



**SUPREME COURT  
DETERMINATION**

**BETWEEN**

**ROBERT EDWARD BARRY**

**APPLICANT**

**AND BY ORDER**

**THE MINISTER FOR EDUCATION AND SKILLS**

**RESPONDENT**

**Neutral Citation:** [2021] IESCDET 37

**Supreme Court record no:** S:AP:IE:2020:000128

**Court of Appeal record no:** A:AP:IE:2019:000445

**High Court record no:** 2017 No. 257 MCA

**Date of Determination:** Thursday, 8<sup>th</sup> April 2021

**Composition of Court:** O'Donnell J., McKechnie J., Dunne 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 Applicant to appeal to this Court from  
the Court of Appeal

**REASONS GIVEN:**

**ORDER SOUGHT TO BE APPEALED**

<b>COURT:</b> Court of Appeal
<b>DATE OF JUDGMENT OR RULING:</b> 30 <sup>th</sup> October, 2020

<b>DATE OF ORDER:</b> 30 <sup>th</sup> October, 2020
<b>DATE OF PERFECTION OF ORDER:</b> 30 <sup>th</sup> October, 2020
THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 16 <sup>th</sup> November, 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, (Unreported, Supreme Court, 6<sup>th</sup> of December, 2017) 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 I.R. 812. Accordingly, it is unnecessary to revisit the new constitutional architecture for the purpose 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 in any detail. No aspect of this ruling has precedential value as a matter of law. The papers in this matter have been referred to this panel of the Supreme Court under para. 8(e) of the Supreme Court Practice Direction SC19 Conduct of proceedings in Supreme Court. Under that provision, papers may be referred if they have not been completed in accordance with the Practice Direction. In this case, certain orders submitted by the applicant have not been attested, and the transcript has not been formally approved by the judge. However, the panel considers that the papers supplied are sufficient to allow the court to understand the issues involved and, accordingly, this panel will deal with the application on its merits.

## **Decision**

- 3.** The applicant seeks leave to appeal to this court from the order of the Court of Appeal (Costello J.) of the 30<sup>th</sup> of October, 2020, which provided that unless the applicant filed and served an amended notice of appeal by the 27<sup>th</sup> of November, 2020, his appeal would “stand struck out”.
- 4.** The applicant is a lay litigant who has sought to challenge a decision of the Student Grants Appeals Board under the Student Support Act 2011 (“the 2011 Act”). It appears that the applicant applied for a grant to study for the two-year Diploma in Legal Studies course at the King’s Inns. The application was refused on the basis that the only approved course for grant support under the 2011 Act at the King’s Inns was the one-year degree course for the degree of Barrister-at-Law. The refusal was upheld by the Student Grant Appeals Board.
- 5.** The applicant sought to appeal that decision to the High Court under s. 21(6) of the 2011 Act. The High Court (Meenan J.) found that such an appeal only lay on a specified point of law and, furthermore, required leave of either the Student Grants Appeals Board or the High Court. Neither had been obtained. Accordingly, the appeal was not properly before him. Nevertheless, he considered the applicant’s case and found that there was no error of law in the decision made.
- 6.** The applicant lodged a notice of appeal to the Court of Appeal running to 52 pages. On the 6<sup>th</sup> of December, 2019, the matter was before the Court of Appeal for directions. Costello J. directed that the applicant should deliver an amended notice of appeal within three weeks to comply with the requirements of the Rules of the Superior Courts and adjourned the case to the 24<sup>th</sup> of January, 2020.
- 7.** The applicant did not deliver a notice of appeal within that three weeks permitted. On the 24<sup>th</sup> of January, 2020, the applicant sought an adjournment for three months on health grounds. Costello J. adjourned the hearing to the 8<sup>th</sup> of May and directed the applicant to file an amended notice of appeal in the meantime. Thereafter the application was further adjourned because of the COVID-19

situation and was listed for hearing on the 30<sup>th</sup> of October, 2020, by which stage the applicant had still not filed a notice. On that occasion, Costello J. made the order which the applicant now seeks to appeal in the form of an “unless order”: if the applicant did not deliver an amended notice of appeal within three weeks (by the 27<sup>th</sup> of November, 2020), the appeal would be struck out. If the notice of appeal was delivered within that time, the case would be put in for further case management on the 22<sup>nd</sup> of January, 2021. On the 16<sup>th</sup> of November, 2020, and before the time had expired for the delivery of the amended notice of appeal, the applicant lodged this application for leave to appeal to this court.

- 8.** The applicant now contends that leave should be granted to appeal to this court because he claims that it relates to acts of discrimination against the applicant in the original decision and that his right to an unbiased hearing was violated by judges of the High Court and the Court of Appeal.
- 9.** It is apparent that the application raises no issue of law of general public importance which would justify an appeal to this court. Rather, the order made was a standard order made in case management proceedings and where the applicant had failed during almost a full year to comply with the directions of the court.
- 10.** The court is further satisfied that it is not in the interests of justice that there should be an appeal to this court. Accordingly, the application will be dismissed.

**And it is hereby so ordered accordingly.**