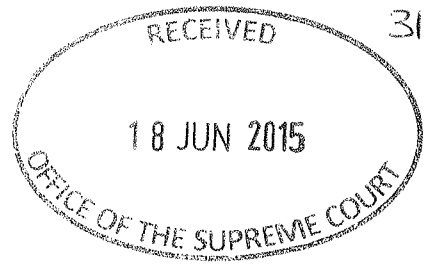


31155



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	
SUBJECT MATTER FOR INDEXING	

LEAVE IS SOUGHT TO APPEAL FROM

<input checked="" type="checkbox"/> THE COURT OF APPEAL	<input type="checkbox"/> THE HIGH COURT
---	---

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

STANISLAV BEDEREV	V	IRELAND, THE ATTORNEY GENERAL AND THE DIRECTOR OF PUBLIC PROSECUTIONS
RECORD No. 11018/2012P		
DATE OF FILING	18 TH JUNE 2015	
NAME(S) OF APPLICANT(S)/APPELLANT(S)	IRELAND, THE ATTORNEY GENERAL AND THE DIRECTOR OF PUBLIC PROSECUTIONS	
SOLICITORS FOR APPLICANT(S)/APPELLANT(S)	EILEEN CREEDON ,CHIEF STATE SOLICITOR	
NAME OF RESPONDENT(S)	STANISLAV BEDEREV	
RESPONDENT'S SOLICITORS	MARTIN & GATELY SOLICITORS	
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"/> X	<input type="checkbox"/> NO
IF YES, PLEASE EXPLAIN WHY			

1. Decision that it is sought to appeal

NAME(S) OF JUDGE(S)	MR JUSTICE GERARD HOGAN MS JUSTICE MARY FINLAY GEOGHEGAN (CONCURRING) MR JUSTICE MICHAEL PEART (CONCURRING)
DATE OF ORDER/JUDGMENT	10 MARCH 2015 (DATE OF PERFECTION 25 MAY 2015)

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	IRELAND, THE ATTORNEY GENERAL AND THE DIRECTOR OF PUBLIC PROSECUTIONS
-----------------------	---

ORIGINAL STATUS	<input type="checkbox"/> PLAINTIFF	<input checked="" type="checkbox"/> DEFENDANT
	<input type="checkbox"/> APPLICANT	<input type="checkbox"/> RESPONDENT
	<input type="checkbox"/> PROSECUTOR	<input type="checkbox"/> NOTICE PARTY
	<input type="checkbox"/> PETITIONER	

Solicitor Donough McGuinness			
NAME OF FIRM	CHIEF STATE SOLICITOR'S OFFICE		
EMAIL	DONOUGH_MCGUINNESS@CSSO.GOV.IE		
ADDRESS	OSMOND HOUSE LITTLE SHIP STREET	TELEPHONE NO.	(01)4176267
		DOCUMENT EXCHANGE NO.	DX 186001
POSTCODE	DUBLIN 8	REF.	DMCG/2012/05279

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	ROBERT BARRON SC		
EMAIL	RBARRON@LAWLIBRARY.IE		
ADDRESS	145-151 CHURCH STREET	TELEPHONE NO.	(01)8174570
		DOCUMENT EXCHANGE NO.	816015
POSTCODE	DUBLIN 7		

Counsel			
NAME	ELIZABETH COGAN BL		
EMAIL	ECOGAN@LAWLIBRARY.IE		
ADDRESS	145-151 CHURCH STREET	TELEPHONE NO.	0876794165 (01)8175510
		DOCUMENT EXCHANGE NO.	816578
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	STANISLAV BEDEREV
------------------------	-------------------

ORIGINAL STATUS	<input checked="" type="checkbox"/>	PLAINTIFF			DEFENDANT
	<input type="checkbox"/>	APPLICANT			RESPONDENT
	<input type="checkbox"/>	PROSECUTOR			NOTICE PARTY
	<input type="checkbox"/>	PETITIONER			

SOLICITOR LAUREN MARTIN			
NAME OF FIRM	MARTIN & GATELY SOLICITORS		
EMAIL	INFO@MARTINGATELY.IE		
ADDRESS	36 CHARLES STREET WEST	TELEPHONE NO.	(01) 5143800
		DOCUMENT EXCHANGE NO.	
		REF.	LM
POSTCODE	DUBLIN 7		

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	SUNNIVA McDONAGH SC		
EMAIL	SMCDONAGH@LAWLIBRARY.IE		
ADDRESS	145-151 CHURCH STREET	TELEPHONE NO.	(01)8174975
		DOCUMENT EXCHANGE NO.	816319
		POSTCODE	DUBLIN 7

COUNSEL			
NAME	JOHN NOONAN BL		
EMAIL	JNOONAN@LAWLIBRARY.IE		
ADDRESS	LAW LIBRARY FOUR COURTS	TELEPHONE NO.	(01)8172353
		DOCUMENT EXCHANGE NO.	818157

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"/>	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

1. Scope of the Appeal

The Appellants seek to appeal the entire decision of the Court of Appeal.

2. Statement of Relevant Facts Found by Trial Court

In the High Court, the learned judge did not formally set out findings of fact.
The following relevant facts were established:

(1) New substances and patterns of misuse emerge at a rapid pace and legislation in a format, such as that used in the Dangerous Drugs Act 1934, which was more specific than the Misuse of Drugs Act 1977 Act [“the Act”] in that it named in its long title and its provisions a number of specific substances that it aimed to regulate, frequently has difficulty in keeping up to date. It is thereby often rendered ineffective after a short number of years. [partially paraphrased, para. 46 judgment]

- (2) The Act attempts to deal with this problem by ensuring that it does not, other than in its Schedule, name any specific substances which it seeks to define as "controlled". Section 2(2) of the Act ensures that the Government can keep pace with new developments and that there will not be a need to completely renew the legislative scheme after a few short years **[para.46]** That is not to say that there are no principles and policies in the Act which can give guidance to the Government in the exercise of its discretion;
- (3) The Act contains provisions (offences in respect of the possession and possession with intent to supply controlled substances; onerous penalties on conviction; offences in respect of the cultivation of certain substances and the power of the court to require the provision of reports into the health or medical condition of convicted persons, some of whom will be suffering from drug addiction) the purpose of which is clearly to discourage the misuse of dangerous and harmful substances and to deal with the consequences of such misuse as and when it arises; **[para.47]**
- (4) It is clear from the scheme of the Act that one of the main purposes of the legislation is to regulate and provide for the consequences of the misuse of certain drugs. The overall purpose of the Act can be taken from the legislation as being the control of those substances which are most commonly abused and misused by individuals and the protection of individuals and society from the effects of the misuse of certain harmful and dangerous substances. **[para.50 & 51]**
- (5) The emergence of new substances and patterns of misuse is a regular and frequent occurrence. The Oireachtas may not always be able to act with sufficient speed to address the urgency of newly arising situations. **[para. 53];**
- (6) The policy of the Oireachtas is clear from the legislation; to control and regulate those substances which are subject to misuse and which would cause harm to human health and to society as a whole if not controlled. This is clear from the simple policy decision taken by the Oireachtas in this legislation to criminalise the activities in question **[para.53];**
- (7) It cannot but be the case that the classification of new substances and patterns of misuse is a dynamic and evolving task, that is technical in nature and requires a level of skill which members of the Oireachtas would not necessarily have **[para.53].**
- (8) The Schedule to the Act provides a clear list of controlled substances. The exact names and chemical formulae of any new controlled substances, which would be so designated by the powers invested in Government under section 2(2) of the Act, would be set out in a statutory instrument **[para. 55];**
- (9) The principles and policy behind the legislation are self-evident **[56].**
- (10) The legislative context, historical perspective and the scheme of the Act all make clear that it aims to control substances which would have negative and detrimental effects on human health and society and is limited to those substances which are likely to be universally harmful to those who misuse them. It is clear that alcohol is not intended to be controlled by this legislation as there is a vast *corpus juris* of legislation of

the sale and consumption of alcohol [56];

(11) The following relevant evidence was furthermore accepted:

- The process of controlling new drugs is an urgent one having regard to the dangers to human health associated with the substances in question. [Marita Kinsella's evidence, as above]
- The Misuse of Drugs Act, 1977 was enacted in the context of the existence of two principal UN Conventions which provided for the control at international level (including imposing obligations on State parties) of narcotic and psychotropic substances, collectively psychoactive substances, which are:-

"... usually substances which effect the central nervous system which produce stimulation, depression, they are usually substances that have a very high potential to be misused."

[Marita Kinsella's evidence, as above]

- The Oireachtas had regard to the two UN Conventions of 1961 and 1971 in enacting the Misuse of Drugs Act, 1977, which Conventions themselves provided for the addition of new proscribed substances over time, something that has occurred with the addition of a number of substances at the time the Misuse of Drugs Act, 1977 was enacted. [Marita Kinsella's evidence, as above]

3. (a) Findings and orders in the High Court

In holding, in summary, as follows –

(i) that when used in section 2(2) of the Act, the term any “substance, product or preparation” should be construed by reference to the classes of substances found in the list of items in the Schedule and could not include substances which do not bear comparison with those substances;

(ii) there are adequate principles and policies discernible from the overall scheme of the legislation to guide the Government in the exercise of the discretion delegated to it by s.2 of the legislation;

(ii) that the term “any substance, produce or preparation” which is at issue in section 2(2) of the Act must clearly be read in the context of the legislative scheme with a view to the overall purpose of the legislation, as evident from the scheme;

(iii) that the policy of the Oireachtas, to control and regulate those substances which are subject to misuse and which would cause harm to human health and society as a whole if not controlled, is clear from the legislation;

(iv) that the power of review and annulment of regulations created under section 2(2) of the Act retained by the Oireachtas under section 38(3) of the Act is an important safeguard;

(v) in respect of the requirement that the provision in question be sufficiently clear to allow a

litigant to effectively challenge by way of judicial review the delegated legislation or administrative action concerned, that the Act is not deficient

the learned trial judge refused the relief sought in the proceedings.

The learned trial judge in his order of 4 July 2014, perfected on the 16 July 2014,

- refused the relief sought on the Plaintiff's application;
- dismissed the Plaintiff's action;
- ordered that the Defendants recover against the Plaintiff the costs of the action when taxed and ascertained in default of agreement and
- ordered that the order be stayed until the 31st of July 2014.

(b) Findings in the Court of Appeal

In holding, in summary, as follows -

- (i) Section 2 (2) of the Act was framed in such a way as to give the Government the maximum freedom to make an order under that sub-section so that it was not constrained by the parameters of the existing categories of controlled drugs specified in the schedule;
- (ii) the fundamental difficulty is that the 1977 Act determined that only "certain" dangerous or harmful drugs would be controlled, thus leaving important policy judgments to be made by the Government rather than by the Oireachtas;
- (iii) the Government is more or less at large in determining which substances or products should be declared to be controlled drugs, given the breadth of section 2(2) of the 1977 Act. There is almost no guidance given on which drugs are liable to misuse such that they should be declared controlled by the provisions of the 1977 Act and the key words in the long title ("misuse", "certain", "harmful", "dangerous") are too general to be sufficient for this purpose;
- (iv) while terms such as "misuse", "dangerous" and "harmful" which are contained in the long title represent laudable and desirable objectives, they do not in themselves constitute a sufficient restriction on the more or less unlimited power of regulation vested in the Government by s.2(2) of the 1977 Act in relation to what "substances, products or preparations" should be declared to be controlled drugs;
- (v) while a power of annulment, such as that retained at section 38(3) of the Act, is of some assistance in considering whether the legislation under challenge violates Article 15.2.1, the presence of such a provision will rarely be a decisive consideration. The fact that an order of this kind can subsequently be annulled cannot in itself save a statutory provision which clearly offends Article 15.2.1;
- (vi) the conclusion that section s.2(2) of the 1977 Act purports to vest the Government with what, in the absence of appropriate principles and policies set out in the legislation itself, are in truth law making powers is unavoidable.

The learned judges allowed the appeal and ordered as follows:

- that the appeal be allowed and that the Order of the High Court be set aside and in lieu thereof

and declared that

- section 2(2) of the Misuse of Drugs Act 1977 is repugnant to Article 15.2.1 of the Constitution and is therefore invalid
- having regard to said finding the Misuse of Drugs Act 1977 (Controlled Drugs) (Declaration)(Order) 2011 (S.I. No.551 of 2011) is accordingly invalid

and ordered that the Plaintiff recover from the Defendants the costs of the appeal and of the High Court proceedings (to include any reserved 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.

1. These proceedings, whereby the Plaintiff has sought, and obtained in the Court of Appeal, a declaration that section 2(2) of the Misuse of Drugs Act 1977 is invalid on the grounds that it contravenes Article 15.2.1 of the Constitution, raise a constitutional issue of far-reaching importance.
2. The judgment of the Court of Appeal has significant implications in respect of the application generally of the principles and policies test to delegated powers provided for in primary legislation. The effective functioning of the state is reliant on the ability of the executive to adopt regulations pursuant to such powers and the power of the legislature to provide for same. Clear guidance on the standards applicable in the assessment of the constitutional propriety of such delegated powers, having regard to the requirements of Article 15.2.1 is required.
3. This is particularly important in the specific context of the Misuse of Drugs legislation. The Oireachtas passed emergency legislation in the form of the Misuse of Drugs (Amendment) Act, 2015, which confirmed the validity in law (on the day after the passing of the said Act) of all the Regulations previously adopted by the Government pursuant to Section 2(2) of the 1977 Act. But the question remains as to how the Oireachtas may delegate the power to the Government (or any Minister or other

body) to add new controlled substances expeditiously in the future in a manner that would not be found to infringe Article 15.2.1. This is a matter of general societal importance because of the need for the State to be able to respond expeditiously to the emergence of new drugs of misuse in the future.

4. The Court of Appeal considered *inter alia* the significance, in the context of the separation of powers, of provisions for the annulment by the Oireachtas of Regulations made pursuant to delegated powers in parent legislation as well as general statements on the role of the long title as an aid to statutory construction, thereby incorporating a consideration of important rules of statutory interpretation of broad implication.

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 Specific Grounds of Appeal and Error(s) of Law

- (1) The learned judges erred in law in holding that the Government is more or less at large in determining which substances or products should be declared to be controlled drugs pursuant to Section 2(2) of the Misuse of Drugs Act, 1977.
- (2) The learned judges erred in law in finding that the United Nations Single Convention on Narcotic Drugs, 1961 and the United Nations Convention on Psychotropic Substances, 1971 were irrelevant to the interpretation of the power delegated to the Government by Section 2(2) of the Misuse of Drugs Act, 1977.

- (3) The learned judges erred in law in finding that the Schedule to the Misuse of Drugs Act, 1977 could not be read *ejusdem generis* so as to limit the scope of the power under Section 2(2) of the Misuse of Drugs Act, 1977.
- (4) The learned judges erred in law in holding that Section 2(2) of the Misuse of Drugs Act, 1977 left important policy judgments to be made by Government rather than by the Oireachtas.
- (5) The learned judges erred in holding that the objectives of the Misuse of Drugs Act, 1977 were insufficient to restrict the power of regulation contained in Section 2(2) within the limits permitted by Article 15.2.1 of the Constitution.
- (6) The learned judges erred in the manner in which they gave consideration to the power of annulment contained in Section 38(3) of the Misuse of Drugs Act, 1977 and in thereby concluding that it did not save Section 2(2) from a finding of unconstitutionality.

2. 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) The Misuse of Drugs Act, 1977 enjoys the presumption of constitutionality. Consequently, it is presumed that the power conferred on the Government by Section 2(2) of the Misuse of Drugs Act 1977 can only be exercised in a manner that is rational and, in that regard, in a manner that complies with the principle of proportionality.
- (2) In ascertaining the intention of the Oireachtas and hence the meaning of legislation, it is a principle of statutory interpretation that the Courts have regard to the legislative history of the enactment. In that regard, the Misuse of Drugs Act, 1977 was enacted against the background of the Dangerous Drugs Act, 1934, the limitations of that Act in terms of anticipating the evolution of drugs of misuse and the adoption internationally of the two United Nations Conventions, of which indirect reference was made in Section 20 of the Misuse of Drugs Act, 1977.
- (3) It is a principle of law that words bear the same meaning throughout a statute. It is a further principle of law that words and phrases in statutes are coloured by the surrounding words. In Section 2 of the Misuse of Drugs Act, 1977 the phrase “substance, product or preparation” is used in both subsection (1) and subsection (2). The Schedule sets out a list of such substances, products or preparations, which thereby inform the meaning of “substance, product or preparation” as used in Section 2(2) of the Act.
- (4) The policy of the Misuse of Drugs Act, 1977 is to protect the public from dangerous or otherwise harmful drugs by providing a comprehensive scheme for prohibiting and/or regulating the use of such substances. There is no important policy judgment left to the Government under Section 2(2). Its role is to keep the legislation up to date by adding newly recognised drugs of misuse as they emerge (or as their misuse

emerges), against a known background of rapid evolution of drugs of misuse at and before 1977.

- (5) Article 15.2.1 of the Constitution provides that the sole and exclusive power of making laws for the State is vested in the Oireachtas. It does not preclude the Oireachtas, in delegating the power to implement its laws by way of regulation, from conferring a discretion on the subsidiary body in question to determine what measures fit within the legislative scheme so enacted. The objectives of the Misuse of Drugs Act, 1977, whether read alone (from the long title) or in its legislative context and/or with regard to the Schedule to the Act, do not permit the Government such a degree of discretion as amounts to a purported delegation of the exclusive law-making power of the Oireachtas. Its function is to keep the Misuse of Drugs Act, 1977 up to date with developments in the illicit drugs market.
- (6) A power of annulment in an Act is a factor to take into account in determining whether a delegated power infringes Article 15.2.1 of the Constitution and not having first determined that there is a breach of Article 15.2.1. Furthermore, or in the alternative, Section 2(2) of the Misuse of Drugs Act, 1977 does not clearly offend Article 15.2.1.

3. Specific Provisions of the Constitution, Acts(s) of the Oireachtas, Statutory Instruments(s) and other legal instruments relied on

Article 15.2.1 of the Constitution

Dangerous Drugs Act 1934, Parts I to VI

United Nations Single Convention on Narcotic Drugs, 1961

United Nations Convention on Psychotropic Substances, 1971

Statutory Instruments S.I. No. 99/1970 Health (Possession of Controlled Substances) Regulations 1970

Statutory Instruments S.I. No. 55/1974 Health (Possession of Controlled Substances) (Amendment) Regulations 1974

Misuse of Drugs Act 1977, whole Act, and in particular sections 2(1), (2)(2), 20 and 38(3) thereof

Misuse of Drugs Act 1984, whole Act, and in particular section 6,7, 8 and 14 thereof

Misuse of Drugs Act (Controlled Drugs)(Declaration) Order 2011, Statutory Instruments S.I. 551 of 2011

Misuse of Drugs (Amendment) Act 2015, whole Act

4. The issues of law before the Court appealed from to the extent that they are relevant to the issues of appeal

There was no list of issues of law before the Court of Appeal

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

Robert Barron SC

Elizabeth Cogan 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

Court of Appeal [2015] IECA 38

References to Law Report in which any relevant judgment is reported

[Neither 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:

An order allowing the Respondents' appeal;

An order setting aside the Order of the Court of Appeal allowing the appeal and setting aside the Order of the High Court;

An order setting aside the Order of the Court of Appeal declaring that section 2(2) of the Misuse of Drugs Act 1977 is repugnant to Article 15.2.1 of the Constitution and is therefore invalid;

An order setting aside the Order of the Court of Appeal declaring that the Misuse of Drugs Act 1977 (Controlled Drugs) (Declaration) Order 2011 (S.I. 551 of 2011) is accordingly invalid;

An order setting aside the Order for the Plaintiff's costs of the appeal and of the High Court proceedings (to include any reserved costs) to be taxed in default of agreement to be recovered from the Defendant

An order affirming the Order of Gilligan J. in the High Court dismissing the Plaintiff's claim

An order affirming the Order of Gilligan J. in the High Court for costs to be paid by the Plaintiff in to the Defendants (the Appellants)

An order vacating the Order of Gilligan J. in the High Court staying the order for the Defendant's costs

An order for Defendants to recover from the Plaintiff the costs of the proceedings in the High Court, the Court of Appeal and in this appeal to include any reserved costs.

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

THE PLAINTIFF IN THE PROCEEDINGS, THE RESPONDENT TO THIS APPEAL, HAS SOUGHT AND OBTAINED IN THE COURT OF APPEAL A DECLARATION THAT SECTION 2(2) OF THE MISUSE OF DRUGS ACT 1977 IS REPUGNANT TO ARTICLE 15.2.1 OF THE CONSTITUTION AND IS THEREFORE INVALID AND THAT ACCORDINGLY THE MISUSE OF DRUGS ACT 1977 (CONTROL OF DRUGS) (DECLARATION) ORDER, STATUTORY INSTRUMENTS S.I. 551 OF 2011 IS INVALID

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:

LAURENTIU V MINISTER FOR JUSTICE [1999] 4 I.R. 26
MCGOWAN V LABOUR COURT [2013] 2 ILRM 276
THE PEOPLE (DIRECTOR OF PUBLIC PROSECUTIONS) V QUILLIGAN (No.2) [1986] I.R. 495

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:

1. THE CONSEQUENCES OF THE COURT OF APPEAL'S DECLARATION THAT SECTION 2(2) OF THE MISUSE OF DRUGS ACT IS INVALID ARE FAR –REACHING. IN PARTICULAR, THE COURT'S JUDGMENT HAS IMPACTED ON A NUMBER OF PENDING CRIMINAL PROSECUTIONS INVOLVING OFFENCES PERTAINING TO DRUGS DECLARED TO BE CONTROLLED UNDER THE IMPUGNED MECHANISM PROVIDED FOR AT SECTION 2(2) OF THE MISUSE OF DRUGS ACT 1977.

2. GIVEN THE NATURE OF THE MATTERS AT ISSUE IN THIS APPEAL IT IS IN THE PUBLIC INTEREST THAT AN APPEAL OF THE COURT OF APPEAL'S JUDGMENT BE BROUGHT AND DETERMINED AS EXPEDITIOUSLY AS POSSIBLE.

3. THE JUDGMENT OF THE COURT OF APPEAL HEREIN HAS TO DATE GIVEN RISE TO THREE APPLICATIONS FOR AN INQUIRY PURSUANT TO ARTICLE 40.4.1 OF THE CONSTITUTION INTO THE LEGALITY OF THE DETENTION OF PERSONS CONVICTED OF DRUGS OFFENCES PERTAINING TO SUBSTANCES DECLARED TO BE CONTROLLED UNDER THE SAID MECHANISM, WITH CONSEQUENT COST TO THE EXCHEQUER. THE REJECTION OF THESE APPLICATIONS IN THE JUDGMENT OF KEARNS, J. DELIVERED IN THE HIGH COURT ON 24 APRIL 2015 IS NOW THE SUBJECT OF APPEALS BY TWO OF THE APPLICANTS. THERE MAY BE MORE SUCH APPLICATIONS PURSUANT TO ARTICLE 40.4.1.

Signed: Eileen Creedon

(Solicitor for) the applicant/appellant

Eileen Creedon, 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.