

## Appendix FF

Order 58, rule 15

No. 1

## SUPREME COURT

## Application for Leave and Notice of Appeal

## For Office use

Supreme Court record number of this appeal	2017/000078
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]

Angela Kerins	V	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
High Court Record Nr	2017 431 JR	Court of Appeal Record Nr
Date of filing		
Names of Appellants		Ireland and The Attorney General
Solicitors for Appellants		The Chief State Solicitor
Name of Respondent	Angela Kerins	
Respondent's solicitors	Eames Solicitors	



Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
Yes	x	No
If yes, give [Supreme Court] record number(s)		

Are you applying for an extension of time to apply for leave to appeal?	x	Yes	No
If Yes, please explain why			
<p>(i) This appeal is against the decision of the Divisional Court of the High Court of 5 April 2017 whereby it declined to award the Appellants their costs against the Respondent arising from the refusal of the Respondent's claim for judicial review on 31 January 2017. By Notice of Appeal dated 4 May 2017 the Respondent has appealed against that refusal of judicial review;</p> <p>(ii) By the date on which the Appellants were served with the Respondent's Notice of Appeal they were out of time to appeal the judgment on costs;</p> <p>(iii) By Respondent's Notice dated 19 May 2017 the Appellants have indicated that they do not oppose the application by the Respondent to appeal directly to this Honourable Court but oppose the substantive appeal on a number of grounds as set out therein;</p> <p>(iv) In the particular circumstances of this case, it is pleaded that a direct appeal to this Honourable Court on the issue of costs is warranted and in the interests of justice;</p> <p>(v) If the Appellants are granted leave to appeal on the issue of costs, it will allow all issues arising from the decision of the Divisional Court to be determined in a single hearing.</p>			

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

Name(s) of Judge(s)	Kelly P, Noonan and Kennedy JJ.
Date of order/ Judgment	Judgment on costs delivered on 5 April 2017 refusing the Appellants their costs and making no order for costs as between the Appellants and the Respondent

	Order perfected on 7 <sup>th</sup> April 2017
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## 2. Applicant/Appellant Details

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

Appellant's full name	1. Ireland 2. Attorney General
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Original status

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

<input type="checkbox"/>	Defendant
<input checked="" type="checkbox"/>	Respondents
<input type="checkbox"/>	Notice Party

<b>Solicitor</b>			
Name of firm	The Chief State Solicitor		
Email	Caitriona_Keane@csso.gov.ie		
Address	Osmond House	Telephone no.	014176235
	Little Ship St	Document	
	Dublin 8	Exchange no.	
Postcode		Ref.	

How would you prefer us to communicate with you?

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

<b>Counsel</b>			
Name	Maurice Collins SC		
Email	maurice@mauricegcollins.ie		
Address	2 Arran Square	Telephone no.	8729533
		Document Exchange	812015
		no.	
Postcode	Dublin 7		

<b>Counsel</b>			
Name	Conor Power SC		
Email	conor@conorpower.net		
Address	Law Library	Telephone no.	4449896
	Distillery Building 145-151 Church St	Document Exchange no.	816564
Postcode	Dublin 7		

<b>Counsel</b>			
Name	John Fitzgerald BL		
Email	johnfitzgerald@lawlibrary.ie		
Address	Law Library	Telephone no.	8175624
	Distillery Building 145-151 Church St	Document Exchange no.	816619
Postcode	Dublin 7		

If the Applicant / 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

Respondent's full name	Angela Kerins
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Original status	<input type="checkbox"/>	Plaintiff	<input type="checkbox"/>	Defendant	Is this party being served with this Notice of
	x	Applicant		<input type="checkbox"/>	

	Prosecutor
	Petitioner

	Notice Party

Application for leave?			
Yes		No	

Solicitor			
Name of firm	Eames Solicitors		
Email	d.coen@eames.ie		
Address	2 Malthouse Square Smithfield	Telephone no.	7825155
		Document	261004
		Exchange no.	
		Ref.	
Postcode	Dublin 7		

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

	Document Exchange
	Post

x	E-mail
	Other (please specify)

Counsel			
Name	John Rogers SC		
Email	jrogers@indigo.ie		
Address	Church St Building Church St	Telephone no.	8175096
		Document	815309
		Exchange no.	
Postcode	Dublin 7		

Counsel			
Name	Siobhan Phelan SC		
Email	siobhanphelan@lawlibrary.ie		
Address	Law Library Distillery Building	Telephone no.	8173950
		Document	
		Exchange no.	
Postcode	Dublin 7		

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"/>	Post

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

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

<p>It is sought to appeal from the judgment and order of the Divisional Court of 5 April 2017 making no order as to costs in respect of the Respondent's claim for judicial review against the Appellants, which said claim had been refused by the Divisional Court by judgment of 31 January 2017.</p>
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#### 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 and
- ii. why there are exceptional circumstances warranting a direct appeal to the Supreme Court

1. General Public Importance

- (i) The substantive case was heard before the Divisional Court and involved issues of the extent and applicability of parliamentary immunity to proceedings before Dáil committees. Accordingly, it is pleaded that the context underlying the costs judgment was one of general public importance.
- (ii) The Appellants made oral submission on certain of the legal issues arising in the course of the hearing before the Divisional Court, which submissions were upheld by the Court in refusing relief to the Respondent.
- (iii) Against this background, the Divisional Court ruled that no Order on costs should be made in respect of the Appellants.
- (iv) It is pleaded that the decision of this Honourable Court will clarify the circumstances in which the usual rule as to costs in Order 99 of the Rules is not applicable, particularly where that event was in favour of a party against whom no particular relief had been sought and who had not been released from the proceedings by the unsuccessful party.

## 2. Interests of justice

- (i) The Appellants have not opposed the Respondent's application to appeal directly to this Honourable Court from the substantive judgment of the Divisional Court. It is in the interests of justice to consider the substantive issues together with the costs issue in a single hearing.

## 3. Exceptional circumstances

- (i) The substantive case was heard before a Divisional Court involving issues of the separation of powers and the applicability of parliamentary immunity to Dáil committees.
- (ii) In circumstances where the Appellants do not oppose the Respondent's application to appeal directly on these issues to this Honourable Court, it is appropriate to determine all the issues in the case in a single hearing.

## 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. The Grounds and Errors of Law**

- (i) In the application for judicial review before the Divisional Court, the Respondent did not seek any particular reliefs against the Appellants, but



against a number of individual members of the Oireachtas, the clerk of the Public Accounts Committee and the clerk of Dáil Éireann;

- (ii) When the Appellants wrote to the Respondent asking to be released from the proceedings, the Respondent refused on the basis that the other parties against whom relief was sought would be likely to argue that the Appellants were vicariously for actions taken in performance of their parliamentary functions;
- (iii) In the event, no such plea was made by the other parties, yet the Respondent did not release the Appellants from the proceedings.
- (iv) The Appellants were thus required to appear for the hearing, in the course of which they made oral submissions addressing the central issues in the proceedings.
- (v) These submissions were expressly considered “*helpful*” by the Court and were upheld in refusing relief to the Respondent;
- (vi) Against this background, it is pleaded that the normal rule that costs follow the event should have been applied in awarding costs to the Appellants against the Respondent and no or no adequate reasons for departing from the normal rule are identified in the Divisional Court’s Ruling on Costs.

2. The Applicable Legal Principles and provisions of the Constitution and legal provisions

- (i) The normal rule that costs follow the event
- (ii) Article 15 of the Constitution
- (iii) Order 99, Rule 1 of the Rules of the Superior Courts

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

**JOHN FITZGERALD BL**

**CONOR POWER SC**

**MAURICE G COLLINS 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

[2017] IEHC 217

References to Law Report in which any relevant judgment is reported

### 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:

The Appellants seek an Order for their costs as against the Respondent in respect of the High Court proceedings and in this appeal.

What order are you seeking if successful?

Order being appealed:      set aside ☐      vary/substitute ☒

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

n/a

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

n/a

**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?

☐

Yes

☒

No

If Yes, please give details below:

Will you request a priority hearing?

☐

Yes

☒

No

If Yes, please give reasons below:

Signed:

*Eileen Greedan*

Office of the Chief State Solicitor

Osmond House

Little Ship St

Dublin 8

**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.