

UNAPPROVED



**THE COURT OF APPEAL**

**Record No.: 2020/159**

**Neutral Citation Number: [2021] IECA 142**

**Edwards J.**

**McCarthy J.**

**Donnelly J.**

**BETWEEN/**

**FRANK BRASSIL**

**APPLICANT/APPELLANT**

**-and-**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**DEFENDANT/RESPONDENT**

**RULING of Ms. Justice Donnelly delivered on the 13<sup>th</sup> day of May, 2021**

1. On the 23<sup>rd</sup> day of March, 2021, in my judgment with which Edwards and McCarthy J.J. agree, this Court dismissed the appellant's appeal against the refusal by the High Court (Gearty J.) to grant his application for judicial review in respect of two road traffic convictions affirmed by the Circuit Court for the Eastern Circuit. The background to the case and the reasons for the Court's decision are set out in my judgment delivered on that date.

2. In my judgment which was delivered electronically, I indicated my provisional view that as the respondent had been entirely successful in the appeal, she was entitled to her costs in this Court. The appellant was given liberty to contend for an alternative form of order by written submissions.

3. The solicitor for the appellant had made three extremely brief submissions, the first two of which amount to criticism of the content and/or effect of the judgment that was delivered. The first submission is that the judges, without a copy of the transcript, gave their theory of what had happened in the Circuit Court. The second submission is that it gave *carte blanche* to the Gardaí as to how to deal with, and in their own time to do, things in a custodial situation. The final submission is as follows: “The appellant is of the view that his case was and is meritorious and a costs order should not be made against him [See 1 and 2 above].”

4. The respondent seeks her costs of the appeal.

5. The long-standing rule of practice that costs follow the event has now been given statutory support by virtue of s. 169 of the Legal Services Regulation Act 2015. Neither the former rule that costs should follow the event, nor s.169 to the extent that it amends the former rule (if at all), provide any support for the appellant’s submission that no order should be made on the ground that a party continues to be of the view that his case was meritorious. Examples of the type of matters that a court may consider in making an order otherwise than to grant the entirely successful party its costs are set out in s. 169 of the said Act. They are not exhaustive examples; a court may have regard to the nature and circumstances of the case and the conduct of the parties in considering whether to depart from the rule. There is nothing in the conduct of the respondent to warrant a departure from the principle that the entirely successful party should be entitled to its costs. Neither is there anything in the nature and circumstances of this case that would warrant a departure from that principle.

6. I am satisfied therefore that the Court should order that the entirely successful respondent be awarded her costs against the unsuccessful appellant.

7. Edwards J. and McCarthy J. hereby indicate their agreement with this judgment and the proposed order.