

RECEIVED
19 MAY 2017
OFFICE OF THE SUPREME COURT

THE SUPREME COURT

Record No. 2017/73

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

Respondent's Notice of the Appellant in respect of the Cross Appeal

Supreme Court record number	2017/73
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[Title and record number as per the High Court proceedings]

Angela Kerins

Applicant

AND

Deputy John McGuinness, Deputy Mary Lou MacDonald, Deputy Shane Ross, Deputy Aine Collins, Deputy Paul J Connaughton, Deputy John Deasy, Deputy Robert Dowds, Deputy Sean Fleming, Deputy Simon Harris, Deputy Eoghan Murphy, Deputy Gerald Nash, Deputy Derek Nolan, Deputy Kieran O'Donnell, the Clerk of Dail Eireann, the Clerk of the Public Accounts Committee, Ireland and the Attorney General

Respondents

Date of filing	19 May 2017
Name of respondent	Angela Kerins
Respondent's solicitors	Eames Solicitors
Name of appellant	Deputy John McGuinness, Deputy Mary Lou MacDonald, Deputy Shane Ross, Deputy Aine Collins, Deputy Paul J Connaughton, Deputy John Deasy, Deputy Robert Dowds, Deputy Sean Fleming, Deputy Simon Harris, Deputy Eoghan Murphy, Deputy Gerald Nash, Deputy Derek Nolan, Deputy Kieran O'Donnell, the Clerk of Dail Eireann, the Clerk of the Public Accounts Committee
Appellant's solicitors	Office of the Parliamentary Legal Adviser

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name Angela Kerins

The respondent was served with the application for leave to appeal and notice of appeal on date

9 May 2017

The respondent intends :

☐ to oppose the application for an extension of time to apply for leave to appeal

☐ not to oppose the application for an extension of time to apply for leave to appeal

☐ to oppose the application for leave to appeal

☒ not to oppose the application for leave to appeal

☒ to ask the Supreme Court to dismiss the appeal

☐ to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court

☐ Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal: ☒

Respondent's Representation

Solicitor			
Name of firm			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode		Ref.	
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)		

Counsel			
Name			
Email			
Address		Telephone no.	

		Document Exchange no.	
Postcode			

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

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)

2. Respondent's reasons for opposing extension of time

<p>If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused</p> <p>N/A</p>

3. Information about the decision that it is sought to appeal

<p>Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:</p>
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4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

N/A Leave to appeal is not being contested

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

1. The Learned Judges of the Divisional Court did not err, either in law and/or in fact and/or in mixed questions of law and fact as contended, in awarding the Appellant 2/3 of the costs of the High Court and 100% of the stenographer's costs notwithstanding that the Appellant had lost her proceedings before that Court. The decision of the Divisional Court as to costs is a reasoned application of established principle and the Appellant stands on that judgment in its terms.
2. It is well established that the Court has a discretion to award costs to a losing party having regard to specific factors in the case. Special factors warranting a departure from the normal rule as to costs in this case are identified in the decision of the Divisional Court. Special factors included the exceptional general importance of the issues in the case, the novelty of those issues (including the fact that Article 15.13 was interpreted for the first time as applying to utterances by members in Committees of the Houses), the fact that the Court had found in its principal judgment that the Appellant had been damaged personally and professionally by her treatment before the PAC and all of the circumstances of the case.
3. There is no contradiction in the Divisional Court's application of principles as old as Blackstone in its Principal judgment and its reliance on the novelty of the issues in making a costs order favourable to the Appellant as complained by the Respondents in their cross-appeal. The Divisional Court was required to revisit old principles in a modern, post-Constitution context (and post Article 40.3 of the Constitution) and following defeat of the Referendum in 2011 in a manner which is properly considered novel when compared with earlier cases. Indeed, contrary to what is contended by the Respondents in their cross-appeal, the Appellant considers a novel feature of the decision of the Divisional Court to be the reversion to Blackstonian principles in a manner which appears inconsistent with more recent dicta of the Irish Superior Courts where the protections under Article 40.3 of the Constitution have been measured to defeat assertions of parliamentary immunity in cases such as *In Re Haughey* and *Maguire v. Ardagh*.
4. The Divisional Court did not err in having regard to the damaging effect of utterances made in Committee on the Appellant whilst at the same time concluding that such utterances were non-justiciable. Only the Superior Courts have jurisdiction to rule on the proper interpretation and application of Article 15.13 of the Constitution and, whether or not it was correct in finding utterances in Committee non-justiciable (a question this Court is asked to determine on appeal), this is a case which was properly brought by the Appellant. Accordingly, whether utterances in committee are justiciable or not under the Constitution or otherwise, the Divisional Court was

entitled to have regard to the damaging effect of those utterances (as found by that Court in its Principal judgment) in determining that the Appellant had a proper interest in bringing these proceedings which the Court could rely upon in ruling that she was entitled to a costs order in her favour given the importance of the case generally in clarifying an area of law of particular and special interest and of widespread public importance.

5. It is contested that the fact that the Appellant had a private interest in the outcome of the proceedings should operate, as contended by the Respondents in this case, to disentitle the Appellant to her costs notwithstanding the special and general importance of the issues arising for determination. The judgment of the Divisional Court was important in identifying the legal safeguards available to private citizens appearing on a voluntary basis to assist a Committee of the Houses. The fact that the Divisional Court concluded that there were no legal safeguards available to a citizen in those circumstances does not detract from the exceptional general public importance in obtaining clarification on this issue in a modern, post Constitution context and following defeat of the Referendum in 2011. This case could only ever have been properly brought by a private citizen with locus standi arising from a personal interest but the ruling of the Court on the issue will be widely applicable and is of benefit to the public generally, particularly those who seek to engage democratically with the institutions of Parliament.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

John Rogers S.C.
Siobhan Phelan S.C.

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

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:



**Eames Solicitors
Solicitors for the Respondent
2 Malthouse Square
Smithfield
Dublin 7**

Please submit your completed form to:

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

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.

THE SUPREME COURT

Record No. 2017/73

BETWEEN

ANGELA KERINS

APPELLANT / APPLICANT

AND

**DEPUTY JOHN MCGUINNESS, DEPUTY MARY LOU MCDONALD,
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KIERAN O'DONNELL, THE CLERK OF DÁIL ÉIREANN, THE CLERK OF
THE PUBLIC ACCOUNTS COMMITTEE, IRELAND AND THE
ATTORNEY GENERAL**

RESPONDENTS

Respondent's Notice of the Appellant in respect of the Cross Appeal

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