THE SUPREME COURT

DETERMINATION

IN THE MATTER OF THE DATA PROTECTION ACTS 1988 AND 2003

AND IN THE MATTER OF AN APPEAL PURSUANT TO SECTION 26 OF THE DATA PROTECTION ACTS 1988 AND 2003

BETWEEN

PETER NOWAK

APPELLANT

AND

THE DATA PROTECTION COMMISSIONER

RESPONDENT

AND

PRICEWATERHOUSECOOPERS

NOTICE PARTY

Neutral Citation: [2020] IESCDET 145

Supreme Court record no: S:AP:IE:2020:000089

Court of Appeal record no: A:AP:IE:2018:000139

High Court record no: 2014 No. 89 CA

Date of Determination: Wednesday 16th December 2020

Composition of Court: Clarke C.J., MacMenamin J., Baker J.

Status: Approved

APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.3° OF THE CONSTITUTION APPLIES

RESULT: The Court does not grant leave to the Appellant to appeal to this Court from the Court of Appeal

REASONS GIVEN:

ORDER SOUGHT TO BE APPEALED

COURT: Court of Appeal
DATE OF JUDGMENT OR RULING: 1st July, 2020
DATE OF ORDER: 27th July, 2020
DATE OF PERFECTION OF ORDER: 10th August, 2020
THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 14th August, 2020 AND WAS IN TIME.

General Considerations

1. The general principles applied by this Court in determining whether to grant or refuse leave to appeal having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this Court in *B. S. v. Director of Public Prosecutions* [2017] IESCDET 134 and in a unanimous judgment of a full Court delivered by O'Donnell J. in *Quinn Insurance Ltd. v. PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 IR 812.

It follows that it is unnecessary to revisit the new constitutional architecture for the purposes of this determination.

2. Furthermore, the application for leave filed and the respondent's notice are published along with this determination (subject only to any redaction required by law) and it is therefore unnecessary to set out the position of the parties.

3. Any ruling in a determination concerns whether the facts and legal issues meet the constitutional criteria identified above, is particular to that application, and is final and conclusive only to that extent and as between the parties.

4. The respondent is opposed to the application for leave to appeal.

Background

5. This is the application of Peter Nowak ("the applicant") for leave to appeal to this Court pursuant to the provisions of Article 34.5.3° of the Constitution from the order of the Court of Appeal of 27 July 2020 following a written judgment of 1 July 2020 (Binchy J.), by which the Court dismissed his appeal on the basis that the memoranda in issue do not constitute personal data of the applicant within the meaning of s. 1 of the Data Protection Acts 1988 and 2003 or Article 2(A) of EC Directive 95/46/EC on the protection of individuals with regard to processing of personal data.

6. In 2011, the applicant made a complaint against the notice party to the Chartered Accountants Regulatory Board ("CARB") alleging non-compliance by it with accounting and auditing standards. The notice party wrote to CARB with its observations and attached memoranda addressing the complaints. Following the granting of access to certain documents constituting his personal data under the Data Protection Acts 1988 and 2003, the applicant

complained that the notice party had erred in failing to provide him with the memoranda. The respondent found following an inspection that the documents did not contain his personal data or refer to him in any way. The decision of the respondent was upheld in the Circuit Court (Deery P.) on 3 June 2014.

7. In a judgment delivered on 26 February 2018, the High Court (Coffey J.) dismissed the appeal on the grounds that the memoranda do not constitute the personal data of the applicant and thus do not engage his right to privacy under the Data Protection Acts.

8. In the Court of Appeal, Binchy J. (with whom Haughton and Ní Raifeartaigh JJ. agreed) upheld the decision.

The Application

9. The applicant argues that an appeal to this Court raises a matter of general public importance by virtue of the fact that it centres on the concept of personal data. He contends that it is in the interest of justice to grant leave to appeal because the Court of Appeal interpreted the law incorrectly.

10. The respondent denies that any matters of general public importance arise in relation to what constitutes data. Further, the respondent argues that the decision of the Court of Appeal relied on the fact that the memoranda do not refer to the applicant "in any way" and that this finding cannot be impugned. The respondent also denies that the interests of justice are engaged by the subjective view of the applicant that the decision of the Court of Appeal was wrong.

11. The notice party contends that no matter of general public importance arises as the arguments raised are specific to the applicant, and that the interests of

justice do not support leave as the applicant's claim that the Court of Appeal interpreted the law incorrectly is asserted without basis.

Decision

12. The judgment of the Court of Appeal relied on the finding of fact made by the respondent and upheld by the Circuit Court. An appeal therefrom lies on a point of law only. The facts have been finally ascertained and are not capable of review. In the circumstances, the Court is constrained by the finding that the documents in question do not constitute personal data and therefore it does not consider that any matter falls now for consideration, still less a matter of general public importance, and the interests of justice do not therefore warrant leave to appeal.

13. Leave to appeal will accordingly be refused.

And it is hereby so ordered accordingly.