

**THE SUPREME COURT**  
**Record No.**

**BETWEEN**

**ANGELA KERINS**

**APPELLANT / APPLICANT**

**AND**

**DEPUTY JOHN MCGUINNESS, DEPUTY MARY LOU  
MCDONALD, DEPUTY SHANE ROSS, DEPUTY ÁINE COLLINS,  
DEPUTY PAUL J. CONNAUGHTON, DEPUTY JOHN DEASY,  
DEPUTY ROBERT DOWDS, DEPUTY SEÁN FLEMING, DEPUTY  
SIMON HARRIS, DEPUTY EOGHAN MURPHY, DEPUTY  
GERALD NASH, DEPUTY DEREK NOLAN, DEPUTY KIERAN  
O'DONNELL, THE CLERK OF DÁIL ÉIREANN, THE CLERK OF  
THE PUBLIC ACCOUNTS COMMITTEE, IRELAND AND THE  
ATTORNEY GENERAL**



**RESPONDENTS**

**APPLICATION FOR LEAVE AND NOTICE OF APPEAL**

**For Office use**

Supreme Court record number of this appeal	
Subject matter for indexing	

Leave is sought to appeal from	
<input type="checkbox"/> The Court of Appeal	<input checked="" type="checkbox"/> The High Court

[Title and record number as per the High Court proceedings]

		V		
High Court Record Nr	2014/431 JR	Court of Appeal Record Nr	2017/00199	
Date of filing				
Name(s) Appellant(s)/Appellant(s)		of Angela Kerins		
Solicitors Appellant(s)/Appellant(s)		for Eames, Solicitors		
Name of Respondent(s)	Deputy John McGuinness, Deputy Mary Lou McDonald, Deputy Shane Ross, Deputy Áine Collins, Deputy Paul J. Connaughton, Deputy John Deasy, Deputy Robert Dowds, Deputy Seán Fleming, Deputy Simon Harris, Deputy Eoghan Murphy, Deputy Gerald Nash, Deputy Derek Nolan, Deputy Kieran O'Donnell, the Clerk of Dáil Eireann, the Clerk of the Public Accounts Committee, Ireland and the Attorney General			
Respondents' solicitors	Office of the Parliamentary Legal Advisor for the First to Fifteenth Named Respondent Chief State Solicitor for the Sixteenth and Seventeenth Named Respondents			
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?				
<input type="checkbox"/> Yes		<input checked="" type="checkbox"/> X	<input type="checkbox"/> No	
If yes, give [Supreme Court] record number(s)				

Are you applying for an extension of time to apply for leave to appeal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No X
If Yes, please explain why		

### 1. Decision that it is sought to appeal

Name(s) of Judge(s)	Mr. Justice Kelly and Noonan and Ms. Justice Kennedy
Date of order/ Judgment	Judgments delivered on 31 <sup>st</sup> of January, 2017, Cost Ruling on the 5 <sup>th</sup> of April, 2017 and Order perfected on the 7 <sup>th</sup> day of April, 2017

## 2. Appellant/Appellant Details

Where there are two or more Appellants/appellants by or on whose behalf this notice is being filed please provide relevant details for each of the Appellants/appellants

Appellant's full name	Angela Kerins
-----------------------	---------------

Original status

<input type="checkbox"/>	Plaintiff
<input checked="" type="checkbox"/>	Appellant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
<input type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party

<b>Solicitor Diarmuid Coen</b>			
Name of firm	Eames Solicitors		
Email	<a href="mailto:d.coen@eames.ie">d.coen@eames.ie</a>		
Address	2 Malthouse Square, Smithfield, Dublin 7	Telephone no.	01 7825155
		Document Exchange no.	261004 ORMOND BUILDING
Postcode		Ref.	DCK167-0003

How would you prefer us to communicate with you?

<input type="checkbox"/> Document Exchange	<input checked="" type="checkbox"/> E-mail
<input type="checkbox"/> Post	<input type="checkbox"/> Other (please specify)

<b>Counsel</b>			
Name	John Rogers SC		
Email	<a href="mailto:jrogers@indigo.ie">jrogers@indigo.ie</a>		
Address	Church St. Building, Church St., Dublin 7	Telephone no.	01-817 5096
		Document Exchange no.	
Postcode			

<b>Counsel</b>			
Name	Siobhan Phelan SC		
Email	<a href="mailto:siobhanphelan@lawlibrary.ie">siobhanphelan@lawlibrary.ie</a>		
Address	Suite 1.30.3, Distillery Building, 145 Church St., Dublin 7	Telephone no.	01 8173950 / 087 2301331
		Document Exchange no.	N/A
Postcode	D07 WDX8		

## Counsel

If the Appellant / Appellant is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

How would you prefer us to communicate with you?

<input type="checkbox"/> Document Exchange	<input type="checkbox"/> E-mail
<input type="checkbox"/> Post	<input type="checkbox"/> Other (please specify)

### 3. Respondent Details

Where there are two or more respondents affected by this application for leave to appeal, please provide relevant details, where known, for each of those respondents

Respondents' full name	Deputy John McGuinness, Deputy Mary Lou McDonald, Deputy Shane Ross, Deputy Áine Collins, Deputy Paul J. Connaughton, Deputy John Deasy, Deputy Robert Dowds, Deputy Seán Fleming, Deputy Simon Harris, Deputy Eoghan Murphy, Deputy Gerald Nash, Deputy Derek Nolan, Deputy Kieran O'Donnell, the Clerk of Dáil Éireann, the Clerk of the Public Accounts Committee, Ireland and the Attorney General
------------------------	--

Original status

<input type="checkbox"/>	Plaintiff
<input type="checkbox"/>	Appellant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
X	Respondent
<input type="checkbox"/>	Notice Party
<input type="checkbox"/>	

Is this party being served with this Notice of Application for leave?			
Yes	X	No	

Solicitor: Caitriona Keane			
Name of firm	Chief State Solicitors Office		
Email	Caitriona_Keane@csso.gov.ie		
Address	Osmond House Little Ship Street Dublin 8	Telephone no.	01 4176100
		Document Exchange no.	186001
		Ref.	
Postcode			

Solicitor: Ramona Quinn

Name of firm	Office of the Parliamentary Legal Adviser		
Email	Ramona.Quinn@Oireachtas.ie		
Address	Houses of the Oireachtas Leinster House Dublin 2	Telephone no.	
		Document	
		Exchange no.	
		Ref.	
Postcode			

Has this party agreed to service of documents or communication in these proceedings by any of the following means?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

Counsel			
Name	Paul Gallagher SC		
Email			
Address	4A Wellington Road Ballsbridge Dublin 4	Telephone no.	01 6606195
		Document	
		Exchange no.	
Postcode			

Counsel			
Name	Brian Kennedy SC		
Email			
Address	2 Arran Square Arran Quay Dublin 7	Telephone no.	018729488
		Document	812143
		Exchange no.	
Postcode			

Counsel			
Name	Catherine Donnelly BL		
Email			
Address	70 Shandon Park Phibsborough Dublin 7	Telephone no.	018176961
		Document	818348
		Exchange no.	
Postcode			
Counsel			
Name	Maurice Collins SC		
Email	maurice@mauricegcollins.ie		
Address	2 Arran Square	Telephone no.	019729533

	Arran Quay Dublin 7	Document Exchange no.	812015
Postcode			

Counsel			
Name	Conor Power SC		
Email			
Address	Law Library Four Courts Dublin 7	Telephone no.	
		Document Exchange no.	816564
Postcode			

Counsel			
Name	John Fitzgerald		
Email			
Address	Distillery Building 145-151 Church Street Dublin 7	Telephone no.	018175624
		Document Exchange no.	816619
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

Has this party agreed to service of documents or communication in these proceedings by any of the following means?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

#### 4. Information about the decision that it is sought to appeal

Please set out below:

Whether it is sought to appeal from (a) the entire decision or (b) a part or parts of the decision and if (b) the specific part or parts of the decision concerned

(a) A concise statement of the facts found by the trial court (in chronological sequence) relevant to the issue(s) identified in Section 5 below and on which you rely (include where relevant if certain facts are contested)

(b) In the case where it is sought to appeal in criminal proceedings please provide a concise statement of the facts that are not in dispute

The relevant orders and findings made in the High Court and/or in the Court of Appeal

It is sought to appeal from the entire decision. The relevant findings made by the High Court are as follows:

1. The Divisional Court found that when the Appellant attended before PAC on the 27<sup>th</sup> of February, 2014 much of what was put to her were matters of which she had no prior notice (paragraph 18 of judgment of 31<sup>st</sup> of January, 2017).
2. The Divisional Court found that matters put to the Appellant and said of her on the 27<sup>th</sup> of February, 2014 were damaging to her reputation personally and professionally (paragraph 20).
3. The Divisional Court found that the conduct of the hearing, in the Appellant's absence, on the 10<sup>th</sup> of April, 2014 *"was, by any standards, extremely damaging to Ms. Kerins' reputation"* (paragraphs 27-30).
4. The Divisional Court found, referring to the determination of the Committee on Procedures and Privileges (hereinafter "the CPP") to the effect that under S.O. 163 (1) the PAC is only empowered to proceed with the examination of an account or a report after it is presented to Dáil Éireann and as no such account or report exists or has been presented to Dáil Éireann, the examination into the internal affairs of Rehab is ultra vires the PAC, that *"it is common case that the effect of this determination was to bring to an end the further pursuit by the PAC of matters relating to Rehab or Ms. Kerins' role therein"* (paragraph 33).
5. The Divisional Court found that the primary remedy sought by the Appellant is damages (paragraph 35).
6. In circumstances where the President of the High Court (also a President of the Divisional Court) had independently fixed the terms of an issue paper, the Divisional Court determined (paragraph 37) that it was neither necessary nor appropriate to answer the questions so directed to decide the case and accordingly reached no determination on the issues fixed by order for determination by the Court.
7. The Divisional Court found (paragraph 42) with regard to the 2013 Act that the meetings of the PAC under consideration were not a Part 2 inquiry and were thus *"other committee business"* to which Part 7 of the 2013 Act applied.
8. The Divisional Court concluded (at paragraph 43) that as the CPP refused the PAC's application for compellability powers, Chapter 2 of Part 7 dealing with privileges and immunities of witnesses and Chapter 3 dealing with the power of committees to obtain evidence did not apply to the hearings involving the Appellant. This finding did not address the argument advanced on behalf of the Appellant that the procedural safeguards provided under Part 7 may be applied without compellability powers being exercised and can also apply, upon direction from the CPP, in respect of

witnesses attending voluntarily.

9. The Divisional Court found (paragraph 44) that Part 8 of the 2013 Act dealing with the privilege and immunities of committees and members of the Houses applies to all committees of whatever kind.
10. The Divisional Court found that the exercise of jurisdiction involves the exercise of a power and that because the Appellant attended voluntarily before the PAC, no jurisdiction was being exercised as there was no “*legal sanction*” for non-attendance. In the development of its reasoning in respect of this finding, the Divisional Court did not explain how the fact of voluntary attendance in February, 2014 could excuse damage arising from ultra vires actions of the PAC in April, 2014 when proceedings were conducted in the Appellant’s absence.
11. The Divisional Court found (paragraph 69) that the question of her being afforded *In Re Haughey* [1971] IR 217 rights to defend herself could never arise when the Appellant already had the right to decline cooperation at any stage. In making this finding, the Divisional Court did not consider the Appellant’s employment obligations to her employer and/or the implications of the fact that the Appellant did decline cooperation in April, 2014.
12. The Divisional Court found the Appellant’s complaints to be non-justiciable by reference to Article 15 of the Constitution in reliance, inter alia, on judgments in *Callely v. Moylan* [2014] 4 I.R. 112.
13. The Divisional Court found that the ratio of the decisions as to justiciability in *Maguire v. Ardagh* [2002] 1 IR 485 and *In Re Haughey* was underpinned by compellability and extrapolated from this that the issue of jurisdiction can only arise where compellability powers are being exercised concluding therefore that no question of jurisdiction arises in this case.
14. The Divisional Court found that s. 92 of the 2013 Act is merely declaratory of the position that already obtained under Article 15.13, namely that the privilege applies to committees of either House in the same way as it applies to the Houses themselves.
15. The Divisional Court found that while some of the Oireachtas respondents expressed themselves in terms, which suggest that conclusions were being arrived at by the individuals concerned in reality, these statements were expressions of opinion by the relevant members and devoid of any legal force.
16. The Divisional Court found that although the Appellant had been damaged by unfair treatment by the PAC on occasions of ultra vires exercise of powers (as found by CPP), it was powerless to provide any redress to the Appellant because of the protected position of the members of the PAC.
17. The Divisional Court found that it would be wrong to categorise its decision on non-justiciability as a denial of the constitutional rights of the Appellant on the basis that in this instance, the custodian of those rights is not the court but the Oireachtas itself. The Divisional Court made no reference in its findings on justiciability to the interaction of Article 40.3 of the Constitution with Articles 15.10, 15.12 and 15.13 and does not address how competing

rights should be balanced in its interpretation of the scope of the non-justiciable sphere provided for under Article 15. Nor does the Court reflect the express restriction on the breadth of the said sphere of non-justiciability clear from the language of Article 15 itself where provision is made only for personal immunity of the member from liability in respect of utterances in the Houses defined as the House of Representatives to be called Dáil Éireann and a Senate to be called Seanad Éireann sitting in public in accordance with Article 15.8

## 5. Reasons why the Supreme Court should grant leave to appeal

*In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal)—*

Please list (as 1, 2, 3, etc) concisely the reasons in law why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court

*In the case of an application for leave to appeal to which Article 34.5.4° of the Constitution applies (i.e. where it is sought to appeal to the Supreme Court from the High Court)—*

Please list (as 1, 2, 3, etc) concisely the reasons in law:

- i. why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court;-

### **General Public Importance**

As recognised by the Divisional Court at paragraph 29 of its decision on costs delivered in the 5<sup>th</sup> of April, 2017, these proceedings raise issues of “special and general public importance and of some novelty.”

1. The proceedings raise issues concerning the legal safeguards (if any) available to witnesses who appear before the Public Accounts Committee (“the PAC”) in a voluntary capacity. In circumstances where the PAC has an important public function the proper discharge of its function, the conduct of its members and the rights of persons appearing before them is a matter of general public importance.
2. As acknowledged by the Divisional Court at paragraph 36 of its principal judgment on the 31<sup>st</sup> of January, 2017 (and repeated at paragraph 30 of its judgment on costs on the 5<sup>th</sup> of April, 2017), the case raises important questions of freedom of speech in Parliament, the separation of powers and the extent to

which the court may intervene in the affairs of the Legislature.

3. The Divisional Court in the decision sought to be appealed determined for the first time, effectively reversing the decisions of this Court in *In Re Haughey* and *Maguire v. Ardagh*, that Article 15.13 extends to utterances in committee as well as in the parliamentary chambers.

4. The case has implications for the position of persons who volunteer to appear before the PAC and/or for the future operation of the PAC.

### Interests of Justice

5. In its decision the Divisional Court ruled that notwithstanding that the Appellant had been damaged professionally and personally by the actions of PAC members, the Court was powerless to intervene and that there was no legal remedy for the wrongs acknowledged to have been perpetrated. The Constitution guarantees to vindicate the personal rights of citizens and to protect citizens against unjust attack and the interests of justice in this case are such as to require a determination from this Court on the legal issues which arise and the role of the Court in safeguarding rights protected under Article 40.3 of the Constitution in the interests of justice.

6. The interests of justice in this case concern not only the Appellant, but every citizen of the State who interacts or considers interacting with a Committee of Parliament.

ii. why there are exceptional circumstances warranting a direct appeal to the Supreme Court;-

### Excpetional Circumstances warranting a direct appeal to the Supreme Court

The circumstances of this case are exceptional by reason of the nature and novelty of the issues which arise (set out above) and which of themselves warrant a direct appeal to the Supreme Court but also because:

1. the case was heard before a Division of the High Court and therefore has already been heard by a division of the Superior Courts comprising three Judges;

2. the decision of the Divisional Court has the effect of departing from the doctrine of precedent normally considered binding on the Courts by reversing the decisions of this Court in *In Re Haughey* and *Maguire v. Ardagh* and therefore raises issues which properly should be determined by this Court because they concern the application of this Court's previous decisions.

**6. Ground(s) of appeal which will be relied on if leave to appeal is granted**

Please list (as 1, 2, 3, etc) concisely:

1. the specific ground(s) of appeal and the error(s) of law related to each numbered ground
2. the legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom
3. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely
4. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

**1. *Error of Law in extending the application of Article 15.13 of the Constitution to utterances made in Committee***

- i. The Divisional Court erred in law in finding that the privileges and immunities under Article 15.13 of the Constitution apply to committees of either House in the same way as it applies to the Houses themselves. This is an overly broad and impermissible interpretation of Article 15.13 which is

confined in its terms to utterances in the Houses themselves. Further this application of Article 15.13 is contrary to principles long established in the Superior Courts requiring a narrow and strict interpretation of the privileges and immunities conferred, by way of exception and ouster of personal rights, under Article 15. Contrary to the finding of the Divisional Court, there is no “clear constitutional prohibition” on utterances in committee which trench upon the rights of good name of non-members being justiciable before the Courts (paragraph 103 of judgment).

- ii. The decision of the Divisional Court is unsupported by precedent in that no other Court has ever found that Article 15.13 applied to Committees and this is the first time that a Court has relied on Article 15.13 to render immune from scrutiny utterances in Committee.
- iii. The real effect of the decision of the Divisional Court, contrary to the established doctrine of precedent and stare decisis, is to reverse the earlier decisions of this Court in seminal cases such as *In Re Haughey* [1971] IR 217 and *Maguire v. Ardagh* [2002] 1 IR 485 where Article 15.13 was not considered to apply to immunize the Committees in question. Indeed, as a result of the decision of this Court in *Maguire v. Ardagh*, a proposal for a Constitutional amendment to extend immunities to Committees of the Houses was put to the People and when this was defeated, the Legislature sought to address the absence of protection under Article 15.13 for utterances in Committees by the enactment of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 [hereinafter “the 2013 Act”].
- iv. Further, the Divisional Court erred in law in finding the Appellant’s complaints non justiciable by reference to Article 15 of the Constitution in reliance on judgments in *Callely v. Moylan* [2014] 4 I.R. 112, incorrectly identifying the joint judgment of O’Donnell and Clarke JJ as the “majority judgment” (paragraph 71). The said judgment was in fact in the minority on the justiciability issue.
- v. The Divisional Court erred in law in failing to accord any weight to Article 40.3 of the Constitution and the protections afforded to the personal rights of citizens under the Constitution in construing Article 15.13 in a manner which extended it beyond the strict terms of the area of non-justiciability thereby created and failed to reflect a necessary balance between the individual’s rights and the powers of the institutions of State.
- vi. The decision of the Divisional Court is deeply unsatisfactory insofar as it made no reference in its findings on justiciability based on Article 15 of the Constitution to the interaction of Article 40.3 of the Constitution with Article 15 and the hierarchy and connection of Article 40.3 rights with immunities and privileges under Article 15. The framers of the Constitution did not make the protection of personal rights under Article 40.3 subservient to privileges and immunities of parliamentarians and this was never the intention of the People in adopting the Constitution, as made clear by the failure of the 2011 Constitutional amendment.

**2. Error of Law in Determining that Separation of Powers Principles precluded the Court from providing a remedy in respect of the damaging actions of Committees**

- i. The Divisional Court erred in law and in its application of the joint judgment of Clarke and O'Donnell JJ in *Callely v. Moylan* in placing weight on the principle of government by separation of powers recognised in the said joint judgments, but failing to properly distinguish the ratio of those judgments as concerning a member of the Seanad and issues pertaining to expenses claims by members of the Houses falling within the legitimate sphere of activity of the Houses. The protection of the constitutional rights of private citizens (as opposed to Members of the Houses) from unjust attack is quintessentially within the sphere of competence of the Courts. Under the Constitution, the Courts are not only empowered but under a duty to intervene to vindicate the personal rights of a citizen from unjust attack unless the Constitution itself otherwise provides. As the Constitution does not otherwise provide in the circumstances of this case, the protection of the rights of private citizens, including the Appellant, from unjust attack is within the legitimate sphere of activity of the judicial branch of government.
- ii. Furthermore, in relying on the minority judgments in *Callely* to find the complaint non-justiciable, the Divisional Court failed to properly consider the emphatic finding in the said joint judgment that it is the function of the courts to determine the proper boundaries of the exercise of power in each case and to apply this ratio to the manner in which the exercise of powers by the PAC under Order 163 is delimited not by the Houses of the Oireachtas but by the provisions of the Comptroller and Auditor General Act, 1993 (as amended). It is the Court's role to determine the proper boundaries of the exercise of power by PAC by reference to the powers vested in it by the Houses and accordingly by reference to the provisions of the Comptroller and Auditor General Act, 1993 (as amended),
- iii. By its reliance on the separation of powers doctrine to exclude review of the actions of PAC from the Court's power of review, the Divisional Court failed to discharge its duty under the Constitution to vindicate the Appellant's right to fairness, and to afford the Appellant, as a private citizen, with positive protection for her personal rights in proceedings before the PAC which affected her rights. The decision of the Divisional Court in deferring to elected deputies in committee as acting within a sphere of competence protected from review by the Courts under the Constitution, represents a failure to properly patrol the parameters of the Courts' jurisdiction and, rather than uphold the separation of powers doctrine in fact results in a violation of that doctrine. The decision represents the antithesis of respect for the separation of powers doctrine.
- iv. Preserving democracy by observing the parameters of the powers enjoyed by separate organs of State under the Constitution requires, first and foremost, protection for the rights of citizens engaging with those institutions.

Democracy is fundamentally undermined where the ordinary or private citizens at its heart, the People from where all powers under the Constitution flow, may be the subject of unjust attack under the cloak of an institution of State and left without remedy by the institution of the State whose constitutional duty it is to vindicate their rights. In the hierarchy of rights, Article 15 does not trump Article 40.3 and the Court is required to effect a balance between both sets of rights. This is consistent with a constitutional order which ensures the citizen may engage with the institutions of parliament.

- v. The Divisional Court erred in failing to recognize that when considering the exercise of a power within the sphere of competence of the Houses of the Oireachtas (which did not occur in this instance), the separation of powers doctrine under the Constitution does not recognize the existence of a lawless place in which people are empowered to do wrong without restraint.
- vi. The Divisional Court erred in law and in fact in finding that it would be wrong to categorise its decision on non-justiciability as a denial of the constitutional rights of the Appellant on the basis that in this instance, the custodian of those rights is not the court but the Oireachtas itself. The custodian of the rights of a private citizen who is not a member of the House and who appears before a Committee, particularly where the Committee is not engaged in Committee business but on a frolic of its own, is not the Oireachtas but the Courts. Any determination to the contrary results in an unlawful abdication by the Courts of their role under the Constitution in preserving within its sphere of competence the vindication of the personal rights of citizens from unjust attack.

### 3. *Error of Law in finding Appellant's Complaint Non-Justiciable*

- i. It was the role of the Court under the Constitution to determine the proper boundaries of the exercise of powers concerning non-members of the Houses where those powers derive not from the Constitution or the Standing Orders but from the provisions of the Comptroller and Auditor General Act, 1993 (as amended). The Divisional Court failed to consider the fact that the self-written brief of the PAC to enquire into the Charity sector generally, and the Appellants' employment with Rehab and her private life specifically, did not fall within the parameters of PAC's role under the Comptroller and Auditor General Act, 1993 (as amended). As there is a legislative basis for the powers exercised by the PAC in purporting to conduct examinations, it is for the Courts to determine the boundaries of the proper exercise of that power.
- ii. In deciding the Appellant's complaint was non-justiciable, the Divisional Court erred in construing Article 15.13 and/or section 92 of the 2013 Act as applying to utterances by deputies in Committee where the Committee was not engaged in Committee business.
- iii. The Divisional Court failed, in all the circumstances of this case, to properly weigh its duty under the Constitution (and specifically under Article 40.3 of

the Constitution) to protect the rights of private citizens including the Appellant from unjust attack and to vindicate the rights of citizens who have been subjected to unjust attack.

- iv. The reasoning of the Divisional Court failed to reflect that a residual jurisdiction exists in the Court, even in areas otherwise privileged or protected under Article 15 (which this is not), to provide a remedy or to enter what would otherwise be a zone of non-justiciability in exceptional cases. While wrongly applying an overly expansive interpretation of Article 15.13 to utterances in Committee, the Divisional Court further failed to consider the exceptionality of the circumstances of this case in simply deciding that the complaint was non-justiciable regardless of the clear disregard had by members of the PAC for the Appellant's constitutional rights protected under Article 40.3 and/or for their jurisdictional limits.
- v. Furthermore, while Article 15.13 may have the effect of holding a member immune from personal liability in respect of utterances in the Chamber of either House, properly construed with due regard to the Irish text and the word "inchuisithe", it cannot have the effect of precluding the making of an order expunging the record or any other order which does not fix the member personally with liability.

#### 4. *Error of law in finding no Exercise of Jurisdiction Absent Power of Compulsion*

- i. The Divisional Court erred in law and in fact in finding that the ratio of the decisions as to justiciability in *Maguire v. Ardagh* and *In Re Haughey* was underpinned by compellability and extrapolating from this that the issue of jurisdiction can only arise where compellability powers are being exercised and concluding therefore that no question of jurisdiction arises in this case. The said decisions are not authority for this proposition and there is no authority or lawful basis for the Divisional Court's decision to distinguish this case from *In Re Haughey* and *Maguire v. Ardagh* by reason of the absence of the powers of compulsion which happened to be present in those cases.
- ii. The Divisional Court erred in law in finding that exercise of jurisdiction involves the exercise of a power of compulsion and that because the Appellant attended voluntarily before the PAC, no jurisdiction was being exercised as there was no "legal sanction" for non-attendance. The jurisdiction of PAC under the Standing Orders is determined by the provisions of the Comptroller and Auditor General Act, 1993 (as amended). Voluntary attendance before a body exercising or purporting to exercise public law functions conferred by law, as the PAC did on separate occasions in February and April, 2014, does not render that body omnipotent with regard to the examination it is entitled to conduct and a voluntary participant in proceedings seeking only to assist the PAC, is entitled to expect that powers of examination will be exercised properly and in a manner that is not ultra vires.

iii. In the development of its reasoning in respect of the finding that there was no exercise of power because the Appellant was a volunteer before the PAC, the logic of the Divisional Court is incoherent as the Court does not explain how the fact of voluntary attendance in February, 2014 could excuse damage arising from ultra vires actions of the PAC in April, 2014 when proceedings were conducted in the Appellant's absence and no question of voluntariness could arise. Nor does the Court address the compulsive powers of an employer in securing an employee's attendance before the PAC. The Appellant was not a volunteer before the PAC in February, 2014 in circumstances where she and her colleagues had been directed by her employer to attend and she was exposed to potential sanction under her contract of employment for non-attendance.

iv. The Divisional Court erred in law in finding that the question of her being afforded *In Re Haughey* rights to defend herself could never arise when the Appellant had the right to decline cooperation at any stage. The unsustainable effect of the ruling of the Court (paragraph 69) is that on voluntary attendance before a Committee, a citizen is deemed to have surrendered their constitutional rights, rights which heretofore have been considered entrenched.

5. *Error of Law in Characterising the Statements of Members of the PAC as Expressions of Opinion rather than Findings of Fact and therefore Immune*

i. As in *In Re Haughey* and *Maguire v. Ardagh*, the Appellant was not a mere witness before the PAC as her conduct was seriously impugned during the two hearings before the PAC in a manner which attracted protection under Article 40, s. 3 of the Constitution and the guarantee to the citizen therein enshrined of basic fairness of procedures. The PAC invited evidence of very serious allegations against the Appellant and made statements themselves, without evidence, in the improper manner in which witnesses before it were questioned.

ii. In seeking to examine the Appellant in respect of her employment with Rehab and other private matters, the PAC purported to exercise an adjudicative or determinative power for which they claimed legitimacy. In real terms, the PAC, purporting to exercise a power of examination under Order 163, was exercising materially similar powers to those which engaged the court's jurisdiction in *In Re Haughey* and *Maguire v. Ardagh* and the basis for distinguishing this case from those is not legitimate. The Divisional Court improperly fettered its power to intervene to provide a remedy to the Appellant by characterizing the actions of the PAC by reference to the nature of the legal powers actually vested in it rather than its actions in the purported exercise of a power which had not been vested in it.

iii. The Divisional Court erred in law and in fact in finding that while some of the Oireachtas respondents expressed themselves in terms which suggest that

conclusions were being arrived at by the individuals concerned in reality, these statements were expressions of opinion by the relevant members devoid of any legal force. The evidence shows that Oireachtas respondents expressed themselves in terms “capable of leading to adverse finding of fact and conclusion” within the meaning of the Supreme Court decision in *Maguire v. Ardagh*.

- iv. In treating the damage to the Appellant as beyond review by the Court, the Divisional Court drew an unrealistic distinction between statements of opinion and “findings of fact” in light of the manner in which statements were made and permanency of statements made by members of the PAC, the transcripts and recordings of which remain available on-line on the Houses of the Oireachtas website as part of the official record of the PAC.

**6. Error in law in finding Utterances in Committee Immune whether Committee Engaged in Committee Business or Not**

- i. At the heart of the decision of the Divisional Court is the flawed finding that although the Appellant had been damaged by unfair treatment by the PAC on occasions of ultra vires exercise of powers, it was powerless to provide any redress to the Appellant because of the protected position of the members of the PAC in respect of “utterances” in Committee under Articles 15.12 and 15.13 and/or under section 92 of the 2013 Act.
- ii. The Divisional Court erred in law in finding that s. 92 of the 2013 Act is merely declaratory of the position that already obtained under Article 15.13, namely that the privilege applies to committees of either House in the same way as it applies to the Houses themselves. In enacting the 2013 Act, following the decision of this Court in *Maguire v. Ardagh* and the failure of the 2011 Constitutional amendment, the Oireachtas recognized that Article 15.13 had no such application and that the extension of immunities and privileges to the work of committees could only be done in a law which also prescribed safeguards to protect the rights of persons coming before those committees.
- iii. The Divisional Court erred in law in finding with regard to the 2013 Act that the meetings of the PAC under consideration were not a Part 2 inquiry and were thus “other committee business” to which Part 7 of the 2013 Act applied. “Other committee business” within the meaning of Part 7 of the 2013 Act should properly be construed as business falling within the area of competence of the Committee. If the members of the PAC are not properly engaged in Committee business, namely, examining and reporting on public expenditure falling within the remit of the Comptroller and Auditor General, none of the protections afforded under the 2013 Act can apply. Members of the PAC are not protected under the Constitution or under the 2013 Act when engaged in an examination based on a self-written brief for which no authority derives under the Standing Orders or under law.
- iv. The Divisional Court erred in law in concluding that as the CPP refused the PAC’s application for compellability powers, Chapter 2 of Part 7 dealing with

privileges and immunities of witnesses and Chapter 3 dealing with the power of committees to obtain evidence did not apply to the hearings involving the Appellant and no judicial safeguards applied in respect of the hearings in February and April, 2014. This finding fails to address the argument advanced on behalf of the Appellant that the procedural safeguards provided under Part 7 may be applied without compellability powers being exercised and can also apply, upon direction from the CPP, in respect of witnesses attending voluntarily as expressly provided in 78(1) of the 2013 Act. By failing to seek such a direction from CPP pursuant to section 77 of the 2013 Act, the PAC ensured that the Appellant was deprived of procedural safeguards (including a right of access to the Court under section 94 of the 2013 Act) which would otherwise have been available in respect of “*Other Committee business*”, not least the safeguard of a refusal to make a direction where CPP determined the business of the Committee to be ultra vires.

- v. The unsustainable effect of the decision of the Divisional Court is that the provisions of the 2013 Act regulating the conduct of Committee business in a manner intended to safeguard individual rights in line with the decision of this Court in *Maguire v. Ardagh* may be by-passed entirely by a Committee who conducts an examination outside its remit, while asserting a particular remit which is not then observed, not only where witnesses appear voluntarily but even where the parties the subject of examination are absent. Thus, on the authority of the ratio in the Divisional Court, the expedient of failing to properly invoke the provisions of the 2013 Act which expressly provide for Court intervention in respect of the conduct of Committee business (Part 9 of the 2013 Act), renders the members of the PAC immune from judicial sanction in respect of their unlawful conduct even where the person affected is not a member of the Houses, is not a public servant with reporting duties and is absent or refuses to attend.
- vi. The Divisional Court erred in law in finding that Part 8 of the 2013 Act dealing with the privilege and immunities of committees and members of the Houses applies to all committees of whatever kind. To benefit from Part 8 of the 2013 Act members of a Committee must be engaged in Committee business. Part 8 of the 2013 Act does not apply where a Committee is not engaged in Committee business whether under Part 2 or under the Standing Orders but is, in fact, otherwise engaged in a frolic of its own for which it does not properly stand constituted and has not been conferred with functions. Any other construction of Part 8 is incompatible with the personal rights guaranteed under Article 40.3 of the Constitution.

#### ***7. Error in law and in Fact as to the Extent of Unfairness Present on the Evidence***

- i. Although the Divisional Court found that the Appellant had been damaged by unfair treatment by the PAC on occasions of ultra vires exercise of powers (as found by CPP), it erred in failing to consider the extent of this unfairness

in reaching its subsequent conclusion that it was powerless to intervene by reason of the non-justiciability of utterances of the PAC. In particular, although the Divisional Court considered the fact that the Appellant was questioned about matters of which she did not have notice, the judgment makes no reference to the fact that she was furnished with a witness pack by letter dated the 18<sup>th</sup> of February, 2014 whereby she was advised that witnesses enjoy absolute privilege and that persons identified in the course of the Committee's proceedings enjoy certain rights under the provisions of the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act, 1997 (albeit that the said Act was repealed by the provisions of the 2013 Act, which Act was commenced in September, 2013). In fact, protections and privileges of the type referred to in the Witness Pack could only apply in 2014 if a direction had been sought under the 2013 Act. Contrary to what was represented to the Appellant, and in manifest breach of her right to fair procedures, no steps had been taken by the PAC to cause these protections to be available. She was not advised, as the PAC argued before the Divisional Court, that on the occasion of voluntary attendance before the PAC no legal protections are available and one enters what is, effectively, a law free zone.

- ii. The Divisional Court erred in fact in finding that it was common case, referring to the determination of the Committee on Procedures and Privileges *that the effect of the determination of CPP in July, 2014 was to bring to an end the further pursuit by the PAC of matters relating to Rehab or Ms. Kerins' role therein* (paragraph 33). On the contrary, the uncontroverted evidence in the case established that members of the PAC continued to lobby through the media for an expanded remit to permit the pursuit of the Appellant following the decision of the CPP.

**8. Error in law and/or in fact in Characterization of the Appellant's Claim and the Necessary Issues for Determination**

- i. The Divisional Court erred in law and/or on the facts in finding that the primary remedy sought by the Appellant is damages (paragraph 35). This is not accepted as a correct characterization of the Appellant's case. It was a critical dimension of the Appellant's case that the record of the damaging opinions expressed by the PAC be expunged. She also sought declaratory relief and orders expunging the record, remedies which exist independently of an award in damages and are of separate and distinct importance to the Appellant.
- ii. The Divisional Court erred in law and/or on the facts in deciding that it was neither necessary nor appropriate to answer the questions directed in the issue paper to decide the case and accordingly reached no determination on the issues fixed by order for determination by the Court rendering the trial unsatisfactory.

9. Such further or other grounds as may be adduced with leave of the Court.

Name of solicitor or (if counsel retained) counsel or Appellant/appellant in person:

John Rogers SC and Siobhán Phelan SC

## 7. Other relevant information

Neutral citation of the judgment appealed against *e.g.* Court of Appeal [2015] IECA 1 or High Court [2009] IEHC 608

References to Law Report in which any relevant judgment is reported:

*In Re Haughey* [1971] IR 217

*Maguire v. Ardagh* [2002] 1 IR 385

*Callely v. Moylan* [2014] 4 I.R. 112

## 8. Order(s) sought

Set out the precise form of order(s) that will be sought from the Supreme Court if leave is granted and the appeal is successful:

An Order allowing the appeal together with the following orders arising from Module 1 of the two part modular trial directed by the High Court:

- I. An Order by way of an application for judicial review directing the Respondents to remove from the record of the Public Accounts Committee either by Order of Certiorari or otherwise any and all references to the Appellant and her employment with the Rehab Group or any matter arising therefrom;
- II. A Declaration by way of an application for judicial review that the Respondents, sitting as the Public Accounts Committee have no jurisdiction either pursuant to Standing Order 163 or at all to examine and/or report on expenditure of monies by the Rehab Group and in particular expenditure in connection with or concerning the Appellant;
- III.A Declaration by way of an application for judicial review that the procedures adopted by the Respondents in respect of the Appellant on

the occasion of her attendance before the Public Accounts Committee and subsequently are unfair and all resulting proceedings are unlawful and null and void;

IV.A Declaration by way of an application for judicial review that the examination by the Respondents sitting as the Public Accounts Committee of expenditure of the Rehab Group and in particular expenditure in connection with or concerning the Appellant is tainted by bias by reason of the conduct of individual members of the Committee;

V. An Order remitting the matter to the High Court for the determination of outstanding issues in Module 2 further to the modular trial directed by the High Court;

VI. Further or other Order;

VII. Costs.

What order are you seeking if successful?

Order being set aside ☒ vary/substitute ☐  
appealed:

Original order: set aside ☐ restore ☐ vary/substitute ☐

If a declaration of unconstitutionality is being sought please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution:

If a declaration of incompatibility with the European Convention on Human Rights is being sought please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention

**Are you asking the Supreme Court to:**

depart from (or distinguish) one of its own decisions? ☐ Yes ☒ No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union?	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No
If Yes, please give details below:				

Will you request a priority hearing?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
If Yes, please give reasons below:				
<p>A priority hearing is sought due to the special and public importance of the issues arising for determination and to facilitate the administration of justice within a reasonable time in this case in circumstances where, if successful on this appeal, the Appellant's case will not be over but will require further hearing in respect of the second module of her case.</p>				

Signed: 

Eames Solicitors  
Solicitors for the Appellant  
2 Malthouse Square  
Smithfield  
Dublin 7

**Please submit your completed form to:**

The Office of the Registrar of the Supreme Court  
The Four Courts  
Inns Quay  
Dublin

**together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.**

**This notice is to be served within seven days after it has been lodged on all parties directly affected by the application for leave to appeal or appeal.**

**THE SUPREME COURT**  
**Record No.**

**BETWEEN**

**ANGELA KERINS**

**APPELLANT / APPLICANT**

**AND**

**DEPUTY JOHN MCGUINNESS, DEPUTY MARY LOU  
MCDONALD, DEPUTY SHANE ROSS, DEPUTY ÁINE COLLINS,  
DEPUTY PAUL J. CONNAUGHTON, DEPUTY JOHN DEASY,  
DEPUTY ROBERT DOWDS, DEPUTY SEÁN FLEMING, DEPUTY  
SIMON HARRIS, DEPUTY EOGHAN MURPHY, DEPUTY  
GERALD NASH, DEPUTY DEREK NOLAN, DEPUTY KIERAN  
O'DONNELL, THE CLERK OF DÁIL ÉIREANN, THE CLERK OF  
THE PUBLIC ACCOUNTS COMMITTEE, IRELAND AND THE  
ATTORNEY GENERAL**

**RESPONDENTS**

**APPLICATION FOR LEAVE AND NOTICE OF APPEAL**

**EAMES SOLICITORS  
2 MALTHOUSE SQUARE  
SMITHFIELD  
DUBLIN 7**