



# Delaney caught offside in Irish Supreme Court - the Corporate Enforcement Authority v the FAI and John Delaney

Insights - 03/04/2024

In February 2020, the Corporate Enforcement Authority (CEA) initiated an investigation regarding the Football Association of Ireland (FAI) seizing over 250,000 documents, including the email inbox of the former Irish football team CEO, John Delaney.

After being added as a notice party to the proceedings, Mr Delaney claimed privilege over 1,123 digital and several physical documents, asserting Legal Advice Privilege (LAP) over 163 documents and Litigation Privilege (LP) for the remainder. Relying on a unique provision of the Companies Act 2014 (the Act) (s. 795), the CEA sought a determination from the High Court for an assessment of the privilege status of the documents. In adopting those procedures, the Court appointed two independent barristers to assist it to determine if the information was privileged.

## What is Legal Professional Privilege?

Legal Professional Privilege (LPP) is a rule of evidence that grants a party the legal right to withhold information that they would otherwise be compelled to provide.

There are two types of privilege: LAP which protects communications between solicitor and client made for the purpose of obtaining legal advice and LP, which protects communications made for the purpose of engaging in litigation. The common characteristic of both is confidentiality

## What did the High Court and Court of Appeal decide?

The High Court rejected Mr Delaney's arguments and found that insufficient evidence had been presented to support his claims of privilege. Additionally, the Court found that in respect of a number of documents Mr Delaney had failed to demonstrate that privilege belonged solely to him, rather than to the FAI.

The Court of Appeal upheld the High Court decision, rejecting claims by Mr Delaney that the High Court was obliged to review each document individually and was bound to follow the report of the independent barristers appointed to assist the Court.

## Why did the Supreme Court refuse leave?

Any party seeking to appeal to the Supreme Court from the Court of Appeal, must show that the case raises a point of law of general public importance or that an appeal is justified in the interest of justice<sup>[1]</sup>. For direct appeals from the High Court to the Supreme Court, the party must additionally demonstrate that the appeal presents exceptional circumstances that warrant the granting of leave to appeal<sup>[2]</sup>.

The Supreme Court issued a written decision, which held that it was "not in the interest of justice" to grant leave to appeal, to do so, would "allow a hearing of arguments already ventilated in both the High Court and the Court of Appeal".<sup>[1]</sup>

The Supreme Court acknowledged Mr Delaney's assertion that the Court of Appeal decision raised issues of public importance regarding search warrant execution and privilege. However, it clarified that while the procedures were novel, the issues regarding LPP were not unusual or of significant complexity or public importance.

The Supreme Court clarified that the Court's divergence from the assessor's recommendations was "quintessentially a matter" for the Court of Appeal to determine and did not raise issues of public importance.

## What is the outcome for Mr Delaney?

This decision has brought an end to a long-running action that arose from the seizure of over 250,000 documents from the FAI's offices. The CEA is expected to continue with its inquiry into the FAI, armed with access to all emails from Mr Delaney's FAI email inbox and other hard copy documents.

This decision emphasises that any party claiming LLP must provide evidence to support their claim. The burden lies with the party making the claim, and failure to meet the burden will result in the claim being rejected.

For more information please contact our Sports experts in Ireland via their contact details below.

<sup>[1]</sup> In the Matter of the Companies Act, 2014 Between: Corporate Enforcement Authority v Cumann Peile Na H-Éireann "The Football Association of Ireland" (Respondent) and John Delaney (Notice Party).

[1] Article 34.5.3 of the Constitution.

[2] Article 34.5.4 of the Constitution.

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