

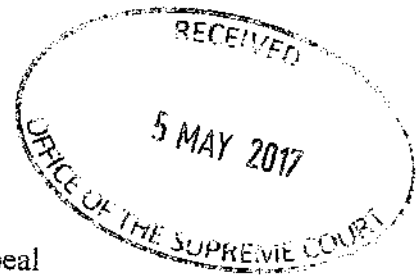
Appendix FF

Order 58, rule 15

No. 1

SUPREME COURT

Application for Leave and Notice of Appeal



Record No: 2014/431JR

**BETWEEN:**

**ANGELA KERINS**

**Applicant/Respondent**

**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**

**Respondents/Appellants**

**AND**

**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]

Angela Kerins  Record No. 2014/431 JR	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
Date of filing		
Name(s) of Applicant(s)/Appellant(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 Éireann, the Clerk of the Public Accounts Committee	
Solicitors for Applicant(s)/Appellant(s)	Office of the Parliamentary Legal Advisor	
Name of Respondent(s)	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?		Yes	X	No
If Yes, please explain why				

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

Name(s) of Judge(s)	Kelly P, Noonan J and Kennedy J
Date of order/Judgment	Judgment on costs delivered on 5 April 2017 Order perfected on 7 April 2017

### 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

Appellants' full names	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
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Original status

	Plaintiff
	Applicant
	Prosecutor
	Petitioner

	Defendant
X	Respondents
	Notice Party

Solicitor: Ms Ramona Quinn

Name of firm	Office of the Parliamentary Legal Advisor
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Email	ramona.quinn@oireachtas.ie		
Address	Houses of the Oireachtas Leinster House	Telephone no.	01 618 3112
		Document	na
		Exchange no.	
Postcode	Dublin 2	Ref.	OPLA 2296.2017

How would you prefer us to communicate with you?

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

<b>Counsel</b>			
Name	Mr Paul Gallagher		
Email	psa@paulgallagher.ie		
Address	4A Wellington Road, Ballsbridge	Telephone no.	01 660 6195
		Document Exchange no.	
Postcode	Dublin 4		

<b>Counsel</b>			
Name	Mr Brian Kennedy		
Email	brian@bkennedy.ie		
Address	2 Arran Square, Arran Quay	Telephone no.	01 872 9488
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Postcode	Dublin 7		

<b>Counsel</b>			
Name	Ms Catherine Donnelly BL		
Email	cdonnelly@lawlibrary.ie		
Address	Distillery Building,	Telephone	087 329 5044

	145-151 Church Street	no.	
		Document Exchange no.	818348
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	<input checked="" type="checkbox"/>	E-mail
<input type="checkbox"/>	Exchange	<input type="checkbox"/>	
<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 checked="" type="checkbox"/>	Applicant
	<input type="checkbox"/>	Prosecutor
	<input type="checkbox"/>	Petitioner

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

Solicitor: Mr Diarmuid Coen	
Name of	Eames Solicitors

firm			
Email	d.coen@eames.ie		
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		Document Exchange no.	261004 Ormond Building
		Ref.	DCK167-0003
Postcode	Dublin 7		

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)

Counsel			
Name	Mr John Rogers SC		
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		Document Exchange no.	815309
Postcode	Dublin 7		

Counsel			
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Email	siobhanphelan@lawlibrary.ie		
Address	Suite 1.30.3, Distillery Building, 145 Church Street	Telephone no.	01 817 3950/087 230 1331
		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.	

How would you prefer us to communicate with you?

<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

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

1. It is sought to appeal from the judgment of the Divisional Court, dated 5 April 2017, on costs ("**the Costs Judgment**"), as incorporated into the Order of the Divisional Court perfected on 7 April 2017, in which the Divisional Court ordered the Respondent do recover as against the First to Fifteenth Named Appellants two thirds of her costs of the within proceedings together with 100% of the transcript costs to be taxed in default of agreement.
2. For the avoidance of doubt, the Appellants do not appeal against the judgment of the Divisional Court of 31 January 2017 ("**the Principal Judgment**"), in which judgment the opposition of the Appellants to the Respondent's application was unequivocally upheld.
3. The relevant findings of the Divisional Court in the Costs Judgment were as follows:
  - (1) The Respondent appeared before the Public Accounts Committee ("**PAC**") in a voluntary capacity and was dealt with on 27 February 2014 by the Appellants in the manner described in the Principal Judgment (§27).
  - (2) The Respondent was not in attendance for medical reasons at the meeting of 10 April 2014, but in her absence was dealt with in the manner described in the Principal Judgment (§27).
  - (3) The Court was limited by the terms of the Constitution from making any comment which would touch directly on the utterances of any



member of the PAC, "but nonetheless it could not be gainsaid that much of what was put to the [Respondent] and said about her in the course of the two meetings in question was damaging to her reputation personally and professionally" (§27).

- (4) The institution of the proceedings was a proportionate reaction on the part of the Respondent to the situation arising from what took place before the PAC (§28).
- (5) The Respondent had raised issues of special and general public importance and of some novelty, which also were of importance to the Appellants (§§29–31).
- (6) The Respondent was entitled to two-thirds of her costs of the High Court proceedings together with 100% of the transcript costs to be taxed in default of agreement.

## 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

### I. General Public Importance

4. The Costs Judgment raises issues that are of widespread general public importance, the determination of which has consequences which extend well beyond the scope of the current appeal. In particular, an appeal in respect of the Costs Judgment will bring clarity to the following issues:

- (1) The extent to which it is permissible to have regard to utterances of members of the Oireachtas in determining whether a costs order can be

made against such members of the Oireachtas;

- (2) The extent to which it is permissible to depart from the normal rule on costs in circumstances in which the unsuccessful litigant has not only pursued a damages claim, but in which, as the Divisional Court found in the Principal Judgment (at §107) “[t]he essence of the ... case is a claim for damages” (emphasis added);
- (3) The threshold for identifying a matter of public importance and novelty such as to warrant a departure from the normal rule that costs follow the event, in particular, in circumstances in which the unsuccessful litigant advocates a position which is clearly contrary to settled law. In the particular circumstances arising here, in the Principal Judgment, the Divisional Court ruled (at §109) that the Respondent had invited the Court to examine, discuss and adjudge words in parliament “*the very thing that Blackstone said was not to be done*”, yet notwithstanding that the Respondent had argued against such long-established law, exercised its discretion to depart from the normal rule in the Costs Judgment.

## II. Interests of Justice

5. It would also be in the interests of justice for the case to be heard by the Supreme Court. In particular:

- (1) Notwithstanding the Divisional Court’s unequivocal rejection of the Respondent’s case in the Principal Judgment, the Divisional Court concluded in the Costs Judgment that the Respondent was entitled to two-thirds of her costs together with 100% of the transcript costs to be taxed in default of agreement.
- (2) The Costs Judgment will involve a charge on public finances, and cannot be justified in circumstances in which the Appellants were entirely successful in their opposition to the Respondent’s application.
- (3) This ruling rested on findings that were inconsistent with findings in the Principal Judgment.
- (4) In the Principal Judgment (inter alia, at §109), the Divisional Court had concluded that utterances of members of the Oireachtas were immune from amenability to the Courts. Yet in the Costs Judgment, the Court ruled that the meetings before the Public Accounts

Committee had been damaging to the Respondent's reputation personally and professionally and that it had been a proportionate response for the Respondent to issue proceedings in respect of same.

- (5) Further, in the Principal Judgment (at §107), the Divisional Court found that the Respondent had argued against a legal position which had been well-settled since Blackstone, yet in the Costs Judgment (§29), the Court found that the Respondent had raised issues of some novelty.
- (6) It is unjust that the Appellants, having succeeded on issues in the Principal Judgment, should find a contradictory position adopted in the Costs Judgment.
- (7) It is also respectfully submitted that it is apparent from the public importance of the case, that it will inevitably necessitate determination by the Honourable Court. In particular, the issue of the extent to which it is permissible to have regard to utterances of members of the Oireachtas in determining whether a costs order can be made against such members of the Oireachtas is likely to require ultimate clarification from this Honourable Court.
- (8) The matters of law arising in this Appeal are specific and discrete, and are unlikely to benefit from a determination by the Court of Appeal (for example, by way of refining or narrowing the issues) prior to any consideration by this Honourable Court. The interests of justice—and of efficient and effective use of judicial resources—weigh in favour of permitting this Appeal.
- (9) The Respondent has made a separate application for leave to appeal directly to this Court against the Principal Judgment, by application filed on 4 May 2017. If and insofar as that application is successful, it would be appropriate to grant the Appellant's leave to appeal in that that would allow for all issues arising from the decision of the High Court to be argued and determined in a single hearing. The alternative, whereby the Court of Appeal would be asked to address the Appellant's appeal, would appear to be an unsatisfactory and inefficient use of Court time and resources and could result in anomalies and potential injustice.

### III. Exceptional Circumstances

6. The following exceptional circumstances warrant a direct appeal to the Supreme Court:

- (1) The Costs Judgment has been delivered by a Divisional Court, which, in itself, is unusual.
- (2) The matters of law arising in this Appeal are specific and discrete, and are unlikely to benefit from a determination by the Court of Appeal (for example, by way of refining or narrowing the issues) prior to any consideration by this Honourable Court. The interests of justice—and of efficient and effective use of judicial resources—weigh in favour of permitting this Appeal.
- (3) The Respondent has made a separate application for leave to appeal directly to this Court against the Principal Judgment, by application filed on 4 May 2017. If and insofar as that application is successful, it would be appropriate to grant the Appellant's leave to appeal in that that would allow for all issues arising from the decision of the High Court to be argued and determined in a single hearing. The alternative, whereby the Court of Appeal would be asked to address the Appellant's appeal, would appear to be an unsatisfactory and inefficient use of Court time and resources and could result in anomalies and potential injustice.

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

I. The Specific Grounds and Errors of Law

1. The Divisional Court erred in law and/or in fact and/or in mixed question of law and fact in awarding the Respondent two-thirds of her costs together with 100% of the transcript costs to be taxed in default of agreement, notwithstanding the Respondent's lack of success in the proceedings.
2. In particular (and without limitation), the Divisional Court erred in having regard to the fact that what was said at the PAC meetings was damaging to the Respondent's reputation and in concluding that the Respondent's response in bringing unsuccessful proceedings was proportionate; to have regard to such factors entailed subjecting parliamentary utterances to scrutiny and amenability, notwithstanding the immunity conferred by Article 15 of the Constitution, and notwithstanding that the Divisional Court had indeed, itself, concluded that such utterances were immune from scrutiny and unamenable in the Principal Judgment (at §107).
3. With prejudice to the foregoing, the Divisional Court failed to have any and/or any adequate regard for the following:
  - (1) The Appellants were entirely successful in their opposition to the Respondent's application.
  - (2) Not only were the Appellants entirely successful, but indeed, given that they were unequivocally successful on the question of jurisdiction (which the Court found (Principal Judgment, §107) did not properly arise at all), the Divisional Court found it unnecessary to deal in its

Principal Judgment with a range of other grounds of review raised by the Respondent (including without limitation the application of *Anisminic v Foreign Compensation Commission* [1969] 2 AC 147, constitutional justice, and *audi alteram partem*) which nonetheless required preparation and time in advance of and at the hearing.

- (3) The public importance of the case did not reach the threshold identified in well-established case law. In particular (and without limitation), the case arising was not exceptional and sui generis and did not involve uncharted constitutional terrain; there were no novel points of law; indeed, the Respondent was seeking to overturn clear and long-established principles.
- (4) The Respondent had a private and pecuniary interest in the proceedings, and, in particular, had taken the exceptional and unprecedented step of seeking damages from members of the Oireachtas in respect of parliamentary utterances.

## **II. The Legal Principles Related to Each Numbered Ground and Confirmation as to How Those Legal Principles Apply to the Facts or to the Relevant Inferences Drawn Therefrom**

1. In respect of each numbered ground above, the Respondents rely on the following legal principles:
  - (1) The normal rule that costs follow the event in accordance with Order 99, Rule 1 of the Rules of the Superior Courts;
  - (2) The principle that the onus is squarely on an unsuccessful party to justify a departure from that rule;
  - (3) The principle that utterances of the Oireachtas are not amenable to judicial scrutiny; and
  - (4) The principles arising from Article 15 of the Constitution.

## **III. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely.**

1. The Appellants will rely, in particular, on the following provisions:

- (1) Article 15 of the Constitution; and

(2) Order 99, Rule 1 of the Rules of the Superior Courts.

**IV. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal**

There was no list of issues of law relevant to the Costs Judgment.

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

Paul Gallagher SC

Brian Kennedy SC

Catherine Donnelly BL

**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 in the following terms:

1. An Order for their Costs of the High Court proceedings.
2. Such further or other order as may be required;
3. The costs of this Appeal.

What order are you seeking if successful?

Order                      set ☐                      vary/substitute ☒  
being                      aside ☐  
appealed:

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

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:**

Ramona Quinn

Ramona Quinn,

Solicitor,

Office of the Parliamentary Legal Adviser,

Leinster House,

Dublin 2.

**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.