



Opening Statement

Workplace Relations (Miscellaneous Provisions) Bill 2021

On the 6th Of April the Supreme Court issued its decision in the case 66/20 Zalewski v Adjudication Officer & ors. Justice O'Donnell - writing on behalf of a 4-3 majority - found that the exercise of powers by adjudication officers pursuant to the Workplace Relations Act 2015 ('2015 Act') is the administration of justice under Article 34 but is saved under Article 37 of the Constitution. Article 37 allows for the operation of limited function and powers of a judicial nature in civil matters by persons duly authorised by law to exercise such functions and laws by persons not established or appointed under this Constitution.

In doing so, it rejected a challenge to the validity of certain sections of the 2015 Act and section 8 of the Unfair Dismissals Act 1977 as amended.

The majority judgment of the Supreme Court overturned the judgment of the High Court which had found that the Workplace Relations Commission's ('WRC') adjudication service was not administering justice within the meaning of Article 34 of the Constitution. The 7 judges of the Supreme Court were of one mind that the WRC's adjudication service is the administration of justice, traditionally a matter exclusively for the Courts. The majority decision saved the 2015 Act from being constitutionally repugnant because it found that the administration of justice was limited and therefore permissible under Article 37. The limited nature is due to the fact that the WRC deals with workplaces; has statutory limits on the awards it can make; enforcement of its decisions is required through the courts; its decisions are subject to an appeal; and the decisions and procedures of the adjudication services are subject to a judicial review before the High Court.

However, separately the Supreme Court also determined that two aspects of the 2015 Act are incompatible with the Constitution. Firstly, the Court found that the practice of holding all hearings in private as provided under section 41 (13) is not an acceptable feature of the administration of justice and therefore not compatible with the Constitution. Justice must be done in public and while there are situations where privacy is warranted, a blanket approach of hearing matters in private is not an acceptable feature of the administration of justice.

This requirement to administer justice in public will also have an impact on the routine anonymisation of parties under section 41(14) of the 2015 Act. Anonymisation may be granted by the adjudication officer in session of the proceedings, having considered the circumstances and or justice, of the particular case.

The second procedural weakness that the Court held was that the absence of a statutory provision for the administration of an oath, and any possibility of punishment for giving false evidence, is inconsistent with the Constitution.

In order to address these immediate matters of concern, a short Bill is required. The purpose of this Bill is to ensure that the Constitutional frailties that the Supreme Court identified in the investigative procedures of the Workplace Relations Commission's adjudication services are brought in line with the Constitutional requirements so that the adjudication services of the WRC can resume in full. The Orders of the Supreme Court declare that section 41(13) of the Workplace Relations Act, 2015 as amended is repugnant to the Constitution, having regard to Article 34.1 and Article 37 thereof and a Declaration that absence of any provision for the administration of an oath, or any possibility of punishment for giving false evidence in the hearing of claims heard under Part Four of the Workplace Relations Act, 2015 is inconsistent with the Constitution. These Declarations of the Court have immediate effect. Accordingly, the WRC's adjudication service is very restricted in the matters that it can dispose of until such time that these amendments are carried to the 2015 Act, the Unfair Dismissals Act, the Employment Equality Acts and the Equal Status Acts.

Finally, amendments to the Industrial Relations Acts 1946 and 1969 are also proposed. The Supreme Court's finding that the functions being performed by the WRC adjudication and the Labour Court are functions of a judicial nature involving the administration of justice under the Constitution, warrants the inclusion of an express statutory guarantee that the membership of the Labour Court 'shall be independent in the performance of his or her functions'.

I do wish to avail of this opportunity to clarify to the Joint Committee that that investigations pursuant to section 13 of the Industrial Relations Act 1969 are not affected by the Supreme Court ruling as these investigations are not justiciable, that is, subject to the administration of justice.

The judgments of the Supreme Court The decisions also provide for certain matters that will require policy and possible legislative attention at a later stage. These matters relate to the independence of the decision makers and necessity to ensure that persons carrying out these functions have the appropriate skills and capabilities. Once the required amendments are in place, it is expected that

the Minister will be making regulations pursuant to the powers of section 41(17) of the 2015 Act in relation to the matters addressed in this bill and on the conduct of hearings.

The request for a waiver of pre-legislative scrutiny, an important aspect of the legislative process, arises from the urgency to rectify provisions in the statutory scheme that are not consistent with our Constitution. This Bill is strictly addressing matters that were expressly identified by the judgment as requiring immediate rectification.

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