

# THE HIGH COURT

[2024] IEHC 92

For the reasons set out in *X v. Y* (2) [2022] IEHC 584, I am not including the Record Number in this judgment.

## IN THE MATTER OF THE FAMILY LAW (DIVORCE) ACT 1996

**BETWEEN**

**X**

**APPLICANT**

**– AND –**

**Y(3)**

**RESPONDENT**

### **JUDGMENT of Mr Justice Max Barrett delivered on 21<sup>st</sup> February 2024.**

#### SUMMARY

*In this judgment I indicate how I will proceed, following on the enactment of s.56 of the Courts and Civil Law (Miscellaneous Provisions) Act 2023, as regards the disclosure of certain documents, evidence, and information that comes within s.40(6)/(7) of the Civil Liability and Courts Act 2004, as amended by the said later provision.*

1. By notice of motion of 7<sup>th</sup> July 2023, Mr X, the applicant, seeks (i) an order granting liberty to him to disclose certain documentation from the couple's family law proceedings in support of a complaint to the LSRA, (ii) a like order in support of certain criminal complaints to An Garda Síochána, (iii) an order granting liberty to An Garda Síochána to disclose certain material

to the DPP,<sup>1</sup> and (iv) an order excepting the disclosure of the s.47 report in the said family law proceedings. At a later point in the notice of motion, Mr X seeks, “*should the court refuse to grant the [just-mentioned]...orders*”, separate, more detailed orders that, in truth, are a more focused and detailed amplification on the just-mentioned orders.

2. The law in focus in this application is s.40 of the Civil Liability and Courts Act 2004, as amended by s.56 of the Courts and Civil Law (Miscellaneous Provisions) Act 2023. As amended (and so far as relevant) s.40 of the Act of 2004 now reads as follows:

“(6) *Nothing contained in an enactment that prohibits proceedings to which the enactment relates from being heard in public shall operate to prohibit the production of a document prepared for the purposes or in contemplation of such proceedings or given in evidence in such proceedings, to (a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or (b) such body or other person as may be prescribed by order made by the Minister; when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.*

(7) *Nothing contained in an enactment that prohibits proceedings to which the enactment relates from being heard in public shall operate to prohibit the giving of information or evidence given in such proceedings to (a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or (b) such body or other person as may be prescribed by order made by the Minister; when the body or person concerned is performing functions consisting of the*

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<sup>1</sup> This order has not been sought by An Garda Síochána and An Garda Síochána is not a party to this application. So relief (iii) will be refused. (This is the relief sought at item 3 of the notice of motion. For like reason I will refuse the liberty sought for An Garda Síochána at item 11 of the notice of motion.)

*conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.*

(7A) *The leave of a court shall not be required for (a) the production of a document in accordance with subsection (6), or (b) the giving of information or evidence in accordance with subsection (7)."*

3. I understand from the parties that ss.7A was enacted to address an issue that I identified in a previous judgment concerning the need for the leave of a court to produce a document or evidence from *in camera* family law proceedings, a need that no longer arises in the circumstances contemplated by s.40(7A). Thus while the facts in this case are essentially unchanged since my judgment in *X v. Y* [2022] IEHC 584, the Oireachtas has made a significant change to the law through its enactment of s.56.

4. It was suggested for Ms Y that ss.7A is not quite the liberalising provision that it may at first glance seem. This is because those subsections refer to:

“(6) ... (a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or (b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.

(7) (a) a body or other person when it, or he or she, is performing functions under any enactment consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter, or  
(b) such body or other person as may be prescribed by order made by the Minister, when the body or person concerned is performing functions consisting of the conducting of a hearing, inquiry or investigation in relation to, or adjudicating on, any matter as may be so prescribed.”

[Emphasis added].

5. It was contended for Ms Y that unless Mr X can show that (in the circumstances of this case) a body or other person (within the meaning of ss.6 or 7) to whom he proposes to make a report is “*conducting a hearing, inquiry or investigation...or adjudicating on...*” he cannot produce any evidence from *in camera* family law proceedings. Respectfully, I do not accept this contention. I explain why hereafter.

6. Suppose, for example, that Mr X goes to the Garda station in Store Street today and wishes to complain (and he does wish to complain) about one or more alleged offences that he believes to have been committed and/or which he contends came to light in the course of his family law proceedings. By way of first step, he will speak to the garda on duty and tell her what alleged wrong/s he believes to have occurred. By way of second step, the garda almost certainly will then inquire as to whether Mr X has any documents or materials to support his allegations. At that point as I read ss.7A Mr X is free, without the leave of a court to produce a document in accordance with ss.6 or to give information or evidence in accordance with ss.7. The same is true not just as regards An Garda Síochána but, *mutatis mutandis*, as regards any body or other person referred to in ss.6 and/or ss.7. The same would apply if Mr X wrote to An Garda Síochána or such a body or person in terms of making a complaint.

7. Does this mean that one must go through a two-step process whereby one makes a complaint, gets An Garda Síochána or such a body or person to the point where it is undertaking an investigation and then become legally entitled to proceed in accordance with ss.7A? I do not consider that such a two-step process is in practice required. As regards where an oral complaint is made I return to my Store Street example. Even if the garda in that example did not immediately think to ask for a document, information, or evidence covered by ss.7A, it seems to me that it would be perfectly open to the person making complaint to say ‘And I have documentation to support my complaint if that would help’. If the garda then wanted to see that documentation it seems to me that the complaining person in then handing across the relevant materials would enjoy the protection of ss.7A. The same is true not just as regards An Garda Síochána but, *mutatis mutandis*, as regards any body or other person referred to in ss.6 and/or ss.7.

8. What then if one makes a written complaint to An Garda Síochána? Again, it seems to me that if one attaches documentation to the letter of complaint, then the moment the letter of complaint is read and the receiving garda turns to the attachments the protection of ss.7A applies to the complaining person. The same is true not just as regards An Garda Síochána but, *mutatis mutandis*, as regards any body or other person referred to in ss.6 and/or ss.7.

9. What if a person discloses a document, information or evidence to a receiving body or person referred to in ss.6 and/or 7 that proves not to be relevant to *e.g.*, any investigation that then follows? I suspect (though I do not know) that the protection which the Oireachtas sees to arise in that circumstance is that ss.7A only applies as regards the bodies or other persons referred to in ss.6 or 7, a relatively select group of bodies or persons who are expected to act in accordance with the law and generally to behave responsibly.

10. To the extent that there are past orders, capable of variation by me, that might preclude Mr X from now proceeding in accordance with s.40 of the Act of 2004, as amended by s.56 of the Act of 2023, I will order that those orders now stand varied to such an extent that Mr X can now proceed in accordance with s.40, as amended.

11. I am sorry for Ms Y as it does seem that Mr X will now disclose some information to bodies and persons within the meaning of ss.6 and 7, some of which Ms Y would prefer was not disclosed because it is material of a private nature. It is undoubtedly unpleasant to think that such personal information could be floating around about one. However, as I touched upon in the preceding paragraph, the information can only go to a relatively select group of bodies or persons who are expected to behave responsibly. There is some protection for her in that, and I suspect (though I do not know) that the Oireachtas, in making the change of law that it effected via s.56, considered this to be adequate protection in the challenging circumstances where it had to decide how to treat with information in a situation where there is a public interest in allowing complaints about alleged wrongdoing, there is a public interest in ensuring that family law proceedings enjoy the cloak of confidentiality, and there are potentially competing private interests in terms of keeping information confidential or seeing it disseminated more widely.

12. In closing, I note that in *X v. Y (2)* [2023] IEHC 377 I mentioned a separate judgment in which a judicial colleague had previously made “*powerful criticisms*”. Contrary to Mr X’s

understanding, in so stating, I meant merely that the criticisms were forcefully expressed, *i.e.* I did not mean to indicate that I agreed with them; it is not for me to make comment.

**13.** Given that s.7A provides that a person may without the leave of the court produce a document in accordance with ss.6 or give information or evidence in accordance with ss.7 it is not necessary for me to give the types of orders contemplated by Mr X in his notice of motion. He is expressly entitled by law to proceed as contemplated by ss.7A without leave of the court. Thus apart from the two ‘liberty to An Garda Síochána’ reliefs which I have stated that I will refuse, I do not see that any of the reliefs sought by Mr X fall now to be granted. I will, however, order that any orders variable by me stand varied to the extent described above.

**14.** Finally, at item 4 of the notice of motion, Mr X seeks an order: “*specifically excepting the disclosure of the s.47...report from the orders sought herein*”. As I understand this limb of the notice of motion., Mr X is expressly not seeking leave to disclose same and wanted me to ‘carve it out’ from the scope of granting any order allowing disclosure. For the reasons stated, no such order as to disclosure falls to be made, so there is nothing for me to do in this regard following on his notice of motion.