



APPROVED

NO REDACTIONS NEEDED

THE COURT OF APPEAL

**Costello P.
MacGrath J.
Hyland J.**

**Record Number: 2024/136
High Court Record Number: 2022/2115P
Neutral Citation No: [2024] IECA 294**

BETWEEN/

PASCAL HOSFORD

PLAINTIFF/RESPONDENT

-AND-

**MINISTER FOR EMPLOYMENT AFFAIRS AND SOCIAL
PROTECTION**

DEFENDANT/APPELLANT

JUDGMENT of Ms. Justice Hyland delivered on the 4th day of December, 2024

Summary

1. The case concerns an action in which the plaintiff seeks various reliefs in respect of alleged breaches of section 13 of the Protected Disclosures Act 2014 (the “2014 Act”), which creates a tort where detriment exists because of the making of a protected disclosure. The plaintiff, Mr. Hosford, who represents himself, had a long-standing dispute with his previous employer, the Minister for Employment Affairs and Social Protection (the “Minister”), following which he made a number of protected disclosures. Following various complaints to the Workplace Relations Commission (“WRC”), he brought further complaints in August 2020. Those claims were deemed to be statute barred by decision of the WRC of 9 July 2021. He issued

the within proceedings on 31 May 2022 seeking damages for an alleged breach of the statutory tort of detriment caused by a protected disclosure.

2. The Minister sought to have the proceedings dismissed on the grounds, *inter alia*, that the proceedings were barred by the terms of s.13(2) of the 2014 Act. Section 13(2) precludes a person from pursuing alternative reliefs in the respect of the same matter i.e. a person must elect between seeking a remedy in tort under s. 13(1) or seeking redress under Schedule 2 of the 2014 Act and/or the Unfair Dismissals Act.
3. In short, Mr. Hosford argues that because his claim was not adjudicated upon in substance by the WRC (being time barred), he remains entitled to pursue a claim in tort under s.13. The trial judge refused to dismiss the proceedings on the ground that this question raised a novel and complex issue that was unsuitable for determination in a motion to dismiss. I agree that the question is novel; but not that it is complex.
4. For the reasons set out in this judgment, Mr. Hosford's claim is doomed to fail because of the clear obligation to elect under s.13(2) between the WRC route on the one hand, and the tortious route on the other, without any limitation on this obligation where no substantive decision results from the election. He unequivocally elected to pursue his claim by the WRC route and that election binds him irrespective of the outcome of the WRC process. Accordingly, the appeal is allowed and Mr. Hosford's proceedings will be dismissed.

Relevant statutory provisions

5. Before considering the detail of the appeal, it is necessary to set out the statutory scheme. As identified in the Long Title to the 2014 Act, it was enacted to make provision for, and in connection with, the protection of persons from the taking of action against them in respect to the making of certain disclosures in the public

interest. The legislative scheme will be set out in some detail as it is necessary to understand the statutory architecture of same.

6. Part 3 is headed up “*Protections*” and s.12 is headed up “*Other protection of employees from penalisation for having made protected disclosure*”. Its application is clearly limited to employees. Section 12 provides:

“(1) An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for having made a protected disclosure.

(2) Subsection (1) does not apply to the dismissal of an employee to whom section 6 (2)(ba) of the Unfair Dismissals Act 1977 applies.

(3) Schedule 2 shall have effect in relation to an alleged contravention of subsection (1)”.

7. Section 6(2)(ba) of the Unfair Dismissals Act 1977 as amended (the “UDA”) provides for the case where an employee alleges dismissal, including constructive dismissal, on the basis of the making of a protected disclosure. In other words, s.12(1) is about penalisation short of dismissal. On the other hand, where an employee complains that they were unfairly dismissed due to a protected disclosure being made (whether an outright dismissal or a constructive dismissal, as Mr. Hosford alleges occurred in this case), an employee should invoke the UDA rather than s.12(1).

8. Schedule 2, referred to in s.12(3), provides in its unamended form i.e. prior to the amendment of the 2014 Act, as follows:

“(1) Where an employee has made a protected disclosure—

(a) the employee

may present a complaint to a rights commissioner that the employee’s employer has contravened section 12 (1) in relation to the employee.

...

(3) A decision of a rights commissioner under subparagraph (2) shall do one or more of the following:

(a) declare that the complaint was or was not well founded;”

...

(6) ... a rights commissioner shall not entertain a complaint under this paragraph if it is presented after the end of the period of 6 months beginning on the date of the contravention to which the complaint relates.

(7) Notwithstanding subparagraph (6), a rights commissioner may entertain a complaint under this paragraph ... but not later than 6 months after the end of the period, if satisfied that the failure to present the complaint within that period was due to exceptional circumstances.

9. Similarly, in relation to limitation periods, Section 8 of the UDA as amended provides that a claim for redress shall be initiated within 6 months of the date of the relevant dismissal or within 12 months from the date of the dismissal where the adjudication officer is satisfied that the giving of the notice within 6 months was prevented due to reasonable cause. Section 13 is the critical provision for the purpose of this motion. It provides in relevant part:

13. (1) If a person causes detriment to another person because the other person or a third person made a protected disclosure, the person to whom the detriment is caused has a right of action in tort against the person by whom the detriment is caused.

(2) A person may not both—

(a) pursue a right of action under subsection (1) against a person in respect of a matter, and

(b) in respect of the same matter make or present against the same person—

(i) a claim for redress under the Unfair Dismissals Acts 1977 to 2007,

(ii) a complaint under Schedule 2.

Factual Background

10. The facts underlying this case and the previous cases brought by Mr. Hosford, are set out in full in the careful and detailed decision of the trial judge in the High Court. It is important to understand that the judgment encompasses four identical strike-out motions by the Minister in respect of four sets of proceedings brought by Mr. Hosford. The trial judge struck out three of those sets of proceedings but this appeal is not concerned with those parts of his judgment as Mr. Hosford has brought a leapfrog appeal to the Supreme Court in respect of those decisions. The only decision challenged in this appeal by the Minister is the trial judge's refusal to strike out the within proceedings i.e. those bearing Record Number 2022/2115P.

11. It is not necessary to set out the long and torturous history of the litigation that Mr. Hosford has engaged in to date, in the context of this appeal. Suffice to say that until November 2019, Mr. Hosford was a civil servant who had been in the Department of Social Welfare or its equivalent since 1985. In 2009, he was transferred to the Scope section of that Department. While in that role, he came into conflict with his employers regarding the appropriate classification of individuals working in companies of which they were directors and shareholders and in particular, whether in certain circumstances, such individuals might be classed as self-employed for pay

related social insurance purposes depending on the nature of their shareholding in the company and other factors. That dispute, and matters arising as a consequence of that dispute, have been the subject of 24 different hearings including before the WRC, the Labour Court, the High Court, the Court of Appeal and the Supreme Court.

12. These proceedings relate specifically to emails sent to him by his employer in 2019, and to his resignation on 1 November 2019. Mr. Hosford argues that those emails constituted penalisation arising from the protected disclosure that he had previously made, and contends that his resignation constituted constructive dismissal, again arising from his protected disclosures. On 21 August 2020, Mr. Hosford made a complaint to the WRC in relation to these matters.

Decision of WRC

13. The decision of the adjudication officer of 9 July 2021 identifies the four complaints made by Mr. Hosford, three being under section 8 of the UDA and one under Schedule 2 of the 2014 Act. Under the heading '*Preliminary Issue*', it is noted that the termination of employment to which the unfair dismissals complaint relates took place on 1 November 2019, and the complaint under the 2014 Act related to emails sent in July and August 2019. The officer notes the complaints were outside the six-month statutory time limit (extendable by a further six months), being made on August 21 2020. The submissions of both parties on the time question are noted, including the respondent's submission that the unfair dismissal complaint is capable of coming within a six-month extension but should not be so extended, and that the penalisation complaint arising out of the emails is outside any extension of time period. The adjudication officer notes that the parties were heard in relation to the preliminary point as to the time limits. He discusses relevant case law of the Labour Court, discusses the reasons that had been put forward for the delay and concluded

that there was neither an explanation nor an excuse for his failure to make a complaint within time and no reasonable cause had been established. In those circumstances he concluded the complaint was not well founded on the preliminary issue. No appeal to the Labour Court was taken against that decision by Mr. Hosford.

The Proceedings

14. Some eleven months after the WRC decision, on 31 May 2022, Mr. Hosford issued the plenary summons in these proceedings. He sought four reliefs. The first was a declaration that the Minister acted unlawfully, breaching s. 13 of the 2014 Act and caused unlawful detriments in tort; second, he sought a declaration contrary to s. 13 that the cumulative actions of the employer both before and after April 2019 resulted in him resigning from his employment on 1 November 2019 and making a claim via a tort action for unlawful constructive dismissal; third, he sought compensation and damages; and fourth, he requested the Superior Courts to set out legal guidelines via a test case in respect of the protections in the 2014 Act.
15. A statement of claim followed on 28 June 2022, where, amongst other reliefs, he sought the following relief at paragraph 28: -

“That these proceedings now arise and now are taken under section 13 of the 2014 Act (Tort actions) because the Workplace Relations Commission (WRC) - in a WRC decision which issues on 9 July 2021, concerning the same complaints (which complaints were lodged with the WRC on 17 August 2020) - decided not to grant the sought, (via WRC statutory discretionary) a time-limit-extension to twelve months, as opposed to the standard provision in the WRA Act 2015 to there being only six months to lodge (whistleblower) alleged penalisation/detriment complaints.”

16. Although the language is not entirely clear, I am satisfied that the import of this paragraph is that the plaintiff is proceeding under s. 13 because he did not get an extension of time from the WRC in respect of the same complaints (my emphasis). That paragraph identifies in explicit terms that the complaints the subject matter of these proceedings are precisely the same complaints as were the subject of the WRC proceedings. At the hearing of this appeal, Mr. Hosford confirmed that this was the case.
17. On 19 July 2023, the Minister issued the within motion seeking, *inter alia*, an Order pursuant to Order 19, Rule 28 of the RSC striking out the plaintiff's claim for failure to disclose a reasonable cause of action and/or for being frivolous or vexatious and an Order pursuant to the inherent jurisdiction of the Court striking out the plaintiff's claim as an abuse of process. The matter was heard on 31 January 2024.

Decision of the trial judge

18. The trial judge delivered a written judgment promptly on 19 March 2024. Much of that judgment was taken up with the other three motions that were also before the court in respect of the three other sets of proceedings issued by Mr. Hosford. One set of proceedings was in respect of complaints regarding penalisation first made to the WRC in 2017 and in 2019, which were the subject of substantive determinations by the WRC and the Labour Court, as well as some decisions of the Superior Courts, including a WRC adjudication of 6 November 2019 and a Labour Court determination dated 14 August 2020. The trial judge notes that, although the Plenary Summons in these proceedings only refers to matters arising between April and November 2019, the Statement of Claim expressly criticises, *inter alia*, the decision of the Labour Court and the High Court in respect of those previous complaints. The trial judge observed there was no basis upon which the courts would entertain such

an application in relation to the matters the subject of his 2017 and 2019 complaints to the WRC, as those matters had finally been determined on the merits by an administrative body or a court and the doctrine of *res judicata* prevents the plaintiff from pursuing them afresh. The trial judge noted that, in so far as Mr. Hosford pursued any additional claim in tort in respect of those matters, the claim was barred by s. 13(2) of the 2014 Act.

19. However, he took a different approach to the matters considered in the WRC decision of 9 July 2021 because the matter had been dealt with on a preliminary basis i.e. time barred, and had not been substantively adjudicated upon. At paragraph 60 he acknowledged that it was clear that the subject matter of the August 2020 complaint to the WRC was the same as the subject matter of the within proceedings, and that had the substance of his claim been determined by the WRC, he would be barred from pursuing the claim in tort by s.13(2). However, the trial judge queried whether the dismissal of his proceedings as being out of time attracted the same consequences.

20. It should be said at this point that, sensibly, the Minister is not pursuing the appeal against the finding of the trial judge at paragraph 67 that the matters could not be regarded as *res judicata*. I entirely agree with this conclusion given that there was no substantive determination of Mr. Holford's claims. Rather, the Minister bases her claim that the proceedings disclose no reasonable cause of action and/or are doomed to fail on the operation of s.13(2).

21. The operative part of the trial judge's decision refusing a dismissal was in the following terms:

"In addition, whether section 13(2) operates as a complete bar on a person pursuing a claim in tort in respect of the same matters which have been the

subject of complaints to the WRC, but which were dismissed as being out of time, gives rise to a novel and complex issue of law which would, in my view, be inappropriate for determination on a motion to dismiss. That is not to suggest that the defendants should not, in due course, be permitted to argue that the WRC decision does operate as a bar on these proceedings succeeding, whether pursuant to section 13(2) or on the basis of the doctrine of res judicata, rather it would be premature to dismiss the proceedings in limine.”

22. It should be added that the judge observed at paragraphs 62 and 63 that the question was complicated by the potentially anomalous position created by s. 12 and s.13 of the 2014 Act, which provide for alternative remedies and an obligation to elect between them, where the time limits applicable to the remedies are different. He pointed out that the time limit for a cause of action in tort is the normal six-year time limit under s. 11(2) of the Statute of Limitations Act, 1957, whereas the relevant time limit for a penalisation claim is six months, extendable for no more than a further six months and a claim under the UDA imposes a similar time limit. He asked whether the plaintiff's election of a remedy that was statute barred prevents him from pursuing a remedy that arguably is not.

Arguments of the parties

23. The Minister concedes that the question identified by the trial judge is novel but argues he made an error of principle in concluding that it was also complex. She argues that the wording of s. 13(2) is clear and that, on the facts of this case, where Mr. Hosford accepts (a) that the within proceedings cover the same matter as that before the WRC and (b) where it was against the same person, i.e. the Minister for Employment Affairs and Social Protection, there is no scope for an argument that the

preclusion of a tort claim by s.13(2) does not apply because the WRC ruled out the claim as being out of time, rather than engaging substantively with it. She argues that the words are entirely clear and do not refer to the complaint before the WRC being substantively determined, or heard and adjudicated upon in substance, or anything of that nature. Rather, the section simply refers to the claim being made or presented, without any conditionality in respect of its subsequent treatment or nature of determination at WRC stage. She argues that this being so, the objection raised by Mr. Hosford was entirely suitable for determination at motion stage contrary to the conclusion of the trial judge and that, applying the appropriate threshold for dismissal, this case easily surmounts it.

24. Mr. Hosford, on the other hand, argues that the Minister's case lacks constitutional justice as it appears that the law completely bars tort actions, not only regarding out of time adjudication decisions (as in the instant case) but by way of analogy, lack of jurisdiction adjudication decisions and cases where WRC claims are withdrawn. He argues that this is not a case of taking a second bite at the cherry, given that there was no first bite allowed. Nor is this a case where the principle of double recovery could ever apply, since he had no recovery before the WRC. In oral submissions, he argues that if the appeal is rejected and the case proceeds in the High Court as per the decision of the trial judge, he intends to seek to challenge the constitutionality of the legislative provisions and to bring in the Attorney General since he considers s.13(2)(a) and (b) undermine his right of access to the court and are unconstitutional. (It should be noted at this point that the Attorney General and Ireland were added to the statement of claim but Mulcahy J. notes at paragraph 72 of his judgment that this addition was not appropriate for a claim in tort and in any case would have required

an application to add additional defendants. There is no challenge to the constitutionality of the legislation in the proceedings as currently constituted).

25. He argues that where there was no substantive WRC adjudication concerning the remedy, as in the instant case, it would be unjust should he be precluded from issuing proceedings in tort, particularly where such proceedings have a much longer time limit being six years as opposed to the very short time limit for the WRC proceedings. He argues s.13(2)(b) and Schedule 2 cannot act as a complete bar where the WRC has dismissed a complaint as being out of time. He argues that this Court has a discretion to allow his claim and that there has been no decision in substance that the complaint was or was not well founded as required under Schedule 2, s. 1(3)(a).

Discussion and decision

26. The applicable legal test in cases involving strike out/dismissal, whether under Order 19 Rule 28 or the inherent jurisdiction of the court, has been identified in many cases, including *Scotchstone Capital Fund Ltd v. Ireland* [2022] IECA 23, *Cronin v Cowen* [2023] IEHC 190, and *Towey v Government of Ireland* [2022] IEHC 559. Before restating same, it should be emphasised that Order 19 Rule 28 was amended on 22 September 2023 by S.I. 456 of 2023 – Rules of the Superior Courts (Order 19) 2023, i.e. after the bringing of this motion but before the hearing in the High Court. That amendment removes the reference to dismissing proceedings for being frivolous and vexatious, and is in the following terms in relevant part:

“(1) The Court may, on an application by motion on notice, strike out any claim or part of a claim which: discloses no reasonable cause of action, or amounts to an abuse of the process of the Court, or is bound to fail, or has no reasonable chance of succeeding.

...

(3) The Court may, in considering an application under sub-rule (1) or (2), have regard to the pleadings and, if appropriate, to evidence in any affidavit filed in support of, or in opposition to, the application.

(4) Where the Court makes an order under sub-rule (1), it may order the action to be stayed or dismissed, as may be just, and may make an order providing for the costs of the application and the proceedings accordingly.

...”

27. There is no temporal limitation on the application of the amendment, and therefore I take the view that the new version of Order 19, Rule 28 should be applied in the context of this appeal. The amendment makes no material difference here; the Minister had already asserted in the motion that there was a failure to disclose a cause of action and/or an abuse of process, and the argument proceeded on the basis that the proceedings were bound to fail because of s.13(2).

28. In *Scotchstone Capital Fund Ltd v. Ireland* [2022] IECA 23, the Court of Appeal summarised the various principles applicable to applications to strike out proceedings following an extensive analysis of previous case law (see paragraph 290). In respect of cases that are described as bound to fail, the Court concluded that they may be described *inter alia* as devoid of merit or are claims that clearly cannot succeed. The threshold is a high one and a court should not dismiss a case unless it is clear that the case will not succeed. The jurisdiction to strike out proceedings is to be used sparingly in clearcut cases.

29. I propose to consider the argument that this claim is bound to fail and/or has no reasonable chance of succeeding (which really seems like two ways of positing the same test) and then consider whether the level of certainty in that regard is sufficient to justify a dismissal. Recalling the words of s.13(2)(a) and (b), a person may not

pursue a tortious right of action against a person in respect of a matter and in respect of the same matter, make or present against the same person a claim before the WRC. On the facts of this case, I am satisfied that those conditions are met. Mr. Hosford has pursued a right of action in tort and before the WRC in respect of the same matter and as against the same person i.e. the Minister.

30. I have also considered the meaning of the words “*make or present*” in the section to ensure that those conditions have been met. Schedule 2 refers to an employee who has made a protected disclosure presenting a complaint to a Rights Commissioner (now WRC). Section 1(2) of Schedule 2 provides where a complaint under (1) is made, the Rights Commissioner shall take various steps. There seems to be no distinction between presenting a complaint and making a complaint in this context. Section 8 of UDA does not use either of those terms. Rather, it identifies that a claim for redress shall be initiated by giving a notice in writing containing particulars within certain time limits. There is no reference to making or presenting. I am satisfied that there is no material difference between the terms make or present in this context.
31. Mr. Hosford made and/or presented a complaint in respect of penalisation and unfair dismissal arising from protected disclosures to the WRC in August 2020. Indeed, it is notable that in the arguments before the court, Mr. Hosford did not in fact take any real issue with the fact that he comes under the provisions of s.13(2) but rather argued that it was unfair and/or unconstitutional and that the court must have some discretion to interpret it more widely so that it does not apply where there was no substantive determination.
32. The meaning and purpose of s.13(2) is in my view crystal clear. It represents a decision by the Oireachtas to establish alternate paths of redress for persons who

assert harm following the making by them of a protected disclosure. One option is the well-trodden path of existing statutory procedures before the WRC, as supplemented by the 2014 Act (see Schedule 2). This may either be in respect of a penalisation claim or an unfair dismissal claim. This is the s.12 route. The other, entirely novel, path is to rely on the right of action in tort created by s.13(1) against the person alleged to have caused detriment. Arguably, the category of persons who can look for a tortious remedy is wider than those who can seek redress under s.12 since s.12 is limited to employees, whereas no such limitation exists in respect of actions under s.13.

33. These differing paths are not cumulative. A person cannot avail of both routes. The legislature has decided that a person must opt for one or the other. Of course some persons will not have a choice i.e. those who are not employees. They cannot avail of the s.12 route. But whether a person has the benefit of choosing the appropriate route or not, Section 13(2) makes it clear that a person may only seek redress in respect of harm caused by a protected disclosure by one route. This is not unlike the approach that was taken in in the Unfair Dismissals legislation. Section 15 of the Unfair Dismissals Act 1977 provided that:

“Where a recommendation has been made by a rights commissioner in respect of a claim by an employee for redress under this Act or the hearing of a claim by the Tribunal has commenced, the employee shall not be entitled to recover damages at common law for wrongful dismissal in respect of the dismissal concerned.”

34. That section has now been amended to provide:

“Where a [decision has been made by an adjudication officer] in respect of a claim by an employee for redress under this Act [...] the employee shall not

be entitled to recover damages at common law for wrongful dismissal in respect of the dismissal concerned.”

35. It is certainly true that the alternate routes under the 2014 Act have radically different time limits, the WRC route being subject to a six-month time limit extendable to a maximum of a further six months, whereas the other is subject to a six-year time limit and only then if a person raises it to bar the remedy. But that difference cannot be used to undermine the clear language of the statute. The legislature was entitled to make that policy decision.
36. Further, the legislature also decided to require a person to make that election at an early stage as they have done here i.e., once a person has made or presented a case to the WRC, they are precluded from proceeding under s.13. A person may quibble with the substance of both those legislative choices i.e. should the legislature have imposed a binary choice, given the differing time limits and, second, should the election have been required only at a later stage i.e. before the substantive hearing of a case before the WRC. However, those are policy decisions and I cannot give an interpretation to s.13 that it does not bear simply to reflect differing views as to the appropriate policy choices.
37. Applying the principles of *Heather Hill v An Bord Pleanala* [2022] IESC 43, in approaching the interpretation of section 13(2), I must look at it in context after considering the ordinary and natural meaning of the words. The correct way to approach the interpretation of legislation is by applying transparent, coherent and objectively ascertainable principles, rather than having a situation where judges construe an Act by reference to their individual assessments of what they think parliament ought sensibly to have wished to achieve by the legislation (see paragraph 114 of *Heather Hill*).

38. Here, the context includes two distinct regimes. The first regime is that established by s.12 i.e. a prohibition on penalising or threatening penalisation against an employee for having made a protected disclosure and the extension of the WRC regime to claims made for breach of s.12(1), including the entitlement of an adjudication officer to require an employer to take a specified course of action and pay compensation up to a maximum of 260 weeks remuneration. The second, quite different, regime is that established by s.13(1), i.e. the creation of an entirely new tort in respect of detriment to a person because of the making of a protected disclosure. None of that discloses any basis for reading s.13(2) other than in its natural and ordinary meaning. No ambiguity presents itself when the section is read in context.
39. Mr. Hosford argues that the “either/or” approach of s.13(2) does not apply where no substantive decision is made by the body selected as the forum for redress. He relies heavily on the fact that his complaint was dismissed as time barred. But he makes no textual arguments to support this interpretation, or indeed purposive ones save to contend that it is unfair that he is denied a substantive hearing. Section 13(2) manifestly envisages that the die is cast once a person has made or presented the complaint. There is absolutely no conditionality in respect of the election having regard to what happens to the complaint before the WRC (or indeed before the courts if the tortious route is chosen). Here the complaint was statute barred and its substance was not determined. That is one of the potential outcomes where a person elects to avail of the redress scheme available under the WRC architecture.
40. Mr. Hosford spent some considerable time referring to the situation that would prevail if an applicant made a complaint but then withdrew it. That is not the factual situation in this appeal and the legislation should be interpreted by reference to the facts at issue in the appeal, and not some other hypothetical set of facts. Here, Mr.

Hosford committed to the WRC route, put in a substantive complaint and made submissions on the time issue. He received a decision. He did not appeal that to the Labour Court. He engaged wholly with the WRC mechanism and he cannot resile from that. Nothing in the legislation suggests a different outcome should prevail where the claim is determined on a preliminary procedural basis. In those circumstances I am satisfied that Mr. Hosford's claim cannot succeed because of the bar erected by s.13(2).

41. Having regard to the clarity of my conclusions in this respect, I am satisfied that the hurdles required to be cleared in an application to dismiss are in fact cleared by a considerable margin. This is a claim that clearly cannot succeed. There are no disputed facts and it is suitable for disposition by motion. The trial judge took the view that this was a complex question that should not be determined at a motion stage and that it was premature to determine it; I disagree for the reasons set out above. Moreover, nothing will change if it is argued at the substantive hearing: there are no disputes of fact between the parties and there is no reason it should not be determined at this stage of the proceedings. Accordingly, the appeal of the Minister is allowed, and Mr. Hosford's proceedings will be dismissed as being bound to fail and/or having no reasonable chance of succeeding pursuant to Order 19, Rule 28 due to the preclusion imposed by s.13(2).

Conclusion

42. I uphold the appeal and set aside the Order of the High Court in the within proceedings only. The appellant having been entirely successful on the appeal is presumptively entitled to her costs of the appeal and the proceedings. With the usual caveat that this might increase the burden of costs, if Mr. Hosford wishes to contend for any other order as to costs, I would allow a period of fourteen days for him to file

and serve a short written submission – limited to 1,000 words; in which event the appellant will have fourteen days within which to respond.

43. As this judgment is being delivered electronically, Costello P. and MacGrath J. have authorised me to say that they agree with it and with the orders proposed.