th March<br>2018       | Statement of garda witness (Garda Carolan) taken  |
| 26th April<br>2018       | Statement of civilian witness taken   |
| 29th April<br>2018       | Statement of garda witness (Garda O'Connor) taken   |
| 6th May 2018             | Statement of second victim, the security guard, taken   |
| 17th May<br>2018         | Applicant turned 18 years of age  |
| 18th May<br>2018         | Referral made to the Garda Youth Diversion Office   |
| 30th May<br>2018         | Suitability report sought from a Garda Juvenile Liaison Officer   |
| 26th July<br>2018        | Director of the Garda Youth Diversion Office decided that the Applicant was unsuitable for inclusion in the programme in respect of the first alleged assault, the assault causing harm to the lady |
| 22nd August<br>2018      | Applicant charged with the first alleged assault  |
| 4th<br>September<br>2018 | Applicant was before the court in respect of the first alleged offence  |
| 15th October             | Applicant was deemed unsuitable for inclusion in the programme in   |

|                          |  |
|--------------------------|--|
| 2018                     | respect of the second alleged assault causing harm to the security guard   |
| 23rd<br>November         | Garda O'Reilly intended to charge the applicant in respect of the second alleged assault before the court on this date, however, the applicant did not appear and a warrant was issued for his arrest. |
| 19th<br>December<br>2018 | Applicant charged with the second alleged assault when the applicant was before the court in respect of the first charge   |
| 16th January<br>2019     | The delay issue was flagged before the Children's Court  |
| 13th February<br>2019    | Applicant served with the Book of Evidence   |
| 22nd March<br>2019       | Applicant failed to appear on bail before the Circuit Court and a warrant was issued for his arrest  |
| 18th April<br>2019       | Warrant was executed and the applicant was refused bail and remanded in custody  |
| 29th April<br>2019       | Applicant sought and obtained leave to bring judicial review proceedings   |

#### **Submissions on behalf of the applicant**

8. It was the applicant's case at the hearing of this application that owing to blameworthy prosecutorial delay on behalf of the respondent, the applicant has now "*aged out*", having reached the age of majority prior to being charged, and has now lost the statutory protections under the Children Act, 2001. In particular he has lost the benefit of a jurisdictional hearing under s.75 of the 2001 Act. The applicant relied on the seminal decision of *Donoghue v. DPP* [2014] 2 I.R. 762, where the special duty on the State of proceeding with expedition when dealing with a child, was recognised by the Supreme Court.
9. The applicant maintained that this was not a complex garda investigation and, therefore, the prosecutorial delay was not justified or sufficiently accounted for. The applicant was arrested and detained on the date of the alleged incident, approximately one hour after the incident took place, in respect of an offence contrary to s.6 of the Criminal Justice (Public Order) Act, 1994. Both injured parties were spoken to by the prosecuting garda, Garda O'Reilly, on the day in question and CCTV was also viewed by the garda.
10. The applicant submitted that the following periods in particular amounted to blameworthy prosecutorial delay:-
  - i) 22nd May 2017 – 10th July 2017; 7 weeks

- ii) 10th July 2017 – 3rd October 2017; 3 months
- iii) 25th October 2017 – 23rd February 2018; 4 months
- iv) 23rd February 2018 – 18th May 2018; 3 months

Total delay: 1 year and 5 months

11. A period of seven weeks elapsed between the date of the alleged offences on 22nd May, 2017 and a statement being taken from one of the injured parties, the lady, on 10th July, 2017. The investigating garda, Garda O'Reilly, averred that it was normal practice to wait a period of time before taking a statement from an injured party and to allow them time to process the incident. In response to this, the applicant's solicitor stated in his affidavit dated 15th September, 2019, that given the context of a child being the subject of a prosecution, there was a special duty on the State authorities, over and above the normal duty of expedition, to ensure a speedy trial for a child or young person; what might be excusable delay in the case of an adult, might not be acceptable in the case of a child.
12. The statement from the second injured party, the security guard, was not taken until 6th May, 2018, almost one year after the date of the alleged offences and 11 days prior to the applicant turning 18 years of age. No explanation was offered on behalf of the respondent for this delay. Similarly, the statement of a civilian witness, who was present during the course of the alleged offence, was not taken until 11 months after the incident.
13. Between the dates 10th July – 3rd October, 2017, a period of three months elapsed during which time nothing occurred and the investigation was not advanced. No explanation was offered on behalf of prosecution for this period of delay.
14. It was submitted on behalf of the applicant that it was clear from the affidavit of Garda O'Reilly, that there was an intention to arrest the applicant as early as 3rd October, 2017, at which time the applicant was invited through his mother, to attend for arrest. It was accepted that on 6th October, 2017 the applicant failed to attend for arrest by appointment.
15. It appears that no further attempts were made to progress the investigation between 6th October – 17th November, 2017, during which time the prosecuting garda, Garda O'Reilly, was away at a training course in Templemore Garda College. It has not been averred that any other garda took charge of the investigation during this period.
16. The applicant received a sentence of detention of 8 months on 25th October, 2017, on foot of an incident unrelated to the present proceedings. He was detained in Oberstown Detention Centre. It was submitted that during this period of detention, the investigation was not expeditiously proceeded with. It was averred by Garda O'Reilly that he sought a warrant from his superiors on 20th November, 2017. However no application was made to the District Court for a warrant until 2nd February, 2018. It was submitted that no explanation had been offered for the period that elapsed between the seeking of the warrant and same being applied for and granted pursuant to s.42 of the Criminal Justice

Act, 1999, which provision provided for the arrest and detention of prisoners in connection with investigation of other offences. Three weeks later, the warrant was executed on 23rd February, 2018.

17. It was submitted that there was a further period of unexplained prosecutorial delay of approximately three months between the 23rd February, 2018 and 18th May, 2018. It was averred by Garda O'Reilly that certain additional statements had to be taken, for inclusion in the investigation file. It was submitted on behalf of the applicant that there was no explanation for the second injured party's statement being taken almost one year after the alleged offence occurred, on the 6th May 2018.
18. The file was not send to the Garda Youth Diversion Office until 18th May, 2018, the day after the applicant turned 18 years of age. On 26th July, 2018 the applicant was deemed unsuitable for inclusion in the juvenile diversion programme in relation to the first alleged offence. This refusal was received 14 months after the alleged offence. On the 22nd of August the Applicant was charged with the first offence, on charge sheet number 19105376 with an offence contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997 (the 1997 Act). In relation to the second offence, the applicant was deemed unsuitable for inclusion in the juvenile diversion programme on 25th October, 2018. This refusal was received 17 months after the alleged offence. He was then charged on charge sheet number 19402216 with an offence contrary to s. 3 of the 1997 Act.
19. It was submitted on behalf of the applicant that the approach with regards to referrals to the Garda Youth Diversion Office, was demonstrative of the delay in this case. That matters had been allowed to proceed at a leisurely pace, such that little regard was had for the applicant's constitutional right to a trial with reasonable expedition and had paid little heed to the special duty of expedition upon prosecuting authorities, over and above the normal duty of expedition for adult offenders.
20. In respect of both offences, the respondent directed trial on indictment and as the applicant had reached the age of majority, the Children's Court had no jurisdiction to deal with the matter.
21. It was submitted on behalf of the applicant that due to the prosecutorial delay outlined above; the applicant had been deprived of a s.75 hearing pursuant to the 2001 Act. That sections states as follows:-

*"75.—(1) Subject to subsection (3), the Court may deal summarily with a child charged with any indictable offence, other than an offence which is required to be tried by the Central Criminal Court or manslaughter, unless the Court is of opinion that the offence does not constitute a minor offence fit to be tried summarily or, where the child wishes to plead guilty, to be dealt with summarily.*

*(2) In deciding whether to try or deal with a child summarily for an indictable offence, the Court shall also take account of—*

- (a) *the age and level of maturity of the child concerned, and*
- (b) *any other facts that it considers relevant.”*

22. It was submitted that in terms of age, the applicant had just turned 17 at the time of the alleged offences. Further, it was submitted that it was often decisive in persuading the Children’s Court to accept jurisdiction, if there was a guilty plea. In the applicant’s case, he was recorded as having made admissions during the course of an interview, which was contained in the Book of Evidence that was served upon him. Submissions would also have been made in relation to the applicant’s diagnosis of ADHD and his attendance at the Lucina Clinic. Although the applicant did not have the opportunity to plead guilty and to have the benefit of a s.75 hearing, the applicant’s solicitor was of the view that there was a strong likelihood that jurisdiction would have been accepted by the Children’s Court in this case.
23. The meaning of a “child charged” for the purposes of s.75 was considered by Faherty J. in *DPP v. Forde* [2017] IEHC 799. The court held that the meaning did not include a child, who was under 18 at the time of the alleged offence, but over 18 at the time of the actual charging of the offence. The court concluded that s.75 must be interpreted to mean that the person in question was a child both at the date of the charging and at the hearing. It was stated as follows at para. 42 of the judgment:-
- “[I]n order for the Children’s Court to entertain an application to deal summarily with ‘a child charged with an indictable offence...’, the person must be a child at the time of charging and at the s.75 hearing. [...] No caveat has been added that the benefit of s.75 continues for a person over 18 years on the basis that they were a child when the alleged offences were committed.”*
24. It was therefore clear that s.75 of the 2001 Act was no longer applicable to the applicant and it was argued that he had now lost that important statutory protection. The applicant further relied on the decision of the Court of Appeal in *DPP v. L.E.* [2020] IECA 101 where the s.75 hearing was referred to as “*one of the most important procedural benefits under the Children Act 2001*”.
25. It was argued that the applicant was now potentially exposed to a longer sentence and had lost the other protections of the Children Act, 2001 including: his right to anonymity pursuant to s.93 of the Act, as substituted by s. 139 of the Criminal Justice Act, 2006; the protection of detention as a last resort pursuant to s.96 of the Act; and the adjournment of proceedings for the purposes of obtaining a Probation and Welfare Report pursuant to s.99 of the Act
26. It was submitted that in accordance with the principle of proportionality, if the Court was not disposed to granting prohibition, the court should consider whether any other form of relief may address the prejudice facing the applicant. It was suggested that one such potential relief would be a declaration, limiting the sentencing judge to the sentencing jurisdiction of the District Court. In response to the respondent’s argument that

submissions on mitigation can always be made to the sentencing judge in the Circuit Court, the applicant submitted that that would not cure the problem of a stark sentencing differential. The applicant relied on the decision in *B.G. v. Judge Murphy (No. 2)* [2011] I.R. 748 in this regard.

27. It was also submitted that the court should have regard to the limited form of appeal available from the Circuit Court to the Court of Appeal. An appeal of a summary prosecution to the Circuit Court involves a full rehearing, where the appellant continues to enjoy the presumption of innocence and the automatic right to bail pending appeal. In contrast, the appeal from a conviction on indictment to the Court of Appeal was a more limited appeal, which must be grounded on substantive errors of law.
28. The applicant further sought a declaration that there had been a breach of the right to an expeditious trial guaranteed by Article 38.1 of the Constitution and Article 6 of the European Convention on Human Rights, and sought damages for breach of such rights.

#### **Submissions on behalf of the Respondent**

29. In summary, the respondent submitted that there had been no prosecutorial delay in the case. However, should the court find that there was blameworthy prosecutorial delay, that a balancing exercise as envisaged by the Supreme Court in *Donoghue v. DPP* [2014] 2 I.R. 762, would determine that the balance lay with the public interest in prosecuting serious crimes. The respondent also contended that the applicant was not seriously prejudiced by virtue of having lost various procedural protections, as was submitted on behalf of the applicant.
30. The respondent submitted that in determining whether there was prosecutorial delay in a child's case, it was only appropriate to have regard to events occurring between the date when the alleged incident occurred and when the applicant reached the age of majority.
31. It was submitted on behalf of the respondent that the first issue to be addressed was whether there had been any blameworthy prosecutorial delay. It was only if there was such a finding that the court should then proceed to conduct a balancing exercise to determine if the public interest in the prosecution of the alleged offences has been outweighed by prejudice to the accused.
32. The respondent submitted that the investigation in this case had been conducted expeditiously and that much of the delay had been attributable to the applicant. In particular, the applicant had failed to attend the appointment for arrest that was made for 6th October, 2017. There was no attempt made by the applicant to explain his non-attendance. The applicant was then detained for a period, arising out of an unrelated incident, which necessitated a statutory procedure for the obtaining of a warrant through the relevant channels. It was submitted that the delay between October 2017 and February 2018 had been of the applicant's own making. He could not lay the blame for that at the door of the prosecuting authorities.



33. The respondent submitted that there had been no culpable or blameworthy prosecutorial delay. Even if the court found that there were “*pockets of delay*” (see: *L.E. v. DPP* [2020] IECA 101), this did not amount to blameworthy prosecutorial delay, when the whole period was considered. The respondent contended that the applicant’s case failed at the initial hurdle.
34. The respondent submitted that should the court find that there was in fact prosecutorial delay, then a balancing exercise would have to be conducted to determine whether the public interest in the prosecution of these serious offences has been outweighed by prejudice to the minor.
35. With regards to the procedural benefits which can be conferred on a minor, who is accused of an offence, under the Children Act, 2001; the respondent took no issue with the existence of these benefits. Particular reference was made to s.75 of the 2001 Act, which creates a jurisdiction whereby a District Court judge can deal with an indictable offence summarily, in the case of children. Section 75 does not vest a right in an accused to have their case dealt with summarily. It only provides a broad discretion to the District Court judge to do so.
36. The respondent relied on the judgment of O’Regan J. in *Ryan v. DPP* [2018] IEHC 44, where the approach adopted by the court was to consider whether the charge in question would have been dealt with summarily. In that case the District Court had refused jurisdiction. It was also noted by O’Regan J that the DPP would not have consented to the matter being dealt with in the District Court. In the present case, the respondent had directed that the trial proceed on indictment. In light of this, it was submitted that the Court should determine whether the present charges would most likely have been dealt with summarily or not. The respondent submitted that the charges would not have been dealt with summarily, due to the nature and seriousness of the offences, as well as the age and available evidence of maturity of the applicant. The applicant was 17 at the time of the offences. It was submitted that even if a s.75 hearing had taken place, the applicant was at the highest end of the permissible age range. There was also evidence of maturity before the court. The respondent averred that the psychological report exhibited on behalf of the applicant, related to when the applicant was 12 years of age. On that basis, it was submitted that that report would have been of little, or no assistance to the District Court at a s.75 hearing.
37. The respondent also contended that the loss of the applicability of s.96 of the 2001 Act, which stipulates that a sentence of detention will be a last resort, was not sufficient prejudice to defeat the public interest in the prosecution of charges and as such, should not be a factor in favour of prohibition. The respondent relied on the views expressed by the Court of Appeal in *AB v. DPP* (Unreported, Court of Appeal, Birmingham P., January 21st 2020) and Simons J in *Dos Santos v. DPP* [2020] IEHC 252, where it was held that the fact the alleged offences had occurred at a time when the applicant had been a minor was something which would be taken into account by the sentencing court; therefore the applicant’s inability to rely on s.96, was not relevant. The respondent submitted that s.96

was not of practical significance to this case; as such, should not be a factor in favour of prohibition.

38. Similarly, in relation to the loss of the provisions of s.99 of the 2001 Act, which mandates the preparation of a mandatory probation report, the respondent contended that the loss of this entitlement was not sufficient to justify prohibition of the trial (see: *AB v. DPP*). The respondent also relied on the judgment of Simons J in *TG v. DPP* [2019] IEHC 303, in which he held that prejudice arising from the loss of such provision, was not significant, as the trial court would have discretion to seek such a report.
39. With regards to reporting restrictions, s.93 of the 2001 Act provides for this in relation to any court proceedings concerning a child. The respondent opened a number of cases where it was held that the loss of anonymity was a significant disadvantage: see *L.E. v. DPP* [2020] IECA 101; *Dos Santos, TG v. DPP*, and *Ryan v. DPP* [2018] IEHC 44. In these cases, however, the courts refused prohibition and found that in conducting the necessary balancing exercise; the balance weighed in favour of the trial proceeding.
40. The respondent submitted that it is a well-established principle in prohibition of trial proceedings for the existence of admissions to be taken into account. In the present case the applicant had made certain admissions, and had failed to indicate in these judicial review proceedings whether he would be disputing that he made these admissions, or that they were not accurate. In this regard, the respondent referred to the case of *SW v. DPP* [2018] IEHC 234, where one of the grounds for refusing prohibition, was that admissions had been made. See also: *Bernotas v. DPP* [2019] IEHC 296.
41. Finally, the respondent submitted that the declaration sought as to the sentencing powers of the Circuit Court on the basis of *BG v. Judge Murphy (No. 2)* [2011] I.R. 748 was misconceived and should be refused. That case concerned the powers of the courts under the separation of powers to remedy an injustice done to a person by a legislative omission. The declaration in that case was made in circumstances where a lacuna in the legislative scheme in issue was found to have breached the equality guarantee pursuant to Article 40.1 of the Constitution of Ireland, which provided that all citizens shall be held equal before the law. The respondent submitted that that case was far removed from the circumstances of the present case. The respondent contended that there had been no breach of the applicant's constitutional rights and as such, there was no basis on which the court should seek to limit the jurisdiction of the Circuit Court. Should the applicant plead guilty to the alleged offences, the Circuit Court will be obliged to take into account the his age and maturity at the time the alleged offences took place.
42. In summary, the respondent contended that there had been no blameworthy prosecutorial delay in this case. To the extent that there had been any delay in the investigation, the applicant had contributed significantly to such delay by failing to attend for appointment and by virtue of being sentenced to a period of detention.
43. The respondent submitted that the applicant had failed to establish any, or any significant, prejudice which would outweigh the public interest in having the prosecution

continue. The respondent pointed to the admissions made by the applicant and submitted that it would be extraordinary to prohibit the trial in light of same.

44. The respondent submitted that the application to have the sentencing power of the Circuit Court limited was misconceived and should be refused. Similarly, the applicant had not pleaded, or particularised any proper basis on which he should be entitled to recover damages. This was not advanced at the hearing of the present application, nor was it addressed in the written submissions.

### **The Law**

45. In considering a case involving minor offenders, it is important to bear in mind the words of O'Malley J. in *G. v. DPP* [2014] IEHC 33:-

*"Children differ from adults, not just in their physical development and lesser experience of the world, but in their intellectual, social and emotional understanding. It is for this reason that it has long been recognised that it is unfair to hold a child to account for his or her behaviour to the extent that would be appropriate when dealing with an adult."*

46. In that case, the applicant successfully sought an order of prohibition of a trial, where he was being charged with sexual offences concerning a young girl. The alleged offences took place when the applicant was 15 years of age. It was not until 4 years, later that the applicant was finally charged. The judge held that there had been prosecutorial delay, admissions had been made and the applicant was facing real prejudice in the case. An order of prohibition was granted.
47. In the seminal decision of *Donoghue v. DPP* [2014] 2 I.R. 762, the Supreme Court affirmed that there is a special duty owed to a child or young person in relation to a trial with reasonable expedition. It was stated by Dunne J. speaking for the court at para. 56:-

*"The special duty of State authorities owed to a child or young person over and above the normal duty of expedition to ensure a speedy trial is an important factor which must be considered in deciding whether there has been blameworthy prosecutorial delay. That special duty does not of itself and without more result in the prohibition of a trial. As in any case of blameworthy prosecutorial delay, something more has to be put in the balance to outweigh the public interest in the prosecution of offences. What that may be will depend upon the facts and circumstances of any given case. In any given case, the age of the young person before the courts will be of relevance. Someone close to the age of 18 at the time of an alleged offence is not likely to be tried as a child no matter how expeditious the State authorities may be in dealing with the matter. On the facts of this case, had the prosecution of Mr. Donoghue been conducted in a timely manner, he could and should have been prosecuted at a time when the provisions of the Children Act 2001 would have applied to him. The trial judge correctly identified a number of adverse consequences that flowed from the delay. Accordingly, I am satisfied that the trial judge was correct in reaching his conclusion that an injunction should be*

*granted preventing the DPP from further prosecuting the case against Mr. Donoghue."*

48. In the *Donoghue* case, members of an Garda Síochána had called to the minor applicant's home, where a substance was found which was believed to be heroin. The applicant was 16 years old at the time and immediately took responsibility and signed an admission to that effect. Subsequently, the items found at his home were forwarded to the forensic science laboratory for analysis, where the substance was confirmed to be heroin. A period of one year and four and a half months elapsed between the date of the applicant's arrest and his being charged with an offence.
49. The case came before the Supreme Court by way of the respondent's appeal from the decision of Birmingham J. in the High Court, where it was concluded that there had been significant culpable delay in the case. On the basis of this conclusion, the judge went on to consider the consequences of the delay in the circumstances of that case. It was noted that in all likelihood the applicant would have benefitted from statutory protections afforded to minor offenders under the Children Act, 2001 and had therefore suffered real prejudice. An order of prohibition was granted in the High Court.
50. The Supreme Court held that having regard to all the circumstances of the case, there had been sufficient evidence before the court to enable the trial judge to reach the conclusion that there had been significant culpable delay in the case. The Supreme Court went on to hold that blameworthy prosecutorial delay alone will not be sufficient to prohibit a trial. The court must conduct a balancing exercise to establish whether any resulting prejudice to the accused, outweighs the public interest in the prosecution of serious offences. The court stated as follows at para. 52:-

*"There is no doubt that once there is a finding that blameworthy prosecutorial delay has occurred, a balancing exercise must be conducted to establish if there is by reason of the delay something additional to the delay itself to outweigh the public interest in the prosecution of serious offences. In the case of a child there may well be adverse consequences caused by a blameworthy prosecutorial delay which flow from the fact that the person facing trial is no longer a child. However, the facts and circumstances of each case will have to be considered carefully. The nature of the case may be such that notwithstanding the fact that a person who was a child at the time of the commission of the alleged offence may face trial as an adult, the public interest in having the matter brought to trial may be such as to require the trial to proceed. Thus, in a case involving a very serious charge, the fact that the person to be tried was a child at the time of the commission of the alleged offence and as a consequence of the delay will be tried as an adult, may not be sufficient to outweigh the public interest in having such a charge proceed to trial. In carrying out the balancing exercise, one could attach little or no weight to the fact that someone would be tried as an adult in respect of an offence alleged to have been committed whilst a child if the alleged offence occurred shortly before their 18th birthday. Therefore, in any given case a balancing exercise has to be carried out in*

*which a number of factors will have to be put into the melting pot, including the length of delay itself, the age of the person to be tried at the time of the alleged offence, the seriousness of the charge, the complexity of the case, the nature of any prejudice relied on and any other relevant facts and circumstances. It is not enough to rely on the special duty on the State authorities to ensure a speedy trial of the child to prohibit a trial. An applicant must show something more as a consequence of the delay in order to prohibit the trial."*

51. The *Donoghue* decision indicates that the first question to be determined by a court is whether or not there has been any culpable or blameworthy prosecutorial delay in the case. In the event that there has been such delay, then the court must carry out a balancing exercise to establish if there was, by reason of the delay, something additional to outweigh the public interest in the prosecution of seriousness offences. Factors such as the length of the delay, the age of the person to be tried at the time of the offence, the seriousness of the charge, the complexity of the case and the nature of the prejudice relied upon are to be considered.
52. In ascertaining whether there has been blameworthy prosecutorial delay in the case, the court has had regard to the statement of White J. in *Cash v. DPP* [2017] IEHC 234, which was subsequently reaffirmed by Simons J. in *Dos Santos v. DPP* [2020] IEHC 252, at para. 23. In both cases it was confirmed that the relevant period of time for determining blameworthy prosecutorial delay is that between the date of the alleged offences and when the accused turned 18 years of age. White J. in *Cash v. DPP* stated at para. 12:-

*"There was prosecutorial delay from 2nd February, 2015 up to the date of charge on 7th January, 2016. The applicant reached his majority on 8th July, 2015. I do not consider any delay subsequent to 8th July, 2015 as being relevant to the applicant's challenge in these proceedings. I would not regard the delay as significant culpable prosecutorial delay. Even if the respondent prosecuted the matter without undue prosecutorial delay, it would not have concluded by way of indictable trial by jury before the applicant's eighteenth birthday."*
53. In the Court of Appeal decision of *L.E. v. DPP* [2020] IECA 101, an appeal against the High Court's refusal to grant prohibition, was dismissed. The applicant in that case was a minor in 2015, when she allegedly committed offences, including assault causing harm, threats to kill and violent disorder. The Court of Appeal upheld the finding of the High Court that there had been no culpable or blameworthy prosecutorial delay. This was in circumstances which concerned a complex investigation with a number of suspected offenders and no admission of guilt. The High Court had held that although there had been "*pockets of delay*", when looking at the matter overall, there had been no blameworthy or culpable prosecutorial delay. The court also held that the overall cause of the delay lay at the feet of the applicant.
54. In the judgment of the High Court in *Daly v. DPP* [2015] IEHC 405, Kearns P, stated that there can be no obligation on prosecution authorities to unrealistically prioritise cases involving minors. It was stated as follows at page 19:-

*"While the importance of ensuring a speedy trial in the case of juveniles is well established, certain factors may arise in each case which determine how expeditiously this can occur and there can be no obligation on prosecution authorities to unrealistically prioritise cases involving minors. In the view of the Court there was no blameworthy prosecutorial delay in this case."*

55. In *SE v. DPP* [2018] IEHC 264, the applicant unsuccessfully sought prohibition. In refusing the reliefs sought, Barrett J. listed the following as relevant factors when conducting the necessary balancing exercise:-

*"In deciding whether or not to grant any of the reliefs that the Applicant has come to court seeking, the court is especially mindful of the following factors:*

- (i) the need for expedition in the criminal process when dealing with children (see, inter alia, in this regard, BF v. DPP [2001] 1 IR 656, Jackson v. DPP & Walsh v. DPP [2004] IEHC 380, C (A Minor) v. DPP [2008] 3 IR 398, G v. DPP [2014] IEHC 33, and Donoghue v. DPP [2014] IESC 56);*
- (ii) the court's finding that there has in the within case been culpable prosecutorial delay, albeit of a limited duration;*
- (iii) the fact that, as recognised in AP v. DPP [2011] 1 IR 729, 745, 'The primary function of deciding to initiate or to continue a prosecution is conferred on the Director of Public Prosecutions' (albeit that this Court must ultimately vindicate the Applicant's constitutional right to an expeditious trial);*
- (iv) the contention of the DPP that the public interest in seeing that serious offences are prosecuted outweighs the factors presented by such delay as may be (and has been) found to arise in this case;*
- (v) the fact that the delay presenting in this case is not due to any dereliction of duty, gross negligence, strategy or tactic on the part of the State;*
- (vi) the fact that there is no identifiable prejudice presenting for the Applicant notwithstanding such culpable delay as has occurred;*
- (vii) the fact that, as recognised in Blanchfield v. Hartnett [2002] 3 IR 207, 226, the court must presume, until the contrary is demonstrated, that the proceedings of a criminal trial will be conducted fairly and properly; there is no reason to believe that the contrary will apply here;*
- (viii) the fact that if the Applicant pleads or is found guilty, (a) the trial judge has the power to order the preparation of a probation report, (b) it is a principle of sentencing that a period of imprisonment will only be imposed as a last resort.*

(viii) *the fact that this is a case in which the evidence against the Applicant is compelling: there is CCTV footage of the incident and identification of the applicant; and*

(ix) *the fact that this is a case in which there has been an uncontested admission; as Hardiman J. noted in SA v DPP (Supreme Court, 17th October, 2007), para.19, '[I]t would...be extraordinary to prohibit a trial in circumstances where the defendant admits a significant amount of behaviour of a criminal nature'."*

56. Turning to the various statutory protections which the applicant is alleged to have been deprived of as a result of the delay in the investigation, the relevant provisions of the 2001 Act are: s.75 (court's jurisdiction to deal with indictable offences summarily); s.93 (reporting restrictions); s.96 (detention as a last resort), and s.99 (mandatory probation report). While it is not necessary to recite these individual provisions in their entirety, the court has had regard to them in considering the potential prejudice the applicant will suffer, having been deprived of them by virtue of "aging out".

57. With regards to the loss of anonymity pursuant to s.93 of the 2001 Act, it was confirmed by McDermott J. in *Independent Newspapers v. I.A.* [2018] IEHC 120 that there was no provision extending the benefits of reporting restrictions when a child passes the threshold age limit of eighteen years in the course of criminal proceedings:-

*"[43.] While it is clear that the protection conferred by s. 93 continues for life in respect of a child who is prosecuted, convicted and sentenced under the age of eighteen, there is no specific provision extending those benefits when a child passes the threshold age limit of eighteen years in the course of the criminal proceedings. Thus for example, a child whose eighteenth birthday occurs in the middle of criminal trial or is convicted the day after his eighteenth birthday would not have the protection of s. 93 or the sentencing regime that would apply to a child. These specific protections under the Children Act 2001 only apply to a child – a person under eighteen years of age. In cases where offences committed by a child are only detected when they enter adulthood, he/she does not obtain the benefit of any of the provisions of s. 93 or any other provisions of the Children Act. There may be good policy reasons to vest in a court a discretion to extend the protections of anonymity in cases which overlap the transition between childhood and adulthood but this has not been addressed by the Oireachtas which has confined the protections to those under eighteen years. This is consistent with the well-established principles of sentencing applicable to an adult who has committed an offence as a child but comes to be sentenced as an adult considered in the case law set out above.*

*[44.] The court must uphold the provisions of Article 34.1 of the Constitution that justice shall be administered in public 'save in such special and limited cases as may be prescribed by law'. The restriction on publication or reporting matters that might tend to identify a child is specifically limited to persons under eighteen years. In*

*Irish Times Ltd. v. Ireland [1998] 1 I.R. 359 the Supreme Court held that it was a fundamental right in a democratic State and a fundamental principle of the administration of justice under Article 34.1 that the people have access to the courts to hear and see justice being done save for limited exceptions. Any order restricting the contemporaneous reporting of legal proceedings by the press must be viewed as a curtailment of access by the people [...]"*

58. This was later followed by Simons J. in the High Court decision of *L.E. v. DPP*, who, upon interpreting s.93, held that reporting restriction were not available in the case of an adult accused. The decision of Simons J. was upheld in the Court of Appeal in *DPP v. L.E.* [2020] IECA 101, where Birmingham P. stated as follows: -

*"I do accept that the loss of anonymity is a significant disadvantage. However, it is necessary to put in the balance against that the seriousness of the case [...]"*

59. Similarly in *Dos Santos* and *T.G.* the court held that the prejudice suffered by the applicant was the loss of anonymity and reporting issues. In both cases, however, the balance weighed in favour of the trial proceeding and the prejudice was not sufficient to halt the prosecution, when considering the public interest in the prosecution of serious offences.
60. In relation to the balancing exercise limb of the test envisaged by Dunne J. in the *Donoghue* case, there have been a number of High Court cases where, notwithstanding the court's finding of blameworthy delay, prohibition has been refused by the court upon conducting a balancing exercise and having come to the conclusion that the balance lay in favour of allowing the prosecution to continue.
61. In *Ryan v. DPP* [2018] IEHC 44, which concerned an alleged assault by the applicant, who was sixteen at the time of the offence, O'Regan J. found that there was prosecutorial delay of approximately nine and a half months, but nonetheless refused the reliefs sought having conducted a balancing exercise. It was concluded that the prejudice the applicant would experience was the loss of anonymity and the loss of a statutory right to a probation report; however, the balance tipped in favour of the public interest in prosecuting charges in respect of serious offences.
62. In *SW v. DPP* [2018] IEHC 264, the offences of assault were alleged to have been committed when the applicant was fifteen years old. The applicant had turned seventeen by the time he was charged. Barrett J. held that although culpable prosecutorial delay amounted to approximately 2 years, it was not appropriate to grant an order of prohibition, as he failed to find sufficient prejudice present in the applicant's case.
63. The case of *Dos Santos v. DPP* [2020] IEHC 252, concerned an alleged offence of robbery and carrying a weapon with intent to commit an offence, when the applicant was sixteen years old. It was held by Simons J. that the delay of approximately twenty-two months was inordinate and without justification, but nonetheless he allowed the prosecution to proceed. The reliefs sought were refused in circumstances where the court held that the



prejudice which had accrued, did not outweigh the public interest in allowing the prosecution to proceed.

64. In *Wilde v. DPP* [2020] IEHC 385, a case involving alleged criminal damage and assault offences, which took place while the applicant was aged sixteen and in custody, Simons J. held that the delay of more than two years was excessive. He nonetheless found that the balance of justice lay in favour of allowing the prosecution to proceed.
65. Therefore even if culpable or blameworthy delay is found to be present in a case, the public interest element may outweigh the prejudice facing the minor who is accused of offences. All cases stand on their own merits and particular factual matrix, and thus this court must conduct its own examination in ascertaining whether there was delay and possible resulting prejudice to the applicant.

## **Conclusions**

### **Has there been a culpable or blameworthy prosecutorial delay?**

66. The first question to be addressed is whether there was any culpable delay in the investigation or prosecution of the offence. In determining this issue, it is only necessary to have regard to the events which occurred between the date of the alleged offences on 22nd May, 2017 and the date on which the applicant reached his age of majority on 17th May, 2018: see *Cash v. DPP* and *Wilde v. DPP*.
67. While this was a serious offence, involving an assault causing bodily harm to the security guard and to the elderly lady, the investigation of the offences was not complex. The Gardaí had attended at the scene shortly after the offences were committed. There the investigating garda, Garda O'Reilly, had spoken to the security guard, to the elderly lady and to a civilian witness. He had also had the opportunity to view CCTV footage of the incident. The applicant was arrested and detained later that day.
68. In the present case there was no particular difficulty in identifying the accused, or the victims of the assault, or any relevant witnesses. It has to be seen as a fairly straightforward investigation.
69. The applicant has complained in relation to the delay of seven weeks that occurred between the date of the alleged offences and the taking of a statement from the elderly lady, Ms. Connolly. The court accepts the explanation given by Garda O'Reilly in his affidavit, that he allowed the lady sufficient time to get over both her injuries and the trauma of the assault. The court is satisfied having regard to the statements made by Ms. Connolly and Mr. Doherty, that Ms. Connolly suffered significant injuries as a result of the assault. Given that the assault occurred completely out of the blue, it is understandable that she would have been very traumatised by the event. Having regard to her injuries and to her age, it was reasonable for Garda O'Reilly to wait a period of seven weeks before taking the statement from her. There was no culpable delay in this regard.

70. Thereafter, there was an unexplained period of three months between the date on which the statement was obtained from Ms. Connolly on 10th July, 2017, to 3rd October, 2017, when the appointment was made with the applicant's mother for him to call into the station for the purpose of arrest and questioning. No explanation has been given by Garda O'Reilly for this period of complete inactivity. It is not clear why he did not use that period to obtain a statement from the security guard and from the independent witness, nor why he delayed until 3rd October, 2017 to make the arrangement with the applicant's mother.
71. The statement from the independent witness, Mr. Doherty was not taken until 26th April, 2018. No explanation was forthcoming as to why that statement was not taken until approximately eleven months after the incident. The statement from the security guard was taken on 6th May, 2018. Again, there was no explanation for the delay of almost twelve months in taking this statement. This is particularly hard to understand, in light of the fact that it appears that the security guard, Mr. Olaxode, only took three days out sick after the incident. Therefore, he would have been readily accessible to the Gardaí from almost immediately after the date of the assault. Having regard to the duty that there is upon prosecution authorities to proceed with reasonable expedition when investigating a crime involving minors, it is difficult to understand why there was such an inordinate delay in obtaining the statement from the security guard.
72. The applicant also makes complaint in relation to the period that elapsed between the date of the alleged offences and his ultimate arrest and detention for the purpose of questioning on 23rd February, 2018. However, some of the delay during that period was due to the fact that he failed to keep the appointment which had been made with his mother, that he would attend at Kilmainham Garda Station on 6th October, 2017 for the purpose of being arrested in relation to the investigation. Neither the applicant, nor his mother attended for that appointment. No explanation has ever been given as to why the applicant did not keep the appointment.
73. Shortly thereafter, Garda O'Reilly attended a training course in Templemore Garda College from 23rd October, 2017 to 17th November, 2017. In the interim, on 25th October, 2017 the applicant had been sentenced to eight months detention in Oberstown Detention Centre in respect of a charge of assault causing harm. On 20th November, 2017, Garda O'Reilly sought a warrant pursuant to s.42 of the Criminal Justice Act, 1999 through his superiors.
74. On 2nd February, 2018 an application was made by Superintendent Patrick McMenemy to the District Court for a warrant pursuant to s.42 of the 1999 Act. The warrant was granted by the District Court. It was subsequently endorsed by Superintendent McMenemy for execution on 5th February, 2018. The warrant was executed by Garda O'Reilly on 23rd February, 2018.
75. While the applicant complains of the delay between the date when Garda O'Reilly applied for the warrant through the Sergeant in Charge on 20th November, 2017 and the application for same being moved by Superintendent McMenemy on 2nd February, 2018,

the court is not of the view that there was culpable delay in this period. Such delay as there was in the matter, was due to the fact that the applicant had failed to keep the appointment on 6th October, 2017; thereafter Garda O'Reilly had been on a training course and in the interim the applicant had been sentenced to a period of detention in Oberstown, which necessitated the seeking of the s.42 warrant. As such, the delays that ensued were due largely to the actions of the applicant. Insofar as one might consider that there was delay between 20th November, 2017 and 2nd February, 2018, the court is mindful of the fact that that covered the Christmas period when the Gardaí would have been under considerable pressure at work. Accordingly, the court declines to find any culpable delay during this period.

76. The interview with the applicant occurred on 23rd February, 2018, which was approximately three months before his 18th birthday. It was not possible for Garda O'Reilly to have the file submitted to the DPP and to have the matter brought before the District Court within that period, due to the fact that there were still a number of statements outstanding. As already noted, he did not obtain the statements from the independent witness and from the security guard until April and May 2018. In addition, statements were obtained from Garda Elaine Carolan on 25th March, 2018 and from Garda Thomas O'Connor on 29th April, 2018. When those statements had been obtained, due to the applicant's age, a referral was made to the Garda Youth Diversion Office on 18th May, 2018, which was the day after the applicant's eighteenth birthday.
77. The court is satisfied that had the investigation been carried out with reasonable expedition, Garda O'Reilly should have been in possession of the statements from the civilian witnesses prior to the date on which he questioned the applicant and the remaining garda statements should have been obtained very shortly thereafter. Had that been done, it would have meant that the papers could have been submitted to the GYDO very shortly after the interview on 23rd February, 2018. Had that been done, the court is satisfied that there was a very good chance that the matter could have been brought before the District Court prior to the applicant reaching eighteen years of age.
78. Looked at in the round, the court is satisfied that there was sufficient time in this case to progress the investigation to a conclusion and to have the matter ready to come before the District Court prior to the time that the applicant reached eighteen years of age. The alleged offences were committed when the applicant was five days beyond his seventeenth birthday. This meant that the Gardaí had 361 days in which to get the matter before the District Court. Having regard to the fact that the investigation was not a complex one, the court is satisfied that had the investigation been carried out with reasonable expedition, the matter could have been brought before the District Court before the applicant turned eighteen years of age.
79. In reaching that conclusion, the court has had regard to the following facts: the investigating garda spoke to the two injured parties and to the independent witness at the scene; he was furnished with CCTV of the incident; he was able to identify the applicant, who was arrested later that evening; his whereabouts appear to have been known to the

Gardaí at all relevant times; there was no difficulty in obtaining the cooperation of the injured parties, or the independent witness. While there was some delay caused by the fact that the applicant failed to keep the appointment on 6th October, 2017 and by his subsequent incarceration in Oberstown Detention Centre, these were not insuperable barriers to the continuance of the investigation. Even allowing for the delay that ensued due to those matters, there was still ample time to have the matter properly determined by the GYDO and submitted to the DPP and brought to the District Court prior to the time when the applicant turned eighteen years of age, had the other relevant statements been obtained at the time when they ought to have been obtained. For these reasons, and having regard to the particular duty to proceed with expedition that is placed upon the Gardaí when investigating crimes involving minors, the court is satisfied that there was culpable delay on the part of the Gardaí in this case.

### **The Balancing Exercise**

80. The fact that there was culpable prosecutorial delay, is not the end of the matter. The court is obliged to carry out a balancing exercise between the loss of procedural advantages that have been caused to the applicant as a result of the delay on the part of the prosecuting authorities, as against the public interest in having serious crimes investigated and prosecuted. In this regard, the assault in this case was of a serious nature. The statements given by the security guard and the independent witness, indicate that the bottle was thrown with considerable force. That is supported by the evidence concerning the injuries suffered by Ms. Connolly. Accordingly, this has to be seen as a serious incident in which the public have an interest in ensuring that the matter proceed to trial.
81. As against that, the court has to balance the loss of various procedural rights that has been caused to the applicant due to the delay on the part of the prosecuting authorities. In this regard, the most significant of these is the loss of the opportunity to have his case considered by a District Court Judge pursuant to s.75 of the Children Act, 2001. There is no guarantee that the District Court Judge would have accepted jurisdiction. However, the loss of that chance is a significant loss to the applicant, because had the District Court Judge accepted jurisdiction in the matter, the level of penalty would have been considerably less than that faced by the applicant on a trial on indictment in the Circuit Court; a maximum sentence of one year, as against a maximum of five years in the Circuit Court.
82. In argument it was submitted on behalf of the respondent that having regard to the serious nature of the alleged offence and the fact that the applicant was at the upper end of the age range at the time of the alleged offence, it would have been unlikely that the District Court Judge would have accepted jurisdiction pursuant to s.75 of the Act.
83. On behalf of the applicant, it was submitted that there was a good likelihood that the District Court Judge would have accepted jurisdiction. In this regard, the applicant relied on the affidavit sworn by his solicitor, who stated that from his experience as a criminal practitioner in the District Court, he thought that it was likely that the District Court Judge would have accepted jurisdiction in this case. In particular, he exhibited a number of

medical reports which showed that the applicant had been diagnosed as suffering from ADHD when assessed in January 2012, which diagnosis was confirmed in a medical report furnished by the applicant's GP dated 16th July, 2019. In that report, Dr. Moran stated that the applicant had also been suffering from other "*non-organic psychotic disorders*" from April 2017. In addition, the applicant had attended for counselling with the Lucena Clinic for a number of years. In these circumstances, Mr. Quinn gave the opinion that there was a strong likelihood that the District Court Judge would have accepted jurisdiction pursuant to s.75. This likelihood was increased where the accused minor pleaded guilty. In this case it was noteworthy that certain admissions had been made by the applicant.

84. On balance, the court is satisfied that there was a reasonable prospect of the District Court Judge accepting jurisdiction pursuant to s.75 of the Act. The court is satisfied that the loss of that chance to have the matter dealt with in that way, represents a serious prejudice to the applicant. Had jurisdiction been accepted, it would have meant that the range of penalty which could have been imposed on a conviction, would have been considerably less than that which could be imposed upon a conviction in the Circuit Criminal Court. In addition, the fact that the applicant would have been dealt with by the District Court while still a minor, would have meant that he would have been able to avail of the anonymity provisions provided for under s.92 of the 2001 Act.
85. The loss of the anonymity provisions is also a considerable prejudice to the applicant. While it is correct to say that the applicant will still be able to avail of the provisions in relation to having the conviction expunged after three years pursuant to s.258 of the 2001 Act, the fact that his trial will be before the Circuit Criminal Court as an adult, will mean that he will face publicity during the trial itself. Thus, even though the conviction may be expunged from the record after three years, the fact of his conviction will probably have been recorded in the media and on the internet, and therefore will be available to third parties, including prospective employers, notwithstanding the expunging of the record after three years. This will represent a serious impediment to him, in the event that he seeks employment later in life. Accordingly, the loss of a statutory right to anonymity, must be seen as a serious prejudice to the applicant.
86. The applicant also claims that he has suffered prejudice by virtue of the fact that due to the delay in prosecuting him, with the result that he will be prosecuted as an adult, he has lost the benefit of the provisions of s.96 of the 2001 Act, which contains the explicit provision that detention should only be imposed as a sentence of last resort. The applicant also complains that he has lost the benefit of s.99, which provides that in respect of a minor there is a mandatory obligation to obtain a probation officer's report.
87. The court does not view the loss of these specific statutory provisions as being of great prejudice to the applicant, due to the fact that were he to be tried as an adult, the court is still entitled to have regard to his age and level of maturity at the date of the offence, in the event that he is convicted and is being sentenced. In addition, the court can always direct that a probation officer's report be obtained and the general principle that detention

is to be seen as a sanction of last resort, would also apply. Accordingly, the loss of these two matters on a statutory basis, does not appear to the court to represent a significant prejudice to the applicant.

**Decision**

88. In conclusion, the court is satisfied that there has been culpable prosecutorial delay in this case and that as a result thereof, the applicant has suffered a significant prejudice in the loss of the opportunity to have a District Court Judge decide whether in his discretion he will deal with the matter pursuant to s.75 of the 2001 Act. In addition, irrespective of what jurisdiction the prosecution may have proceeded in, he has lost the statutory right to anonymity due to the fact that his trial will proceed when he is an adult. For the reasons set out above the court is satisfied that these are significant prejudices suffered by the applicant. In carrying out the balancing exercise that is required of the court, the court is satisfied that the prejudice to the applicant by the loss of these significant statutory provisions, outweighs the public interest in the prosecution of these offences, notwithstanding that they are serious in nature.
89. In light of its conclusions herein, the court proposes to make an order in the terms of para. 1 of the ex parte docket herein, granting an injunction by way of judicial review restraining the continued prosecution of the applicant by the respondent on two charges of assault causing harm contrary to s.3 of the Non-Fatal Offences Against the Person Act, 1997 in respect of the offences alleged to have been committed by the applicant on 22nd May, 2017.
90. As this judgment is being delivered electronically, the parties will have two weeks within which to furnish written submissions on the terms of the final order, and on costs, and on any other matters that may arise.