



**THE SUPREME COURT**

**DETERMINATION**

**BETWEEN/**

**EUGENIE HOUSTON**

**Plaintiff/ Appellant**

**AND**

**DAVID BARNIVILLE, PAUL O’HIGGINS, FERGAL FOLEY, MEL CHRISTLE, DECLAN  
DOYLE, PAUL MCGARRY, PADRAIG MCCARTAN, PAUL MCDERMOTT, SARA  
MOORHEAD, SHANE MURPHY, DAVID NOLAN, RONNIE ROBINS, HELEN BOYLE,  
BRIDGET BIRMINGHAM, DAVID DODD, SEAN GUERIN, JOHN LUCEY, GERARD  
MEEHAN, RODERICK MAGUIRE, LALITA MORGAN PILAY, NIALL O’DRISCOLL,  
DERVLA BROWNE, COLM O HOISIN, MARY ROSE GEARTY, GERARD MEEHAN,  
[FERGAL FOLEY] PATRICK MCGANN, DENIS MCCULLOUGH, ALAN DODD AND  
ANNE MARIE LAWLOR**

**Defendants/ Respondents**

CONSOLIDATED BY ORDER WITH

**2014 5258 P**

**BETWEEN/**

**EUGENIE HOUSTON**

**Plaintiff/ Appellant**

**AND**

**GENERAL COUNCIL OF THE BAR COUNCIL OF IRELAND**

**Defendant/ Respondent**

AND WITH

**2014/5715P**

**BETWEEN/**

**EUGENIE HOUSTON**

**Plaintiff/ Appellant**

**AND**

**THE GENERAL COUNCIL OF THE BAR COUNCIL OF IRELAND**

**Defendant/ Respondent**

AND WITH

**2014/10610P**

**BETWEEN/**

**EUGENIE HOUSTON**

**Plaintiff/ Appellant**

**AND**

**PATRICK O'NEILL, ANNE-MARIE LAWLOR, MAURICE O'CONNELL, DONAL  
O'KELLY, PATRICK MCCANN, DENIS MCCULLOUGH, ALAN DODD, AINE HYLAND,  
NOIRIN GREENE, MARIE SWEENEY**

**Defendants/ Respondents**

AND WITH

**2018/785P**

**BETWEEN/**

**EUGENIE HOUSTON**

**Plaintiff/ Appellant**

**AND**

**HUGH GEOGHGAN, DAITHI O CEALLAIGH, NIALL GREENE, GRAINNE CLOHESSY,**

**EUNAN O'HALPIN**

**Defendants/ Respondents**

**Neutral Citation:** [2021] IESCDET 35

**Supreme Court Record No.:** S:AP:IE:2020:000096

**Court of Appeal Record No.:** A:AP:IE:2019:000175

**High Court Record No.:** 2017/10507 P

**Date of Determination:** Friday, 26<sup>th</sup> March, 2021.

**Composition of Court:** O'Donnell J., McKechnie J., Dunne J.

**Status:** Approved

**APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.3° OF THE CONSTITUTION APPLIES**

**RESULT:** The Court does not grant leave to the Applicant to appeal to this Court from the Court of Appeal.

**ORDER SOUGHT TO BE APPEALED**

<b>COURT:</b> Court of Appeal
<b>DATE OF JUDGMENT OR RULING:</b> 23 <sup>th</sup> June 2020
<b>DATE OF ORDER:</b> 23 <sup>th</sup> June 2020

**DATE OF PERFECTION OF ORDER:** 29<sup>rd</sup> July 2020 Amended 23 November 2020

THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 19<sup>th</sup> AUGUST 2020 AND WAS IN TIME.

**REASONS GIVEN:**

**General Considerations**

1. The general principles applied by this Court in determining whether to grant or refuse leave to appeal, having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment, have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this court in *B.S. v. Director of Public Prosecutions* [2017] IESCDET 134, (Unreported, Supreme Court, 6 December 2017) and in a unanimous judgment of a full court delivered by O'Donnell J. in *Quinn Insurance Ltd. v. PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 I.R. 812. Accordingly, it is unnecessary to revisit the new constitutional architecture for the purpose of this determination.
2. Furthermore, the application for leave filed and the respondent's notice are published along with this determination (subject only to any redaction required by law), and it is therefore unnecessary to set out the position of the parties in any detail. No aspect of this ruling has precedential value as a matter of law.

**Background**

3. The applicant herein is a practising barrister who has been the plaintiff in a number of sets of proceedings against a number of parties, including the General Council of the Bar of Ireland, relating to her membership of the Law Library, and the application of the Code of Conduct of the Bar of Ireland to her. She seeks leave to appeal to this Court from an order of the Court of Appeal made on the 23<sup>rd</sup> June,

2020. It appears that the order of appeal made on that date, and perfected on the 29<sup>th</sup> July, 2020, contained a number of errors, and the order was subsequently amended, pursuant to the provisions of the Rules of the Superior Courts, on the 23<sup>rd</sup> November, 2020. The appeal to the Court of Appeal was from a judgment and order of the High Court made on the 15<sup>th</sup> March, 2019, awarding costs in the amount of €2,500.00 plus VAT, to a non-party to those proceedings, John Elliot, and in the amount of €3,000 plus VAT to a non-party, Ronan Brennan. The Court of Appeal, having considered the judgment and order of the High Court, the written submissions lodged by the applicant, and on behalf of the said John Elliot, and on behalf of Ronan Brennan, together with the other documents contained in the Book of Appeal, heard the applicant in person and counsel for John Elliot, and for Ronan Brennan, and dismissed the appeal of the applicant. A further order for costs was made against the applicant in respect of the appeal.

4. The applicant in her application has set out a number of matters which she says require a further appeal to this Court. She has stated that these issues arise under the heading of the "interests of justice", and does not rely on any matters said to give rise to an issue of general public importance. She contends that the issues that arise have the potential to impact many cases before the courts. She added that the law on legal costs is a combination of secondary or tertiary legislation, and new legislation in the form of the Legal Services Regulation Act. She contends that it is contrary to public policy, and in conflict with the fair administration of justice, that the Law Society should facilitate any solicitor, including a solicitor with a conflict of interest, such as she contends arises in respect of Ronan Brennan, in the manner that has been allowed to happen in this case. She went on to say that the relationship between the courts, and officers of the courts, is considered to be of such importance that, although barristers have rights of audience in all courts, that the committee making secondary and tertiary laws in respect of the courts has decided to limit the right to legal representation on a direct access basis to

barristers in contentious matters before the courts. She contends that, in that context, if it is to be the case that the unsubstantiated representation of an officer of the court acting in his own interest is to be accepted by the courts without challenge, this would mean that the "court/officer of the court" relationship has been reversed; the court is no longer holding the officer of the court to account, but instead is being directed by the officer of the court. She added that the question is further complicated by a recent comment, *obiter*, by the High Court, in which barristers and solicitors are each described as an officer of the court. Accordingly, she states that the issues that arise on this appeal include the following:

- (a) Who is an officer of the court?
- (b) What does the court expect of an officer of the court?
- (c) What does the court expect of the Register of Solicitors when he appears before the court?
- (d) Do remote hearings comply with the constitutional imperative that justice be administered in public?
- (e) Is the requirement for some parties to litigation to purchase a judgment on their case compatible with the courts' obligations under Article 2 Treaty on European Union?

On this basis, she contends that the legal professions, court users, the Oireachtas, and society at large, would benefit from a clear statement from the Supreme Court in respect of officers of the court, and holding to account officers of the court.

5. The respondents, Mr. Elliot and Mr. Brennan, each oppose the application for leave. Mr. Elliot points out that no grounds were advanced to suggest that this appeal should be permitted on the basis that it involves a matter of general public importance, and he agrees with that, and points out that this matter related to the

measuring of costs by the High Court which was done with the consent of the parties. Insofar as the interests of justice are concerned, he pointed out that the issue before the Court of Appeal was as to the measuring of costs, in his case of €2,500 plus VAT. He was a non-party to the proceedings before the High Court who was requested to reply to interrogatories raised by the applicant. She consented to the measuring of the respondent's costs by the learned High Court judge, and appealed to the Court of Appeal against the manner in which the learned High Court judge measured the costs of the respondent, Mr. Elliott. He contends that the interests of justice do not require an appeal, and disputes the suggestion that the issues have the potential to impact many cases before the courts, as suggested by the applicant. He pointed out that the applicant was afforded a full and unfettered opportunity to present her submissions to the High Court, and to the Court of Appeal. He added that the issues raised by the applicant, at paras. 8(1)-(7) of her application for leave to appeal, were not canvassed and did not arise in either the High Court or the Court of Appeal. Accordingly, he opposes the application for leave to appeal.

6. Mr. Brennan in his respondent's notice also disputes the suggestion that an appeal is necessary in the interests of justice, and points out that the matter pertains simply to the measuring of costs by the High Court. Like Mr. Elliot, he pointed out that the issue before the Court of Appeal related to the measuring of his costs, being a non-party in the proceedings in the High Court, but who was required to reply to the interrogatories raised by the applicant. He disputes the existence of any grounds in the application for leave which give a basis for a hearing in the interests of justice, or otherwise.

### **Judgments of the Court of Appeal and the High Court**

7. The Court of Appeal, in its judgment delivered *ex tempore* on the 23<sup>rd</sup> June, 2020, noted the narrowness of the appeal from the decision of the High Court in relation to the costs of Mr. Elliot and Mr. Brennan. It further noted that there was no dispute

as to the jurisdiction of the High Court to measure costs, nor was there any dispute about the fact that this was an appropriate case in which the court should do so. As is set out in the judgment, *"The procedure followed was that on 8<sup>th</sup> March 2019, all parties had indicated their agreement to the measurement of costs. In those circumstances, the matter was put back to 13<sup>th</sup> March 2019 to allow the various parties an opportunity to put information before the Court which would be of assistance to the Court when it came to measuring the costs. On 13<sup>th</sup> March 2019, a letter dated 12<sup>th</sup> March 2019 was submitted on behalf of Mr. Elliot. That letter was from Behan & Company, a legal costs accountant. At that stage, the matter was put back to 15<sup>th</sup> March 2019 in order to allow Ms. Houston to consider the situation. On 15<sup>th</sup> March, Ms. Houston did not put evidence or documentation before the Court, and neither, it must be said, did Mr. Brennan .... The parties were made aware that measurement of costs was in the offing. The parties agreed with that course of action; indeed, they actively encouraged it. An opportunity was provided to put material before the court. Then, there was an opportunity to consider that material and there was an opportunity to make submissions"*.

8. The Court of Appeal noted that there was criticism of the letter from Behan & Co. to which reference has been made. The criticism related apparently to the fact that the letter referred to the proceedings being in the competition list, whereas, by that stage, the proceedings were in the non-jury/judicial review list. Further criticism was made of the fact that there was no reference to the fact that an opportunity was provided to both non-parties to co-operate and to answer the interrogatories on a voluntary basis. Apparently, there was a further criticism that the material which was viewed and which was taken to support the level of fees sought was not enclosed. The Court of Appeal rejected the criticisms of the adequacy of the letter from Behan & Co. They noted that there was no counter-evidence, or counter-documentation, to challenge the information put forward on behalf of Mr. Elliot, and therefore concluded that the document before the Court was adequate. Dealing

with the position in relation to Mr. Brennan, it was pointed out on behalf of the applicant herein that the Behan letter referred only to Mr. Elliot, and the work carried out on his behalf, and no reference was made whatever to Mr. Brennan. The Court of Appeal noted that the High Court allowed Mr. Brennan a marginally lower brief fee on the basis that counsel for Mr. Brennan had the opportunity to adopt submissions made by his colleague on behalf of Mr. Elliot. Mr. Brennan, unlike the solicitor for Mr. Elliot, was not waving his professional fee, although in the letter from Behan & Co. they had referred to a professional fee in respect of the sum of €3,000. They were of the view that that was not an unreasonable figure for a professional fee, and thus it was a fee that the High Court judge took into account when he allowed a professional fee for the solicitor in the Brennan situation. The Court of Appeal viewed that as being a practical and pragmatic way of approaching things. Reference was made to the decision in the case of *Landers v. Dixon*, which concerns the measurement of costs, and the Court of Appeal concluded that there was an objectively defensible basis for the manner in which the measurement of costs was approached in respect of the Brennan costs. Accordingly, they rejected the suggestion that the High Court fell into error in dealing with the measurement of costs.

9. Brief reference should be made to the decision of the High Court in which it was noted as follows:

*"The only issue then is the costs, and as I have noted on the previous occasion, Ms. Houston and the other parties are agreed that I should measure the costs of this application. In doing so I invited both parties to submit to me any evidence they wished to submit by way of letters from costs accountants giving the court some guidance as to the level of fees which I should allow in all the circumstances of the case. Only one of the parties, Mr. Elliot, has availed of that offer, and I have the appropriate letter from Behan & Associates, and Mr. Guiden, who is a very experienced cost accountant who has put his views before the court."*

10. Having dealt with the costs of Mr. Elliot, the High Court judge then proceeded to deal with the costs of Mr. Brennan in the manner outlined previously. The High Court judge had regard to the fact that counsel on behalf of Mr. Brennan had a less onerous task than counsel on behalf of Mr. Elliot.

### **Decision**

11. As can be seen from the above, the decision of the Court of Appeal from the judgment and order of the High Court was solely concerned with the measurement of costs. All the parties had agreed that it was appropriate that the Court should measure the costs of the non-parties to the proceedings in respect of the application for interrogatories. All the parties were given an opportunity to put before the court information in regard to the appropriate level of costs for the application. Mr. Elliot was the only party who took that opportunity. The Court of Appeal had, as mentioned previously, referred to the decision in the case of *Landers v. Dixon*, in which Hogan J. had observed, in relation to the measurement of costs, as follows:

*"It is, of course, implicit in this approach that the judge must have some evidential or other objectively defensible basis for the manner in which costs are measured."*

12. Thus, it can be seen, that the decision of the Court of Appeal was solely concerned with whether or not the approach taken by the High Court in measuring costs was appropriate. As was observed, the procedure that was followed "*closely mirrored that which was recommended by this court in the case of Landers v. Dixon*". The applicant in this case has raised a number of issues which she says arise in the interests of justice, and require to be clarified by this Court. Given that the decision of the High Court was focused solely on the measurement of costs in respect of Mr. Elliot and Mr. Brennan arising out of an application for interrogatories, and that the Court of Appeal was solely concerned to assess whether or not the approach of the High Court was in accordance with the approach set out in the jurisprudence of that

court, it will be seen that the issue before the Court of Appeal was very narrow. The issues said to arise by the applicant have been set out previously. It is impossible to see any basis as to how the matters raised by the applicant could be said to arise from the decision of the Court of Appeal. For example, no issue was raised in the High Court or the Court of Appeal as to the position of "an officer of the court". As is apparent, the applicant has raised a number of matters which go far outside the issue that was actually before the Court of Appeal. It must be borne in mind that the process embarked upon by the High Court was one in respect of which the parties were agreed should be carried out, and the question before the Court of Appeal was whether or not the approach taken was the appropriate one. While the applicant has now raised an issue as to the form of hearing, that is, a remote hearing, no complaint as to the form of hearing was made to the Court of Appeal. Such hearings have become the norm in the current pandemic. As to the complaint as to the cost of preparing a transcript of the relevant hearings, litigation carries costs. The applicant is in no different a position than other litigants who are required to take up a transcript of a judgment or ruling which is the subject of an appeal.

13. In the circumstances, the issues raised by the applicant simply do not meet the threshold for an appeal to this Court. Accordingly, this Court refuses leave to appeal.