

## THE HIGH COURT

2008 28 MCA

## IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 24 OF THE CRIMINAL JUSTICE ACT 1994

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

PLAINTIFF

AND

M.B.

DEFENDANT

AND

E.B.

NOTICE PARTY

**Judgment of Mr. Justice Feeney delivered on the 2nd day of April, 2009.**

1. These proceedings commenced by way of an *ex parte* application to Court on the 18th February, 2008. On that date the plaintiff applied *ex parte* for an order pursuant to s. 24(1) of the Criminal Justice Act 1994 that the defendant, M.B., his servants or agents, or any other person having notice of the making of an order be restrained from dealing in any manner whatsoever with any of the property set out in the schedule to the originating notice of motion. That application was grounded on the affidavit of Detective Garda Paul Grimes sworn on the same date. The Court having considered the matter, ordered that pursuant to s. 24(1) of the Criminal Justice Act 1994, that the defendant, his servants or agents or any other person having notice of the making of the order be restrained from dealing in any manner whatsoever with the property specified in the schedule to the order of the 18th January, 2008. The Court also made orders in relation to service on the defendant and gave liberty to the plaintiff to notify certain parties of the making of the order including the solicitors on record in other proceedings for E.B., namely Fahy McGeever, Solicitors. In the affidavit grounding the application it had been averred that the defendant lived with his wife, E.B., and their five children, at an address in Clondalkin and that M.B. was currently registered as a self employed tiling contractor. It was also averred that on the 11th February, 2008, E.B. had issued High Court proceedings, Record No. 2008 No. 1110P, between herself, E.B., as plaintiff, and the Commissioner of An Garda Síochána, Ireland and the Attorney General, as defendants, in which relief was sought in respect of the application of s. 31(8) of the Criminal Justice Act 1994 and seeking a declaration of unconstitutionality and incompatibility with the European Convention on Human Rights together with other reliefs. A notice of motion within those proceedings, grounded on an affidavit sworn by E.B., was identified as being returnable for the 14th February, 2008, wherein E.B. had sought an order for payment to her of living expenses for herself and her children and for the payment of other sums. The affidavit grounding the application herein indicated that the motion of E.B., within the High Court proceedings wherein she was the plaintiff, had been adjourned until the 22nd February, 2008. It was the solicitors on record for E.B. within those proceedings who were identified in the court order of the 18th February, 2008 as being one of the parties to be notified of the making of the order.

2. The affidavit grounding this application averred that on the 15th January, 2008, the defendant was arrested for an offence under s. 15 of the Misuse of Drugs Act 1977, as amended. The affidavit further averred that on the following date, the 16th January, 2008, a Detective Inspector Paul O'Brien was in possession of information relating to bank accounts of the defendant and requested that the Bank of Ireland deal with those accounts under s. 31(8) of the Criminal Justice Act 1994 and that request had been duly complied with and the directions in writing had subsequently been given to the Bank of Ireland. The affidavit also contained averments in relation to the seizure of two motor vehicles which were identified at paragraphs 4 and 5 of the schedule to the originating notice of motion.

3. The affidavit grounding the initial application herein went on to aver that on the 17th January, 2008 the defendant, M.B., was charged pursuant to ss. 3 and 15 of the Misuse of Drugs Act 1977, as amended, and that he had been remanded in custody until the 24th January, 2008. The street value of the heroin in respect of which the defendant is charged is identified as having an estimated value of seven million Euro, with an approximate weight of 32 kilograms. The defendant subsequently was released on bail and the Director of Public Prosecutions has directed a trial on indictment in relation to the charges pending against the defendant.

4. Detective Garda Paul Grimes averred that on the 22nd January, 2008, he attended a Dublin District Court and swore an application pursuant to s. 63 of the Criminal Justice Act 1994, as amended, regarding four identified bank accounts of the defendant and that an order was granted by the Court and that that order was served on the Manager of the Bank of Ireland, Ballyfermot Branch, which was the Bank where the four identified accounts were held.

He averred that proceedings had been instituted in the State against the defendant for a drug trafficking offence and that such proceedings had not concluded. He also averred that it was his belief that the defendant had been involved in very significant drug dealing for a number of years and had amassed very significant benefits from those offences. It was averred that the property held by the defendant at the date of the swearing of the affidavit was likely to represent a payment or award for drug trafficking activity carried on by the defendant, having regard to the limited nature of his legitimate sources of income and that such sources did not account for the assets of the defendant or his expenditure.

5. Given the issues subsequently raised before this Court, an averment of significance was contained in the affidavit grounding the application. At paragraph 24 of that affidavit it was averred:-

"Insofar as the assets the subject of this application are in the name of E.B., I say and believe that her interest in any of the assets represents a gift made by the defendant to her, which is caught by the Criminal Justice Act, 1994, in particular ss. 3(9) to (12) thereof, and is included within the definition of 'realisable property' within that Act. Her own affidavit makes it clear that she has no source of income independent of the defendant and was on social welfare for eighteen months after being made redundant in 2004."

6. At the *ex parte* hearing, counsel on behalf of the Director of Public Prosecutions raised the issue as to whether an undertaking as to damages required to be furnished by the Director of Public Prosecutions at the *ex parte* stage. Counsel for the plaintiff referred to the judgment of the High Court in the *Minister for Justice v. Devine* [2007] 1 I.R. 813. That decision was opened to the Court and it was argued that such decision should not be followed as it had been made without reference or regard to s. 65 of the Criminal Justice Act 1994. The Court determined that an undertaking as to damages was not required at that stage but that the Court would entertain an application from any person affected by the making of the order seeking to have an undertaking as to damages provided by the Director of Public Prosecutions from the date of the making of the order. The Court did not require an undertaking as to damages as of the 18th February, 2008.

7. E. B.'s application for an order seeking the payment of living expenses within High Court proceedings Record No. 2008 No.1110P was in effect superseded by an application brought by her as a notice party within these proceedings. That application was brought by notice of motion dated the 25th February, 2008 returnable for the 5th March, 2008 wherein E.B. sought an order under s. 24(2),(5) or (6) of the Criminal Justice Act 1994 discharging the *ex parte* order made on the 18th February, 2008, varying that order to provide for living expenses, varying that order for legal expenses and for further or other relief. That application was grounded on an affidavit of E.B. sworn on the 20th February, 2008. The notice of motion brought by E.B. had been served on the Director of Public Prosecutions in advance of its issue and therefore Detective Garda Paul Grimes was in a position to reply to the averments contained in E.B.'s affidavit in an affidavit sworn by him on the 22nd February, 2008. In that affidavit, the plaintiff, the Director of Public Prosecutions, sought "an order refusing the relief sought by E.B." in her notice of motion. E.B. also served a notice of intention to cross-examine Detective Garda Paul Grimes and filed that notice in the Central Office on the 27th February, 2008.

8. The plaintiff issued a notice of motion dated the 25th February, 2008 in these proceedings with M.B. as defendant. That notice of motion was served on E.B. and on the Governor and company of the Bank of Ireland and the notice of motion sought an order pursuant to s. 24 of the Criminal Justice Act 1994 restraining the defendant, his servants or agents, or any other person having notice of the making of such order from dealing in any manner whatsoever with any of the defendant's realisable property. That application extended to all realisable property and did not limit itself to specified items as had been the case within the *ex parte* originating notice of motion. The notice of motion brought by the plaintiff was returnable for the 5th March, 2008 also sought an order extending the restraint order over the bail money lodged by the defendant and an order extending the existing restraint order to include a motor van with registration number 06D XXX34, registered to the defendant under his trading name, T.T.C.. The solicitors for the plaintiff served a notice of intention to cross-examine E.B. and filed that notice in the Central Office on the 26th February, 2008. Detective Garda Paul Grimes swore an affidavit on the 22nd February, 2008 to ground the notice of motion dated the 25th February, 2008 which was returnable for the 5th March, 2008. E.B. swore a replying affidavit dated the 28th February, 2008.

9. The applications within these proceedings and an application by E.B. within High Court proceedings, Record No. 2008, No. 1110P, were mentioned on two dates in the first week of March 2008 and were put in for hearing before the Court on the 13th March, 2008. At the commencement of the hearing on that date it was clarified by counsel for the defendant in the plenary summons that the direction of the Commissioner had been withdrawn, and in those circumstances, the Court proceeded to deal with the motions pending in these proceedings, the application within the plenary proceedings being moot and the Court reserved the costs in relation to the application within those proceedings. The Court proceeded to consider the motions in these proceedings and all the parties were represented. The Court proceeded to consider the application brought on behalf of E.B. to discharge and/or vary the *ex parte* order made on the 18th February, 2008. The application on behalf of the plaintiff to obtain a s. 24 Order in respect of all the defendant's realisable property was also before the Court. At the hearing on the 13th March, 2008, it became apparent that the application to discharge the *ex parte* order brought by E.B. could not proceed as she wished to cross-examine Detective Garda Paul Grimes. In those circumstances the application to vary proceeded but was not completed on that date. The application to vary was completed on a later date and the Court made an order that a sum of €1,000 be paid out to the notice party. That variation order was made to the restraint order of the 18th February, 2008. The plaintiff's motion for a further order pursuant to s. 24 extending to all of the defendant's realisable property was adjourned.

10. Thereafter extensive further affidavits were filed by all parties. The notice party, E.B., swore an affidavit on the 28th March, 2008 as to her means. The solicitor acting for M.B. served a notice to produce for inspection certain documents by notice dated the 22nd April, 2008 and on the 24th April, 2008, Detective Garda Paul Grimes swore a further affidavit. That affidavit was sworn both in relation to the application of E.B., seeking to have the *ex parte* order discharged, and in support of the plaintiff's application for the relief sought in his notice of motion of the 5th March, 2008.

11. On the 24th April, 2008, the defendant, M.B., issued a notice of motion seeking an order discharging the order of the Court made on the 18th February, 2008 together with other relief therein set out. That motion was grounded on an affidavit sworn by M.B. on the 24th April, 2008. A further affidavit of Detective Garda Paul Grimes in reply was sworn on the 28th April, 2008. The motions by all three parties, the plaintiff, the defendant and the notice party, were due for hearing before the Court on the 29th April, 2008. Detective Garda Paul Grimes averred in his replying affidavit to M.B. that due to the very short period of time available to consider the matter, that he reserved the right to put further information before the Court as it became available following inquiries. On the 29th April, 2008, the motions of all three parties were before the Court and submissions were made but not completed. On the 4th May, 2008, the notice party, E.B., swore another affidavit wherein she claimed, *inter alia*, "to have at least a fifty per cent beneficial interest in the joint accounts, the subject matter of the proceedings", on foot of what was claimed to be "the severance of the joint ownership effected by the restraint order". She also claimed in addition a beneficial interest in certain of the accounts over and above the fifty per cent. No issue was raised in relation to motor vehicle registration number: 05D XXX99. It had been referred to as the notice party's car in paragraph 10 of her affidavit of the 20th February, 2008. Detective Garda Paul Grimes swore a further affidavit on the 22nd May, 2008. On the 27th May, 2008, the Court gave directions in relation to the manner in which a legal issue raised by the notice party was to be heard. Counsel for the notice party had contended that the Court was obliged to treat the hearing of the matter as a final hearing and not as an interlocutory matter and the Court directed that legal submissions in relation to that issue should be prepared and that matter was adjourned for argument

on the 8th July, 2008.

12. On the 25th May, 2008 the Court gave directions not only in relation to dates but also identified the procedures and dates to apply in relation to the defendant's application for discovery and third party discovery. On the 23rd June, 2008 a hearing duly took place in relation to the issue of discovery and limited discovery was granted in respect of a computer disk.

13. On the 6th June, 2008, Detective Garda James McDermott swore an affidavit on behalf of the plaintiff in response to the application for relief by the defendant and the notice party. The plaintiff brought a notice of motion dated the 11th June, 2008, seeking an order for production and for an order extending the restraint order to cover a Volkswagen motorcar and two sums of money arising from insurance refunds issued by F.B.D. Detective Garda Paul Grimes swore a further affidavit on the 11th June, 2008 in support of that notice of motion. On the 19th June, 2008, the notice party issued notice of motion seeking various reliefs including discovery, third party discovery and that application was grounded on an affidavit of M.B., the defendant, sworn on the same date, the 19th June, 2008.

14. On the 30th June, 2008, Detective Chief Superintendent John O'Mahoney, the Chief Bureau Officer of the Criminal Assets Bureau, swore an affidavit in these proceedings. In paragraph 2 of that affidavit it was averred that the defendant in these proceedings was a person who, as well as being investigated by An Garda Síochána, was also the subject of an investigation by the Criminal Assets Bureau under its statutory remit and the deponent confirmed that he had directed the Criminal Assets Bureau Forensic Accountant No. 1 to investigate and report on the affairs of the defendant and to swear an affidavit relating to same. That affidavit contained an application for anonymity pursuant to s. 10 of the Criminal Assets Bureau Act 1996. On the same day, Bureau Forensic Accountant No. 1 swore an affidavit setting out the results of his examination and analysis of the defendant's bank statements and other documentation obtained pursuant to warrants and orders duly executed. That affidavit dealt with the bank accounts referred to in the schedule to the originating notice of motion herein and also dealt with the Revenue records of the defendant and analysed the information set forth in the various affidavits sworn within these proceedings up to the date of his affidavit.

15. It was on foot of the application for anonymity referred to in the affidavit of Detective Chief Superintendent John O'Mahoney, that the Court came to consider both the issue of anonymity under s. 10 of the Criminal Assets Bureau Act 1996 and the issue of the proceedings continuing thereafter in camera.

16. On the 7th July, 2008 the solicitor for the defendant served a notice of cross-examination seeking to cross-examine Detective Garda Paul Grimes and Detective Garda James McDermott. Detective Garda James McDermott swore a further affidavit on the 8th July, 2008.

17. On the 7th July, 2008, the Court made an order that the proceedings herein should be conducted in camera. On the 9th July, 2008 the notice party, E.B., swore a supplemental affidavit of means. On the 9th and 10th July, 2008, the Court heard legal argument in relation to the claim by the notice party that her application for a discharge or variation of the restraint order was an application which is of a final kind and not of an interlocutory nature. Having considered the matter the Court ruled that it was satisfied that the restraint process under the Criminal Justice Act 1994 is an interlocutory process and is and cannot be said to be a determination of the rights of the parties in relation to the subject matter of the proceedings and that in those circumstances the Court would proceed on the basis that any evidence which the Court considered in relation to the variation or discharge of the restraint would be on the basis that such consideration was taking place within interlocutory proceedings. On the 10th July, 2008, the Court then proceeded to hear an application concerning an application for a variation in the existing order relating to a claim of altered circumstances arising from the reduction in the notice party's social welfare payments. That matter was dealt with by oral evidence. Oral evidence was given by Sinead Fagan, a Community Welfare Officer with the Health Service Executive, dealing with the social welfare payments to the notice party. On the following day, the 11th July, 2008, pursuant to notices of cross-examination, E.B. and M.B. were cross-examined by counsel for the plaintiff.

18. The defendant swore a supplemental affidavit on the 14th July, 2008 dealing with his then current financial position and seeking a variation of the order then in force to enable him to resume his tiling business by having access to a vehicle and the funds necessary to insure that vehicle together with access to certain other funds in relation to the promotion of his tiling business. On the 14th July, 2008 further submissions and arguments were heard by the Court and Detective Garda Paul Grimes was cross-examined by counsel for the notice party. The cross-examination of Detective Garda Grimes by the solicitor for the defendant had yet to take place. The Court proffered a date for the continued cross-examination of that witness and other witnesses during September 2008 but the dates were not suitable to the parties or their lawyers and in those circumstances the continued cross-examination was adjourned until the 9th October, 2008.

19. On the 14th July, 2008, following submissions and argument and having considered the affidavit evidence, the Court made an order that a sum of €500 be paid forthwith to the notice party from a specified bank account and that commencing on Friday the 18th July, 2008 and on each Friday thereafter, that a sum of €165 be paid to the notice party from that bank account pending further order. On the same date the Court also made an order pursuant to s. 24(1) of the Criminal Justice Act 1994 that the defendant, his servants or agents, the said notice party, or any other person having notice of the making of such order be restrained from dealing with certain items of property set forth in the schedule to order of the 14th July, 2008. The items of property were two cheques from F.B.D. Insurance Company and a V.W. Caddy Van bearing registration number 06D XXX34, then currently in the possession of An Garda Síochána.

20. On the 18th July, 2008 the plaintiff issued a further notice of motion seeking to extend the restraint order already granted to cover a Volkswagen Passat motorcar and for the appointment of a receiver over all the property, the subject matter of the restraint orders and for an order permitting the receiver to sell three specified motor vehicles together with other relief. That notice of motion was grounded on an affidavit sworn by Detective Garda James McDermott on the 18th July, 2008 and a further affidavit of Detective Garda Paul Grimes of the same date. The defendant's application to vary the restraint order came on for mention before the Court on the 28th July, 2008 and was adjourned for hearing on the 31st July, 2008. That hearing was to enable the issue of a variation of the order to be considered in advance of the summer vacation and in circumstances where the hearing was to re-commence on the 9th October, 2008. On the 31st July, 2008 the Court made an order that on production by the defendant of a valid current certificate of insurance for V.W. Caddy Van registration number: 06D XXX34, that the said vehicle could be returned to him and further that the sum of €1,200 be paid to the defendant from a specified bank account to cover the cost of the insurance and further that seven days after obtaining the said insurance cover, that a further sum of €1,000 was to be paid to the defendant. The said orders were made following an oral undertaking on oath given by the defendant in respect of the maintenance and

preservation of the said V.W. Caddy Van. The defendant was also obliged, by the said order, to file in advance of the adjourned hearing date of the 9th October, 2008, an affidavit setting out all income received by him and vouch expenses incurred by him from the date upon which the defendant secured employment to the nearest date possible to the 9th October, 2008. The defendant filed an affidavit on the 8th October, 2008.

21. The plaintiff's notice of motion dated the 18th July, 2008 was not served until October of 2008 and therefore when that motion came on for hearing on the 9th October, 2008, also the date for the resumed hearing and the cross-examination of various witnesses, the motion was adjourned for mention in the Criminal Assets Bureau list for the 28th October, 2008. On the 9th October, 2008, Detective Garda Grimes was cross-examined by the solicitor for the defendant. That cross-examination was not completed on that date and it re-commenced on the following day. On the completion of that cross-examination Detective Garda McDermott was cross-examined by the solicitor for the defendant. The cross-examinations were then complete and the Court adjourned the matter for continued legal argument on the 30th October, 2008. The Court also identified the dates by which the various parties should have provided their written legal submissions. In the interval prior to the adjourned date, an affidavit was sworn by Mark Nugent on the 22nd October, 2008. Mark Nugent was a notice party to these proceedings in relation to the Volkswagen Passat motorcar registration number: 04D XXX74 and he swore an affidavit in support of a claim that the Court should refuse the reliefs sought by the Director of Public Prosecutions in paragraph 1 of his notice of motion dated the 18th July, 2008 seeking to extend the restraint order to cover that motor vehicle. Detective Garda Paul Grimes swore an affidavit on the 29th October, 2008 in relation to the affidavit of the defendant sworn on the 8th October, 2008.

22. On the 30th October, 2008 the Court heard further legal argument. The legal argument was not completed on that date and the matter was adjourned to the 21st November, 2008. On that date all legal submissions were completed and the Court reserved its judgment.

23. The starting point for consideration of the issues in this case is the statutory provision which permits a Court to make restraint orders. The proceedings commenced by an *ex parte* application grounded on an originating notice of motion and affidavit. The relief sought was an order pursuant to s. 24(1) of the Criminal Justice Act 1994. That section states:-

"24.—(1) The High Court may by order (in this Act referred to as a "restraint order") prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in that order.

(2) Without prejudice to the generality of subsection (1) of this section, a restraint order may make such provision as the court thinks fit for living expenses and legal expenses.

(3) A restraint order may apply—

(a) to all realisable property held by a specified person, whether the property is described in the order or not, and

(b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(4) A restraint order—

(a) may be made only on an application by the Director of Public Prosecutions, which may be made *ex parte* and otherwise than in public, and

(b) shall provide for notice to be given to persons affected by the order.

(5) A restraint order—

(a) may be discharged or varied in relation to any property, and

(b) shall be discharged on the conclusion of the proceedings or of the application in question.

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the High Court has made a restraint order, the court may at any time appoint a receiver—

(a) to take possession of any realisable property, and

(b) in accordance with the court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the court, and may require any person having possession or control of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(8) For the purposes of this Act, dealing with property held by any person includes (without prejudice to the generality of the expression)—

(a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt, and

(b) removing the property from the State.

(9) Where the High Court has made a restraint order, a member of the Garda Síochána or an officer of customs and excise may, for the purpose of preventing any realisable property being removed from the State, seize the property.

(10) Property seized under subsection (9) of this section shall be dealt with in accordance with the court's directions."

The Act identifies the cases in which the Court may make restraint orders at s. 23. That section states:-

23.—(1) The powers conferred on the High Court by section 24 of this Act shall be exercisable where—

- (a) (i) proceedings have been instituted in the State against the defendant for an offence which is a drug trafficking offence or an indictable offence other than a drug trafficking offence or an application has been made in respect of the defendant under section 7, 8, 13 or 18 of this Act,
- (ii) the proceedings or the application have not or has not been concluded, and
- (iii) either a confiscation order has been made or it appears to the court that there are reasonable grounds for thinking that a confiscation order may be made in the proceedings or that in the case of an application under section 7, 8, 13 or 18 of this Act the court will be satisfied, as the case may be, as mentioned in section 7 (3), 8 (4), 13 (2), 13 (4) or 18 (2) of this Act,

or

- (b) (i) the court is satisfied that proceedings are to be instituted against a person in respect of an offence which is a drug trafficking offence or an offence in respect of which a confiscation order might be made under section 9 of this Act or that an application of a kind mentioned in subsection 1 ( a ) (i) of this section is to be made in respect of a person, and

- (ii) it appears to the court that a confiscation order may be made in connection with the offence or that a court will be satisfied as mentioned in subsection 1 ( a ) (iii) of this section.

(2) For the purposes of section 24 of this Act, at any time when those powers are exercisable before proceedings have been instituted—

- (a) references in this Act to the defendant shall be construed as references to the person referred to in subsection (1) (b) (i) of this section, and

- (b) references in this Act to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (1) (b) (i) of this section for an offence which is a drug trafficking offence or an offence in respect of which a confiscation order might be made under section 9 of this Act.

(3) Where the court has made an order under section 24 of this Act by virtue of subsection (1) ( b ) of this section, the court shall discharge the order if proceedings in respect of the offence are not instituted or the relevant application is not made within such time as the court considers reasonable."

A restraint order made under s. 24 applies to realisable property and realisable property is defined in s. 3 of the Act as follows:-

"realisable property" means—

- (a) any property held by the defendant, and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act,

but does not include property which is the subject of—

- (a) an order under section 30 of the Misuse of Drugs Act, 1977 (forfeiture orders), or
- (b) an order under section 61 of this Act;"

The interpretation section of the Act at s. 3(16) identifies provisions that have effect for the interpretation of the Act and subs. (a) to (e) are relevant to this application.

"(16) The following provisions shall have effect for the interpretation of this Act, namely,

- (a) property is held by any person if he holds any interest in it,
- (b) references to property held by a person include a reference to property vested in his trustee within the meaning of Part V of the Bankruptcy Act, 1988 or liquidator,
- (c) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested,
- (d) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property,
- (e) proceedings for an offence are instituted—
  - (i) when a summons or warrant for arrest is issued in respect of that offence,
  - (ii) when a person is charged with the offence after being taken into custody without a warrant,

and where the application of this section would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times,"

The Act provides in s. 3(2) an interpretation of the amount that might be realised at the time of a confiscation order is made against the defendant, is to include the aggregate of the values at that time of all gifts caught by the Act. The value of a gift is determined by reference to s. 3(6) and (7) and (12). Whilst an interpretation is provided as to how the

value of a gift is to be determined in the event of a confiscation orders being made, there is no definition of a gift within s. 3, the interpretation section, or anywhere within the Act. Whilst there is no express definition of a gift, s. 3, subs. (12), identifies circumstances in which a defendant is to be treated as making a gift and that subs. reads as follows:-

(12) For the purposes of this Act—

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant, and

(b) in those circumstances, subsections (2) to (11) of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) of this subsection bears to the value of the consideration provided by the defendant."

From that subsection it is clear that a gift includes the transfer of property from one person to another for either no consideration or a consideration significantly less than the value of the consideration provided by the defendant. It is also clear that a gift is considered as occurring where there is a transfer of property from the defendant to another person. The title of the Act identifies that the Act is for the purpose of making provision for the proceeds of drug trafficking and other offences. The Act extends not only to realisable property held by the defendant, but also to property held by another person or a third party to whom the defendant has directly or indirectly made a gift caught by the provisions of the Act.

The High Court has power to make a restraint order but that power applies only to realisable property and only in cases covered by s. 23 of the 1994 Act.

24. The *ex parte* application grounded on the affidavit of Detective Garda Paul Grimes identified that the defendant had been arrested on the 15th January, 2008 for an offence under s. 15 of the Misuse of Drugs Act 1977, as amended, and that on the 17th January, 2008, the defendant was charged pursuant to ss. 3 and 15 of the Misuse of Drugs Act 1977, as amended. That affidavit also identified property in respect of which the application under s. 24(1) of the Criminal Justice Act 1994 was being made. The originating notice of motion identified in a schedule that property which was said to be "specific realisable property of the defendant". That property was set forth in five separate paragraphs and included three bank accounts and two motor vehicles. Two of the bank accounts were in the joint names of the defendant and his wife and the third bank account was in the name of the defendant, trading as Tower Tiling. The grounding affidavit identified the balances in each of the three accounts and gave details of the turnover and profit of the defendant's tiling business for the previous two years, 2006 and 2007, and also details of the defendant's earnings and social welfare payments for the years 2003, 2004 and 2005. The affidavit deposed to the belief that unless there was a restraint order made that the defendant would dissipate his assets, the subject matter of the application, and at paragraph 23 of the affidavit it was averred:-

"The property held by the defendant at the date of the swearing of this affidavit is likely to represent a payment or reward for drug trafficking activity carried on by him having regard in particular to the limited nature of his legitimate sources of income. These legitimate sources do not account for the assets and expenditure of the defendant."

I will return later in this judgment to the issue as to whether or not the property identified as being held by the defendant has been established as being likely to represent a payment or reward for drug trafficking activity carried on by the defendant. That claim was expressly disputed by both the defendant and the notice party. In effect, both the defendant and the notice party argued that the property identified in this application had been accumulated and earned from the lawful economic activity of the defendant and from certain payments received by the third party. The notice party in her affidavit sworn on the 28th February, 2008 averred at paragraph 4 that:-

"... the assets the subject matter of these proceedings are not the proceeds of drug dealing or any other criminal activity but are the proceeds of my husband's tiling business and our accumulated savings."

The defendant adopted a similar position as illustrated by his averment contained in paragraph 10 of his affidavit sworn on the 24th April, 2008 dealing with lodgements where he claimed that:-

"All monies were solely and exclusively derived from lawful economic activity."

25. This application is brought by the Director of Public Prosecutions as provided for in s. 24(4) of the 1994 Act. That subsection states that a restraint order may be made only on the application by the Director of Public Prosecutions and also identifies that such application may be made *ex parte* and otherwise than in public. The application which was made to Court on the 18th February, 2008 was made by the Director of Public Prosecutions was made *ex parte* and otherwise than in public. The application was therefore made by the only party who can make such an application and was made in a manner expressly provided for in the Act,

26. Section 23 of the 1994 Act identifies cases in which restraint orders may be made. Section 23(1)(a) identifies that restraint orders may be made by the High Court where proceedings have been instituted in the State against the defendant for an offence which is a drug trafficking offence. As of the 18th February, 2008 the defendant had been charged with an offence under s. 15 of the Misuse of Drugs Act 1977, as amended, and that is a drug trafficking offence as defined by s. 3(1) of the 1994 Act and proceedings, as defined in the Act, had been instituted. It was also the case that as of the date of the making of the *ex parte* order, the criminal proceedings against the defendant had not concluded. The Court was required to consider the application for a restraint order in the light of the provisions of s. 23(1)(iii) and to determine whether it appeared to the Court that there were reasonable grounds for thinking that a confiscation order may be made in the proceedings.

27. Confiscation orders are dealt with in s. 4 of the 1994 Act and s. 4(1) states:-

"Where a person has been sentenced or otherwise dealt with by a court in respect of one or more drug trafficking offences of which he has been convicted on indictment, the Director of Public Prosecutions may make, or cause to be made, an application to the court to determine whether the person convicted has benefited from drug trafficking."

Such an application can only be made at the conclusion of the criminal proceedings and in circumstances where a defendant has been convicted. In deciding whether to grant a confiscation order the Court must determine whether the convicted person has benefited from drug trafficking. Section 4(5) states:-

"For the purposes of this Act, a person who has at any time (whether before or after the commencement of this section) received any payment or other reward in connection with drug trafficking carried on by him or another has benefited from drug trafficking."

Section 4(6) identifies that the standard of proof in relation to the issue of confiscation orders is the standard applicable in civil proceedings. This Court has to consider whether or not it has been shown that there are reasonable grounds for thinking that a confiscation order might be made within the criminal proceedings against the defendant at the conclusion of those criminal proceedings. As part of the analysis by this Court it must address the issue as to whether it has been established that there are reasonable grounds for thinking that there would be a determination that the defendant has benefited from drug trafficking if convicted. In considering that issue, the Court would have to have regard to a number of matters including the extent of the realisable property or assets accumulated and/or available to the defendant and their potential source. If it was established that the defendant's property and assets could be explained by his lawful earnings, that would be a factor which would favour a conclusion that a confiscation order would not be made. However, if the opposite was the case and the property and assets of the defendant could not be explained by lawful or genuine earnings, an ultimate confiscation order would be more probable. The Court will examine this matter later in this judgment.

28. A restraint order continues in existence for a limited period. Section 24(5) states that a restraint order shall be discharged on the conclusion of the proceedings or of the application in question. If the proceedings end with an acquittal, then there is no entitlement to seek a confiscation order and the restraint order would be at an end and if the defendant is convicted, an application for a confiscation must be made at the conclusion of the criminal proceedings at the point in time where the convicted person is sentenced or otherwise dealt with by the Court. A restraint order is also an order which is capable of discharge or variation at any stage prior to the conclusion of the criminal proceedings and s. 24(6) provides that an application for discharge or variation of a restraint order may be made by any person affected by it and s. 24(5) provides that a restraint order may be discharged or varied in relation to any property.

29. A number of preliminary points were raised by the defendant and notice party in relation to these proceedings. It was claimed on behalf of the defendant that the Director of Public Prosecutions did not have a legal right to apply for a s. 24 order. This was based upon a claim that the Director of Public Prosecutions, as a creature of statute, derived his powers and entitlements from statute. It was claimed that the functions of the Director of Public Prosecutions are as set out in s. 3(1) of the Prosecution of Offences Act 1974. Thereunder he is entitled to perform all functions capable of being performed in relation to criminal matters but it was argued that the definition of criminal matters in s. 1 of that Act does not allow or permit of an application such as was made in this case. That argument ignores the express terms of s. 24(4) which provides that a restraint order may be made only on an application of the Director of Public Prosecutions. The Director of Public Prosecutions has an express statutory power and is carrying out that power in relation to a criminal matter, albeit in circumstances where the particular application is one to which a standard of proof applicable in civil proceedings apply. The Director of Public Prosecutions has an express entitlement to apply for a s. 24 order as provided for in the 1994 Act and the Court rejects the claim that he did not have such power.

30. A further issue raised by the defendant is that it is claimed that the plaintiff failed to justify the procedure whereby the plaintiff sought an *ex parte* order on the 18th February, 2008. It was suggested that there was an obligation on the plaintiff to identify or establish an urgent situation to permit of the use of the *ex parte* procedure. The Court is satisfied that there is no such obligation on the plaintiff. The entitlement of the plaintiff to apply for a restraint order *ex parte* is expressly provided for in s. 24(4)(a) of the 1994 Act. The Oireachtas has determined that a restraint order is by its nature an application which can be made *ex parte* and the rights and interests of a defendant or any party affected by an order are protected by the provision within the Act (s. 24(6)) which allows and permits an application to discharge or vary a restraint order, to be made at any time during its currency by any person affected by it. As the plaintiff had an entitlement to apply *ex parte*, the Court is satisfied that there was no failure on the part of the plaintiff to notify the defendant of his intention to apply for a restraint order. The Court is also satisfied that there is no such obligation.

31. It was contended on behalf of the defendant that the restraint order obtained *ex parte* had the effect of depriving the defendant of his livelihood by preventing him access to his business capital and was further unlawful in that it had the effect of preventing the defendant from supporting his family. The notice party contended that the *ex parte* restraint order is unconstitutional and incompatible with the European Convention on Human Rights. The notice party has commenced separate plenary proceedings alleging that the provisions of the Criminal Justice Act 1994, as amended, are unconstitutional and incompatible with the European Convention on Human Rights. For the purposes of this application the Court is satisfied that the rights of the defendant and the notice party in relation to the defendant's entitlement to earn his living and support his family are sufficiently recognised and protected by the provisions contained within the 1994 Act. That Act allows and permits for any party affected by the restraint order, that is, either the defendant or a notice party, to apply for a discharge or variation at any point in time during the currency of the restraint order. The Court has the power to make a restraint order subject to such conditions and exceptions as it thinks fit. The very process which this Court has been involved in is a process by which a party affected by a restraint order can seek the discharge of that order or its variation in respect of any item or items or property covered by the order. That process provides a means by which the defendant or the notice party can seek and obtain access to funds. It is not a case, as contended for by the defendant, that the defendant has been deprived of his property rights without any effective remedy. The provisions of s. 24(5) and (6) provide a process to seek such remedy.

32. The defendant further contended that there was an unexplained and unjustified delay by the plaintiff in applying for the *ex parte* order. The Court is satisfied that there was no obligation to explain or justify the period of one month from the arrest and charge of the defendant to the making of the *ex parte* application. It is open to the plaintiff, pursuant to statute, to apply for a restraint order at any time provided the requirements laid down in s. 23 of the 1994 Act have been complied with. The powers conferred on the Director of Public Prosecutions under s. 24 of the 1994 are exercisable where the provisions of s. 23 apply and there is no time limit in relation to when an application for a restraint order can be made

prior to the completion of the criminal proceedings. The notice party raised the issue that the duration of the proceedings before the High Court were excessive and amounted to delay. It was claimed that in circumstances where there is an order in being which *prima facie* affects the rights of the defendant and notice party, that such proceedings must be terminated speedily and without delay. The Court is satisfied that there has been no delay in this case other than that the proceedings have been litigated in an excessively prolonged and unnecessary manner. Issues have been raised and cross-examination has occurred which has been of little or no real benefit to the Court in determining the issues before it. The Court in recognition of any hardship which could occur as a result of the protracted nature of the litigation has on a number of occasions varied the restraint order to provide funds and assets to the defendant and notice party. The Court has thereby ensured that any immediate requirement for variation has been considered and dealt with in a timely manner.

33. The defendant also raised an issue in relation to the alleged failure by the plaintiff to fully inform the High Court of the true circumstances when applying for the *ex parte* order. It was claimed on behalf of the defendant that the affidavit of Detective Garda Paul Grimes sworn on the 18th February, 2008 did not fully inform the High Court of the true circumstances and background of the application in that matters were not included within that affidavit which should have been and, in particular, the fact of the payment of income tax, P.R.S.I. and Value Added Tax by the defendant was omitted as was the fact that a significant deposit had emanated from a S.S.I.A. savings account. It was also claimed that there was a failure on the part of the deponent to inform the Court that the plaintiff had access to the defendant's computer business records. It is unquestionably the case that as the proceedings progressed and further affidavits were filed and cross-examination took place that additional information became available to the Court. However, consideration of the grounding affidavit of Detective Garda Paul Grimes demonstrates that the financial records available had been considered and were disclosed by reference to the declared turnover and profit of the defendant's tiling business in the two full years of its operation together with details of the defendant's earnings in prior years. The fact that the defendant received social welfare for a period during 2005 was also identified. The deponent of the grounding affidavit averred at paragraph 23 that the property held by the defendant as of the date of the swearing of the affidavit was likely to represent a payment or reward for drug trafficking activity carried on by him, having regard in particular to the limited nature of the defendant's legitimate sources of income. The Court is satisfied that there was a sufficient identification of the defendant's legitimate sources of income contained in the affidavit. The fact that additional information became available during the course of these proceedings does not lead to the conclusion that there was a failure to disclose relevant information known to the deponent at the time of the *ex parte* application. As replying affidavits were delivered, greater detail was identified and the precise nature of the defendant's income and whether or not it was from so-called legitimate sources became highlighted and analysed. In identifying the defendant's declared earning for 2003 and 2004 and the fact that he was in receipt of social welfare payments in 2005, and the turnover and profit of his business for 2006 and 2007, the deponent of the grounding affidavit put relevant material before the Court which enabled it to consider whether or not the accumulated funds identified in the bank accounts were likely to have emanated from legitimate sources or to represent a payment or reward from drug trafficking activity. The Court is satisfied that there was no failure on the part of the deponent of the grounding affidavit to properly inform the Court as to the true circumstances, then known, at the time of the *ex parte* application. The Court is satisfied that there was no effort on the part of the Detective Garda who swore the initial grounding affidavit to mislead the Court. The deponent properly and adequately informed the Court of the plaintiff's and his own state of knowledge and belief as of the date of the *ex parte* application. Notwithstanding extensive further affidavits and detailed cross-examination the Court is satisfied that even in the light of such additional information that the belief expressed by the deponent as to the source of funds in possession of the defendant remained well founded. The central factual basis for such belief was clearly set down and disclosed. This matter will be dealt with in greater detail later in this judgment.

34. A matter raised by both the defendant and the third party was the failure by the plaintiff to give an undertaking as to damages at the *ex parte* hearing and prior to the *ex parte* order being made. The factual position is that the issue as to an undertaking as to damages was expressly raised by counsel for the plaintiff at the *ex parte* hearing and the authority of the *Minister for Justice v. Devine* [2007] 1 I.R. 813 was opened to the Court. It was indicated to the Court that it was the plaintiff's contention that notwithstanding the legal position identified in the *Minister for Justice v. Devine* case that an undertaking as to damages was not required. The basis upon which such argument was made was that s. 65 of the Criminal Justice Act 1994 had not been considered in that judgment. Having considered the matter the Court indicated that it would not require an undertaking as to damages to be given at that point in time but that the issue as to the appropriateness of an undertaking as to damages being required on the making of a restraint order could be argued at any subsequent hearing or on application by either the defendant or the notice party. At the hearing before the Court it was contended on behalf of the defendant and the notice party that the plaintiff was obliged to give an undertaking as to damages and that absent such undertaking the *ex parte* order should be set aside.

35. In the *Minister for Justice v. Devine* case, O'Sullivan J. held that an undertaking as to damages should have been given at the *ex parte* application in that case in the absence of appropriate reasons against the giving of same. O'Sullivan J. determined that in the light of the principles of equality and *audi alteram partem*, State applicants seeking to enforce a public right or interest were not exempted from the rule requiring such undertaking. Whilst determining that an undertaking as to damages should be given at an *ex parte* stage the Judge also held that the failure to furnish such an undertaking would not *per se* invalidate an order granted or constituted a reason, without more, to have it set aside. In the *Minister for Justice v. Devine* case, the Minister for Justice was applying under s. 24 of the Criminal Justice Act 1994 but in relation to the provisions inserted by the Criminal Justice Act 1994 (s. 46(6)) Regulations 1996. In that case the respondent had been convicted in the United Kingdom of tax evasion and a confiscation order was made in respect of the proceeds of her criminal conduct and she had appealed that order and pending the final determination of that appeal, a restraint order was made by the United Kingdom Court restraining the respondent from dealing with certain assets, including property in Ireland, which constituted the proceeds of crime. The Minister for Justice in accordance with the Regulations applied *ex parte* for a restraint order in Ireland on behalf of the United Kingdom authorities which had made a request under the mutual assistance provisions. In dealing with the matter O'Sullivan J. held (at para. 20 on page 819) as follows:-

"But does the need for urgent if not instantaneous comprehensive and definitive response on occasion mean that the balanced guarantees of a 70 year old Constitution must yield in toto to these perfectly legitimate and pressing concerns? I do not think so; the very need for a swift and assertive response (in some cases *it may even be in secret*) reinforces, rather than the reverse, the countervailing need that the courts have due regard to the unrepresented interests of the party affected by such orders. The court, in my view, should be free where appropriate to make orders with such draconian effect without the burden of conducting even a preliminary inquiry into the current and possibly changing circumstances of the party or parties to be affected with a view to



identifying the scope of potential damage to them. The tried and trusted method of achieving the appropriate balance has been an insistence that an undertaking as to damages should be given to the court and not, be it noted, to the affected party. It is the court that insists on the undertaking to ensure as best it can that its own procedures be marked with the characteristics of fairness and balance.”

The judgment went on state (at p. 820):-

“... in particular in light of the principle *audi alteram partem*, at least insofar as an *ex parte* application is concerned, including an order enforcing a public right or interest, the norm should be that an undertaking as to damages be given in the absence of appropriate reasons as to why not. This can of course be reviewed at any subsequent point at which the affected party has an opportunity of being heard.”

It appears from a consideration of the judgment of O’Sullivan J. that no reference or consideration was given to the provision within the Criminal Justice Act of 1994 dealing with compensation. Section 65 of the Criminal Justice Act 1994 provides:-

- (1) If proceedings are instituted against a person for a drug trafficking offence or offences or for an offence or offences in respect of which a confiscation order might be made under section 9 of this Act and either—
  - (a) the proceedings do not result in his conviction for any such offence, or
  - (b) where he is convicted of one or more such offences—
    - (i) the conviction or convictions concerned are quashed, or
    - (ii) he is pardoned by the President in respect of the conviction or convictions concerned, the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.
- (2) The court shall not order compensation to be paid in any case under this section unless the court is satisfied—
  - (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned, and
  - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Act.
- (3) The court shall not order compensation to be paid under this section in any case where it appears to the court that the proceedings would have been instituted or continued even if the serious default had not occurred.
- (4) The court may order compensation to be paid under this section to a person with an interest in property affected by a confiscation order or a restraint order notwithstanding that he is not the person who was the subject of the relevant investigation or prosecution.
- (5) The compensation to be paid under this section shall be such amount as the court thinks just in all the circumstances of the case.

Given the contents of the judgment of this Court in *Minister for Justice v. Devine*, it is clear that the issue of an undertaking as to damages should have been drawn to the attention of the Court at the *ex parte* stage and that was done in this case. The decision of the Court in *Minister for Justice v. Devine* and the need for an undertaking at the *ex parte* stage was to a significant extent based on the fact that such undertaking would facilitate the conduct of the business of the courts and relieve the Court of the necessity of embarking at the interlocutory stage upon an inquiry as to the then current circumstances or the possible changing circumstances of the party or parties to be affected by the order. In this case the provisions of s. 65 of the 1994 Act were opened to the Court and that section identified that the Oireachtas had provided a statutory basis for compensation to persons effected by orders under that Act. That section makes it clear that compensation is only to be ordered in circumstances where there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence and an applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under that Act. In the light of that provision a general undertaking as to damages would operate to defeat the provisions of s. 65(2) where compensation only becomes payable if both subs. (a) and (b) apply. A general undertaking as to damages would mean that a party claiming damages or compensation would only have to establish an entitlement under s.65(2)(b) and not under sub-paragraph (a). The legislative intention of s. 65 is that compensation or damages should only be paid in specified circumstances and a general undertaking as to damages, as argued for by the defendant and notice party, would be inconsistent with the express provisions of s. 65. It is clear that the provisions of s. 65 apply not only to a defendant but also to any person with an interest in property affected by a confiscation order or a restraint order. The Court is satisfied that there was no requirement on the part of the plaintiff to provide an undertaking as to damages at the *ex parte* stage as the entitlement to compensation or damages is provided for within the Act and the legislative intention therein set out would be undermined if a general undertaking as to damages was required. The Court is satisfied that the provisions for compensation contained within s. 65 provides a sufficient balance of the guarantees contained in the Constitution. The content of s. 65 ensures that the balanced guarantees referred to in the *Minister for Justice v. Devine* case cannot be said to have yielded in toto in the absence of an undertaking.

36. Counsel for the notice party argued that s. 65 did not benefit his client insofar as s. 65(1)(b)(ii) only applied to property which was realisable property. He therefore argued that his client could not benefit under the compensation section as her property was not realisable property. That argument is circular in that if it is established that the notice party’s property is not realisable property within the definition of s. 3, then such property cannot rightly be the subject of an order under the 1994 Act, either by a restraint order or by a compensation order. The real question which requires to be addressed is whether or not the notice party’s property in the joint bank accounts is property held by the defendant or property which the defendant has directly or indirectly gifted to the notice party. That issue will be dealt with later in this judgment.

37. This Court is satisfied that a full consideration of the provisions of the Criminal Justice Act 1994 establish that the issue as to compensation and/or an undertaking as to damages are dealt with by the Act and that there is no requirement for an undertaking as to damages. Further, on the facts of this case, since the issue as to an undertaking as to damages was expressly raised and considered by the Court at the *ex parte* stage and the entitlement for any party effected by the order to raise such issue thereafter identified, there can be no basis for contending that the failure to furnish an undertaking as to damages would invalidate the *ex parte* order or constitute a reason to have such order set aside.

38. The issue which took up by far the longest period of time during the hearing of this case was whether or not there was evidence available to the Court which resulted in it being satisfied, on the civil standard of proof, that there were reasonable grounds for thinking that a confiscation order may be made in the proceedings against the defendant. The different positions of the plaintiff, the defendant and notice party in relation to the property covered by the restraint order have been outlined above. The position identified by the plaintiff was that the property held by the defendant, as set out in the schedule to the order, was likely to represent a payment or reward for drug trafficking activity carried on by the defendant whilst the defendant and the notice party contended that the entire of that property represented property purchased and funds accumulated from the defendant's lawful business activities and the accumulated savings of the defendant and notice party. It was contended by the defendant and notice party that the assets, the subject matter of these proceedings, are not the proceeds of drug dealings or any other criminal activity. The determination of that conflict is central to this Court in determining whether or not the restraint order should be set aside. If the defendant and notice party are correct in their contention then there are strong grounds to indicate that the restraint order should be discharged. If the plaintiff is correct in his contention then that fact would significantly favour the retention of a restraint order.

39. In considering whether it appears to the Court that there are reasonable grounds for thinking that a confiscation order may be made in the proceedings, the Court has regard not only to the fact that the defendant has been charged pursuant to s. 15 of the Misuse of Drugs Act 1977, as amended, but also to other material placed before the Court on affidavit. That material specifies the fact that the defendant has twenty previous convictions since May of 1987 and also details an incident in February 2003 where the defendant was present at the time and place where ten kilograms of heroin were found which were ultimately determined to be in the possession of two other persons who were also present. These persons are identified on oath as being criminal associates of the defendant. Also Detective Garda Paul Grimes in his affidavit sworn on the 22nd February, 2008 identified in para. 4 of that affidavit the circumstances in which the defendant came to be arrested for the offences in respect of which he is now awaiting trial. He averred:-

"The estimated street value of the diamorphine in respect of which M.B. is charged is in the region of €7 million, the heroin weighed approximately 32 kilograms. The circumstances of the seizure of the said drugs are that as a result of a surveillance operation carried out by members of the Garda National Drugs Unit on the 15th January, 2008 the said M.B. was arrested at a field adjacent to Culmore Road, Palmerstown, Dublin 20, in the process of concealing a quantity of controlled drugs, namely diamorphine (heroin) in a number of locations in the field in such a manner that they would be available for collection. On seeing the Gardaí Mr. B. tried to evade arrest by running across the field. He was apprehended and a set of keys was located. The keys were found on the person of Mr. B. when he was apprehended. These keys were for a van registration number 06D XXX34 parked near the field which when searched was found to contain 9 kilograms of diamorphine (heroin). In custody Mr. B. admitted that van registered number: 06D XXX34 belonged to him and stated that he had loaned it to another individual and discovered on its return that it contained drugs."

The circumstances of Mr. B.'s arrest and what was found at the time of his arrest are relevant and significant factors for this Court to take into account in considering whether there are reasonable grounds for thinking that a confiscation order may be made in the proceedings. The averment quoted above recounts not only the circumstances in which drugs were found and the defendant's conduct at that time but also confirms that a very significant quantity of illegal drugs were found. The factors identified in relation to the defendant's history and as to the circumstances of his arrest and charge are relevant factors to take into account in considering whether there are reasonable grounds for thinking that a confiscation order may be made.

40. The Court must also address the significant matter of whether or not the defendant and third party's contention that the assets, the subject matter of the restraint order, are the legitimate proceeds of the defendant's tiling business and/or the accumulated savings of the defendant and the notice party rather than the proceeds of drug dealing as contended for by the plaintiff. The Court heard extensive evidence in relation to these matters and from that evidence certain conclusions can be drawn.

41. There is a volume of documentation available to the Court concerning the defendant's business activities as a tiler, his employment and tax history, this includes employment details, records of the defendant's income tax, the accounts of the defendant's business, the VAT records of that business and documentation concerning the vehicle ownership of the defendant and the notice party and the notice party's tax records including details of her income. There is also documentation relating to the defendant's social welfare payments in the year 2005. The Court also has the benefit of an affidavit from a Bureau forensic accountant of the Criminal Assets Bureau which was sworn following an examination of the Revenue records of the defendant, the business records of the defendant as obtained from his accountant, the notice party's employment history, the VAT records and the bank account activity of the accounts operated by the defendant both in his business name and jointly with the notice party. The forensic accountant is a chartered accountant and a certified fraud examiner. He had available extensive documents and records detailed in his affidavit. The evidence included the fact that the notice party had available to her a weekly sum of €500 to expend on household expenses during the years 2006 and 2007. The forensic accountant's report deals with that sum of €500 which was acknowledged as being available to the notice party. The report fails to allow for the fact that almost €100 of that sum came from children's allowances. Notwithstanding that factual error it is clear that the conclusion of the forensic accountant to the effect that there were substantial sources of funds available to the defendant and notice party during the years 2006 and 2007 over and above the funds generated by the defendant in his business is soundly based. The fact that the €500 available to the notice party each week covered only part of the household expenditure is clear from schedule 4 of the notice party's affidavit of means sworn on the 28th March, 2008, wherein the total weekly expenditure of the household, without any entertainment or holiday expenses and without repaying any loans amounted to €749 per week.

42. The evidence established that the defendant's business earnings and funds generated from other unidentified sources were intermingled in the bank accounts and formed an indistinguishable part of the balances on deposit in the Bank of

Ireland. Given the earnings of the defendant and the notice party as disclosed in the defendant's own accounts as prepared by his accountant, and contained in the Revenue records it is apparent that there were substantial funds available from unidentified and undisclosed sources. No valid or credible explanation was provided as to the source of such funds. An examination of the amounts of money deposited in the bank accounts demonstrated a volume of funds inconsistent with any income or turnover which could have emanated from the defendant's business. The evidence also established that an analysis of the business records of the defendant demonstrated incomplete and inaccurate records. The analysis of such limited records demonstrated that many of the documents were not only inaccurate and incomplete but related to non-existent premises. It was also apparent from an examination of the lodgements made by the defendant that a substantial number were in round sums and were unlikely to have been the proceeds of payments received for work carried out by him. The evidence which was available to the Court demonstrated that the defendant had incomplete, inconsistent and inaccurate business records. These records rather than supporting the defendant's claim of legitimate earnings indicated that the defendant's business was to some extent a pretense. In any event, even if those records were accepted as being legitimate, which the Court does not so accept, such records of profit and income would not be sufficient to account for the volume of transactions in the accounts operated by the defendant. The amounts contained in the bank accounts operated by the defendant are consistent with income in excess of identifiable earnings and savings. The defendant and the notice party's contention, that the funds available to them were generated from legitimate business activities and savings, is not consistent with the evidence available to the Court and on the overall evidence supports the claim that they represent a payment or reward for drug trafficking activity.

43. The Court's view in relation to the financial position of the defendant and the source of funds in the bank accounts is further supported by the defendant and third party's history of dealings with motor cars. The defendant had available to him a BMW 5 X motorcar of considerable value, the purchase of which required the repayment of a loan of €409 per month. At the time of his arrest the defendant identified that car as belonging to him. The monthly car loan repayment, together with the acknowledged household expenses, demonstrate that there were funds available to the defendant and the notice party in excess of any funds or income emanating from historical savings or from the defendant's tiling business. The notice party was made redundant from her job in 2004 and such funds as were received by her on redundancy would have been more than exhausted within a short period of time given the extent of the outgoings of the defendant and the notice party. The fact, relied upon by the defendant and notice party, that the motorcar was purchased in part with funds generated from an S.S.I.A. savings account in no way alters the view of the evidence formed by the Court in that there is no explanation as to how such S.S.I.A. account was funded.

44. The defendant's stated profit in his tiling business for the year 2006 was €19,238 and for the year 2007 €24,749. That profit, as identified in the defendant's own accounts, does not and cannot provide a sufficient income to cover the expenditure of the defendant and the notice party. During the period of 2006 and 2007 the bank statements demonstrate accumulated savings of over €56,000 and the forensic accountant's analysis identified a sizeable gap between the total expenditure and savings and any legitimate verifiable earnings. (See paragraph 21 of his affidavit). Having considered the material and testimony available to the Court, the Court is satisfied that there is clear evidence that the property held by the defendant at the time that the restraint order was made was property in respect of which there are reasonable grounds for thinking that a confiscation order may be made. The test is that an order may be made not that it will be made and that test has been satisfied. The contention by the defendant and notice party that such funds or assets were not the proceeds of drug dealing or any other criminal activity but were the proceeds of the defendant's tiling business and the defendant's and notice party's accumulated savings is not consistent with the evidence available to this Court. This conclusion is evident from the schedule to the notice party's affidavit of the 23rd March, 2008 that identified outgoings of some €749 per week thereby demonstrating an expenditure which cannot be explained from legitimate earnings. The sum of €749 included rent but did not include car insurance, motor tax, loan repayments or savings. Identification of outgoings of that amount shows that funds in excess of €40,000 net were available to the defendant and notice party in both 2006 and 2007. The evidence produced to the Court shows that M.B.'s earnings in his tiling business, even if taken at the level claimed by him, could not explain such expenditure.

The explanation given by the notice party as to the potential source of funds, including the redundancy payment she received in 2004 and S.S.I.A. savings do not provide a credible explanation.

45. The two bank accounts which were held in the joint names of the defendant and the notice party were operated jointly by them for a number of years prior to the restraint order being made. They were joint accounts free to be operated by either the defendant or the notice party and it is clear that, at least in part, they were funded by financial contributions from the notice party. They were used to discharge family expenses and on the 11th August, 2006, account No. 17430269 received the S.S.I.A. funds from the notice party. That was a sum of €25,125.85. The evidence shows that the two joint bank accounts were not only held in joint names but were operated by both the defendant and the notice party. The evidence also shows that from the time of her redundancy in 2004 up to the date of the proceedings herein, the notice party was involved full-time in bringing up her children and looking after the home. It is against that factual background that this Court has to consider whether or not the notice party is the beneficial owner of fifty per cent of the funds held in the two bank accounts in joint names and if so, whether or not a restraint order or a confiscation order could apply to such funds.

46. The plaintiff claims that the entire funds in the two bank accounts in joint names are covered by the provisions of the 1994 Act. The property, the subject matter of the restraint order application and the basis upon which it was sought were set out at para. 23 and 24 of the first affidavit of Detective Garda Paul Grimes sworn on the 18th February, 2008. At para. 23 he averred:-

"The property held by the defendant at the date of the swearing of this affidavit is likely to represent payment or reward for drug trafficking activity carried on by him."

The Court is satisfied that the factual basis relied upon in support of that contention has been established. The deponent went on to aver in relation to the funds in the two bank accounts in joint names to aver at para. 24, as follows:-

"Insofar as the assets the subject of this application are in the name of E.B., I say and believe that her interest if any in the assets represents a gift made by the defendant to her which is caught by the Criminal Justice Act 1994, in particular ss. 3(9), 2(12) thereof and is included within the definition of realisable property within that Act."

This Court must consider whether or not that averment is correct in fact and in law. A restraint order can apply to all realisable property and realisable property is defined. There is no issue that realisable property extends to any property

held by the defendant. The issue is whether the notice party's beneficial ownership of fifty per cent of the funds in the two bank accounts held in joint names is realisable property within the provisions of the Act. If it is to be such, the Court would have to be satisfied that the defendant has directly or indirectly made a gift to the notice party as provided for by the 1994 Act. Simply put, for the notice party's beneficial ownership of fifty per cent of the funds in the two joint bank accounts to be covered by the 1994 Act and capable of being the subject of a restraint order, this Court would have to determine that the notice party's beneficial ownership in those two accounts represented a gift from the defendant. The notice party is the beneficial owner of fifty per cent of the funds in the joint accounts and the case made by the plaintiff is that those funds were a gift.

47. The 1994 Act provides that a restraint order may apply to all realisable property held by the defendant and therefore can extend to all property covered by the definition of realisable property in the Act. That definition is different both in scope and extent from the property which can be the subject of orders under the Proceeds of Crime Act 1996 and orders under the two Acts are made on a different premise.

48. Fifty per cent of the beneficial interest in the two bank accounts in joint names is held by the notice party. For that property to be realisable property within the definition section, that interest or those funds would have to be held by the Court to be property which the defendant had directly or indirectly made a gift of to the notice party. Section 3(6) and (7) subject to s.3(12) identify how the value of a gift is to be determined for the purpose of the Act and a gift is partly defined in s. 3(12) which provides:-

"(12) For the purpose of this Act –

(a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant, and

(b) in those circumstances, subsections (2) to (11) of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) of this subsection bears to the value of the consideration provided by the defendant."

That sub-section provides a limited definition of gift and it is argued on behalf of the plaintiff that the requirement of a comparison and subtraction process as identified in s. 3(12) by necessary implication rules out intangible considerations such as natural love and affection or a spouse's work in the home. It is claimed that it therefore follows that a proper consideration of the Act is that such intangible consideration is not consideration within the meaning of s. 3(12) and that a gift is caught by the Act unless there is a consideration in money or monies worth which is not significantly less than the market value of the asset. The plaintiff also seeks to rely on what is identified as the policy of the Act and on a claim that public policy generally ought to guarantee or ensure that the notice party does not retain the value of assets which it is claimed, to her knowledge, had increased by the application of tainted funds. The plaintiff submits that there is a clear public interest that those who traffic unlawfully in drugs should be deprived of the proceeds and that as part of that policy, restraint orders can be made. In support of his public policy argument the plaintiff relies on the decision on *Murphy v. G.M.* [2001] 4 IR 113. That decision involved a consideration of the provisions and constitutionality of the Proceeds of Crime Act 1996 and the entitlement to make orders under the Act. In this case the Court must consider the provisions of the 1994 Act and have due regard to the definition of realisable property. I will return to this matter later in this judgment.

49. The notice party asserts that she is the beneficial owner of a fifty per cent interest in the two bank accounts in the joint names and she disputes that there was a gift of any of the funds therein from her husband. She avers that she is the defendant's wife and the mother of his five daughters and that she keeps the home for her husband and she assists him from time to time in his work. The notice party claims that she is the beneficial owner of fifty per cent of the sums in the two bank accounts in the joint names and that such property is not realisable property under the provisions of the 1994 Act and that since that property is the notice party's property, it cannot be the subject of a confiscation order unless it was a gift and since it was not a gift, the provisions of the 1994 Act do not apply. The notice party relies on the approach adopted by the High Court and the Court of Appeal in England in the case of *Gibson v. The Revenue and Customs Prosecution Office*, an unreported judgment of the Court of Appeal of the 12th June, 2008 bearing citation number (2008) E.W.C.A. Civ 645.

50. In *Gibson v. The Revenue and Customs Prosecution Office*, the Court of Appeal considered a case, on appeal, where Marion Gibson had appealed against an order made in the High Court to enforce a confiscation order against her under the relevant U.K. legislation. The legislation was the Drug Trafficking Act of 1994. A confiscation order had been made against Marion Gibson's husband, Gene Gibson, for a sum in excess of £5 million and the Court had made an order that he pay that amount within twelve months. Mr. Gibson appealed his sentence and that appeal was dismissed by the Court of Appeal, Criminal Division, and leave to appeal against the confiscation order was refused. Proceedings were brought in the High Court to enforce the confiscation order and Mrs. Marion Gibson was joined to enable her to contend, as she did, that she was the beneficial owner of fifty per cent of the equity in the matrimonial home. She also claimed to have a fifty per cent interest in three endowment policies effected in joint names to support the mortgage and in two bank accounts, also in joint names. The Revenue and Customs Prosecution Office opposed Mrs. Gibson's contentions and the deputy High Court Judge decided that the ...:

"... 1994 Act concerns gifts caught by the Act, and would apply to gifts within the period 1992 to 1998 whether they were tainted or not. By section 6(1), the amount which may be realised for the purposes of a confiscation order includes the total of all gifts caught by the Act."

Mr. Goudie (sitting as a Deputy High Court Judge) held that the relevant payments were not gifts, because Mrs. Gibson provided consideration by bringing up the children and looking after the home.

As is clear from the Court of Appeal judgments the prosecution accepted that finding for the purposes of the appeal. This Court therefore has the benefit of the High Court's finding concerning gifts but the Court of Appeal did not have to address that matter given the concession by the prosecution.

This Court is satisfied that the finding that payments into joint accounts in the names of a husband and wife by the husband cannot be categorised as gifts where the wife provided consideration by bringing up the children and looking

after the home is a correct finding. To hold otherwise would be to disregard the line of authorities that the doctrine of presumption of advancement in relation to husband and wife and the one-sided presumption that a husband who transfers property into the name of his wife, intends to make a gift in her favour is an anachronistic concept which no longer applies except in particular and limited circumstances. The anachronistic nature of such concept was identified in the judgment of Lord Diplock in *Pettitt v. Pettitt* [1970] A.C. 777 at p. 824:-

"It would, in my view, be an abuse of the legal technique for ascertaining or imputing intention to apply to transactions between the post-war generation of married couples "presumptions" which are based upon inferences of fact which an earlier generation of judges drew as to be the most likely intentions of earlier generations of spouses belonging to the propertied classes of a different social era."

In the same case Lord Reid dealt with the matter in the following way (at p. 793):-

"I do not know how this presumption (presumption of advancement by a husband) first arose, but it would seem that the judges who first gave effect to it must have thought either that husbands so commonly intended to make gifts in the circumstances in which the presumption arises that it was proper to assume that where there was no evidence, or that wives' economic dependence on their husbands made it necessary as a matter of public policy to give them this advantage. I can see no other reasonable basis for the presumption. These considerations have largely lost their force under present conditions, and, unless the law has lost all flexibility so that the Courts can no longer adapt to changing conditions, the strength of the presumption must have much diminished. I do not think it would be proper to apply it in the present case."

The anachronistic and weakened status of the presumption of advancement in England was further illustrated in the judgment of Lord Newberger in *Stack v. Dowden* [2007] 2 A.C. at p. 467 he stated in his speech (at para. 101) as follows:-

"The determination of the ownership of the beneficial interest in a property held in joint names primarily engages the law of contract, land and equity. The relevant principles in those areas of law have been established and applied over hundreds of years, and have had to be applied in all sorts of circumstances. While both the nature and the characteristics of the particular relationship must be taken into account when applying the principles, the court should be very careful before altering those principles when it comes to a particular type of relationship. After all, these principles are not static and develop as the needs and values of society change. Thus, the presumption of advancement, as between man and wife, which was so important in the 18th and 19th centuries, have now become much weakened, although not quite to the point of disappearance."

In this jurisdiction given the constitutional status of spouses and the guarantee of equality, it would be difficult absent particular proved facts to identify circumstances where the continued principle of advancement between a husband and a wife could have any general application. In Ireland in the 1982 case of *J.C. v. J.H.C.* (Unreported judgment of Keane J. of the 4th April, 1982) the Judge proceeded on the basis that the presumption of advancement could only have any relevance where evidence to establish the party's true intentions was absent.

The facts of this case show joint bank accounts operated by both spouses into which payments were made by both husband and wife and where both were free to withdraw funds. The fact that one spouse might seek the agreement of the other to withdraw funds or that one exercised significant *de facto* control of such an account does not alter its status.

This Court is satisfied that the notice party's fifty per cent beneficial ownership of the funds in the joint bank accounts cannot properly be classified as being a gift either under the 1994 Act or otherwise. To incorporate the concept or theory of bounty or advancement to support a claim that a gift had been made into the banking arrangements of the defendant and notice party would ignore the true intentions of the parties. The payments made by the defendant into the joint accounts, no matter from what source, cannot be deemed to be gifts to the notice party.

In the *Gibson* case, the High Court found that Mrs. Gibson had guilty knowledge which in the context meant that she knew that the money used to pay the mortgage was not legitimately earned. It was based upon that finding that the prosecution submitted that Mrs. Gibson's beneficial interest not only in the home and the endowment policies but also in the bank accounts in the joint names were available for confiscation in two ways. Firstly, as a matter of public policy, and secondly, under s. 8 of the Drug Trafficking Act 1994. As with the Criminal Justice Act 1994 in this country, the Drug Trafficking Act of 1994 in England under s. 8 covered gifts. The High Court held that Mr. Gibson's payments were not gifts because Mrs. Gibson provided consideration by bringing up the children and looking after the home and as pointed out above the prosecution accepted that finding for the purposes of the appeal. The appeal proceeded on the issue of public policy. In considering that issue, Lord Justice May (at para. 14) of his judgment stated:-

"In the present case, Mrs. Gibson applies for no transfer in her favour and no exercise of the court's discretion. The assets are hers without any court order in her favour. It is the prosecution who have to establish a public policy jurisdiction entitling the court to confiscate her assets, when she was not convicted; when no confiscation order has been made against her under the 1994 Act or otherwise; and when there is no statutory confiscatory provision in the 1994 Act or otherwise on which the prosecution can rely. The prosecution need to persuade the court that there is some freestanding public policy jurisdiction to support their case."

Lord Justice May went on (at para. 18 of the judgment) to state:-

"... it seems to me quite impossible for the law, in the guise of public policy, to attribute to Mr. and Mrs. Gibson an intention which they plainly did not have and would never have assented to. The prosecution cannot, in my view, by the language of imputation achieve a confiscation of Mrs. Gibson's assets which the law does not otherwise enable, by imposing on her a notional and fictitious intention."

That notional and fictitious intention was that public policy required that the Court should impute to Mrs. Gibson and her

husband the intention that she should not benefit from money obtained illegally, but that only he should.

The Court of Appeal also considered the prosecution's claim that it should be put in a position equivalent to that of a victim whose money had been stolen and used to fund the mortgage. It was claimed that the victim in such a case could obtain judgment and a charging order over Mrs. Gibson's beneficial interest or could trace the stolen assets. The Court of Appeal held, at para. 19 of the judgment of Lord Justice May,:-

"The prosecution is not a victim in this (or any sense) and, absent statutory provision, cannot reach Mrs. Gibson's beneficial interest in this way. They do not have any kind of charge over them."

Lord Justice May concluded, (at para. 21) as follows:-

"There is thus, in my judgment, no identifiable power in the court, supported by a public policy which in general I acknowledge, to supplement presently existing statutory provisions to achieve what the prosecution want to achieve in violation of Mrs. Gibson's rights under article 1 of the First Protocol of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Although, in the language in that article, the result contended for might be in the public interest, it would not be subject to conditions provided for by the law. I decline to invent such conditions judicially."

This Court is in effect being asked to do the same exercise in this country under the guise of public policy and this Court refuses to impose or invent conditions judicially.

Lord Justice May went on to state that Mrs. Gibson was entitled to a fifty per cent beneficial interest in the matrimonial home, in the endowment policies and in the bank accounts.

51. The facts of this case establish that the property in the two bank accounts in joint names was property in which each spouse had a fifty per cent ownership and that nothing has been identified to displace that fact of equal beneficial ownership. The joint bank accounts in this case must properly be viewed in a domestic context. The distinct nature of domestic arrangements was identified in the judgment of Baroness Hale (at para. 42) in *Stack v. Dowden*:-

"...the interpretation to put on the behaviour of people living together in an intimate relationship may be different from the interpretation to be put on similar behaviour between commercial men. To put it at its highest, an outcome that might seem just in a purely commercial transaction may appear highly unjust in a transaction between husband and wife or cohabitants."

52. For the notice party's fifty per cent beneficial ownership in the two joint bank accounts to be covered by the provisions of the Criminal Justice Act 1994, it would be necessary for this Court to be satisfied that that property was held by the notice party who had received it from her husband directly or indirectly as a gift. The Court has already indicated that such funds cannot properly be categorised as either a direct or indirect gift.

53. This Court is satisfied that the approach identified by the Supreme Court in *Murphy v. G.M.* in considering the constitutionality of the Proceeds of Crime Act 1996, has no applicability to this case. That case was considering legislation in which the legislature had by the wording of the Act made it clear that it extended to a person who was in possession or control of specified property which constituted the proceeds of crime or was acquired in connection with such property. The basis for an order under the Criminal Justice Act 1994 is not possession or control but property which is held or gifted by a defendant. Therefore the legislative intent, identified by the Supreme Court as being present in the Proceeds of Crime Act 1996, is not present within the Criminal Justice Act 1994.

The evidence which is available to this Court in relation to the joint bank accounts is that they were joint accounts where either of the parties to the account could demand payment and thereby exercise control. There is no evidence before the Court that money lodged by the defendant to the joint bank accounts were in essence a gift by him to his wife. There is an assertion to that effect within the affidavit grounding this application but there is no evidence of such gift.

54. What is in issue is the enforcement of a legislative provision contained in the Criminal Justice Act 1994. That Act can only be applied to realisable property. The evidence establishes an intention to benefit the notice party and that such benefits were consciously or otherwise conferred in consideration for the notice party's work in the home and in bringing up the family's five children and not as a bounty or with an intention to confer a benefit. This Court is satisfied that the plaintiff cannot rely on the presumption of advancement as establishing a gift by the defendant to the notice party. In arriving at that determination, the Court has had regard to the facts concerning the joint bank accounts and the absence of any evidence of an intention on the defendant's part to make or give a gift. This Court cannot seek to impose a result or an intention which the Court itself considers fair. The fifty per cent beneficial interest in the two joint bank accounts was not as a result of a gift, and are not covered by the Proceeds of Crime Act 1994 and therefore cannot be the subject of a confiscation order and it follows therefore cannot be subject to a restraint order.

55. In relation to motor vehicle registration number: 05D XXX99, that motor vehicle is registered in the name of the notice party. The defendant has acknowledged that he is the owner of the car. The car was bought in part with the proceeds of the defendant's and notice party's S.S.I.A. savings in conjunction with a bank loan from the Bank of Ireland. The savings which made up the S.S.I.A. account and the repayment of the bank loan to the Bank of Ireland were funded out of the joint bank accounts. The defendant had the use of the car and the evidence establishes that it was in effect jointly owned by the defendant and the notice party. In the course of the hearings no argument or submissions have been made by the parties in relation to that car and prior to making any determination in relation thereto, the Court will hear the parties in relation to that matter.

56. The Court is satisfied that the notice party's beneficial ownership of fifty per cent of the funds in the two bank accounts in the joint names as of the date of the making of the restraint order is not realisable property within the terms of the 1994 Act, as amended and therefore, cannot be the subject of a restraint order. The Court proposes to vary the restraint order in recognition of that finding by imposing conditions and exceptions as provided for by s. 24(1) of the 1994 Act. In relation to the other bank account in the name of Tower Tiling and the motor vehicles other than 05D XXX99, the

Court is satisfied that such property is realisable property within the terms of the Criminal Justice Act 1994, as amended, and that there are reasonable grounds for thinking that a confiscation order may be made in the proceedings pending against the defendant and that therefore, that such property should be subject to a restraint order under part 3 of the Criminal Justice Act 1994. As indicated above, the Court will hear the parties in relation to the extent of any order covering motor vehicle bearing registration number: 05D XXX99. The variation that will be made in relation to the two joint bank accounts is that such accounts will be restrained (i.e. from dealing in any manner whatsoever) as would reduce the funds therein below fifty per cent of the funds standing to such accounts as of the 18th February 2008 that is below €11,029.73 in account number XXXX0269 and below €4,686.34 in account number XXXX8667. The Court will also consider the plaintiff's application to extend the restraint order and will hear the parties in relation to that matter in the light of this judgment.