

## 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**

<b>Sarah Comiskey</b>		<b>V</b>	<b>Employment Appeals Tribunal</b>	
High Court Record Nr	<b>2015 269 JR</b>	Court of Appeal Record Nr	<b>2015/459</b>	
Date of filing	<b>16 August 2016</b>			
Name of Appellant	<b>Sarah Comiskey</b>			
Solicitors for Appellant	<b>Cormac O'Ceallaigh &amp; Co.</b>			
Name of Respondent(s)	<b>Employment Appeals Tribunal</b>			
Respondent's solicitors	<b>Chief State Solicitors Office</b>			
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 type="checkbox"/> No <input checked="" type="checkbox"/>		

Are you applying for an extension of time to apply for leave to appeal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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**1. Decision that it is sought to appeal**

Name(s) of Judge(s)	<b>Ryan P., MacMenamin and Finlay-Geoghegan JJ.</b>
Date of order/ Judgment	<b>18 July 2016</b>

**2. Applicant/Appellant details**

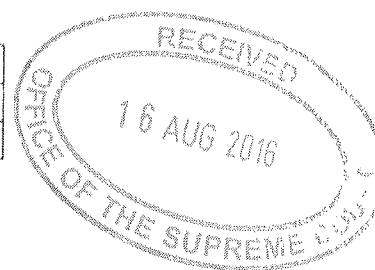
Where there are two or more applicants/appellants by or on whose behalf this notice is being filed please provide relevant details for each of the applicants/appellants

Appellant's full name	<b>Sarah Comiskey</b>
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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



<b>Solicitor</b>			
Name of firm	<b>Cormac O'Ceallaigh &amp; Co.</b>		
Email	info@coclegal.ie		
Address	388 North Circular Road, Phibsboro, Dublin 7	Telephone no.	(01)8300656
		Document Exchange no.	
Postcode		Ref.	

How would you prefer us to communicate with you?

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

<b>Counsel</b>			
Name	<b>Ercus Stewart S.C.</b>		
Email	estewart@lawlibrary.ie		
Address	Distilley Building, 145-151 Church Street, Dublin 7	Telephone no.	(01) 817 5175
		Document Exchange no.	816 420B
Postcode			

<b>Counsel</b>			
Name	<b>David O'Brien B.L.</b>		
Email	davidobrien@lawlibrary.ie		
Address	Law Library, Four Courts, Dublin 7	Telephone no.	(01) 817 7757
		Document Exchange no.	811 050
Postcode			

### 3. Respondent details

Respondent's full name	<b>Employment Appeals Tribunal</b>
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Original status	<input type="checkbox"/>	Plaintiff	<input type="checkbox"/>	Defendant	Is this party being served with this Notice of Application for leave?
	<input type="checkbox"/>	Applicant	<input checked="" type="checkbox"/>	Respondent	
	<input type="checkbox"/>	Prosecutor	<input type="checkbox"/>	Notice Party	
	<input type="checkbox"/>	Petitioner	<input type="checkbox"/>		
		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

<b>Solicitor</b>			
Name of firm	<b>Chief State Solicitors Office</b>		
Email	emma_golden@csso.gov.ie		
Address	Osmond House, Ship Street Little, Dublin 8	Telephone no.	(01) 4176203
		Document Exchange no.	
Postcode		Ref.	

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

Notice Party	<b>Sean Conlan</b>
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Original status	<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant	Is this party being served with this Notice of Application for leave?	
	<input type="checkbox"/> Applicant	<input type="checkbox"/> Respondent		
	<input type="checkbox"/> Prosecutor	<input checked="" type="checkbox"/> Notice Party		
	<input type="checkbox"/> Petitioner	<input type="checkbox"/>		
Yes		<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

Solicitor			
Name of firm	Sean Conlan & Co.		
Email	seanconlanandco@gmail.com		
Address	Main Street, Ballybay, Co. Monaghan	Telephone no.	(042) 9755500
		Document Exchange no.	
		Ref.	
		Postcode	

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

Notice Party	<b>Cathy Shevlin</b>
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Original status	<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant	Is this party being served with this Notice of Application for leave?	
	<input type="checkbox"/> Applicant	<input type="checkbox"/> Respondent		
	<input type="checkbox"/> Prosecutor	<input checked="" type="checkbox"/> Notice Party		
	<input type="checkbox"/> Petitioner	<input type="checkbox"/>		
Yes		<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

Solicitor			
Name of firm	Barry Healy & Co.		
Email	barry@healylaw.ie		
Address	Laurel Lodge, Hillside, Monaghan, Co. Monaghan	Telephone no.	(047) 71556
		Document Exchange no.	
		Ref.	
		Postcode	

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

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

It is sought to appeal from the entire decision of the Court of Appeal.

The Court of Appeal found *inter alia* that:

- a) the impugned section and wording of the determination of the Employment Appeals Tribunal UD1238/2013 which the Appellant challenges and furthermore which forms the subject matter of the within proceedings (hereinafter called “the determination”) alleged by the Appellant to have damaged her was merely explanatory in nature and related to the claimant’s claim of unfair dismissal in the proceedings before the Employment Appeals Tribunal and not capable of damaging her; accordingly, the Appellant did not possess *locus standi* to challenge the said determination of the Employment Appeals Tribunal, or part thereof;
- b) Furthermore, and more generally, the High Court (O’Malley J.) was correct in finding that the applicant held no *locus standi* to challenge a determination of the Employment Appeals Tribunal in proceedings in which the applicant was not a party.

The Court of Appeal formally ordered that the Appellant’s appeal be dismissed on grounds, *inter alia*, that the Court considers that there was no adverse finding against the Applicant in the said determination of the Employment Appeals Tribunal bearing record number UD1238/2013.

#### 5. Reasons why the Supreme Court should grant leave to appeal

The Employment Appeals Tribunal, in proceedings to which the Appellant was not a party, nor present at, nor in which was afforded an opportunity to respond, recorded in its determination, on permanent public and national record, a damaging finding of fact against the Appellant which the Appellant alleges has already, as a matter of fact, materially adversely affected her right to a good name pursuant to Article 40.3.2 of the Constitution and furthermore continues to do so on an on-going basis.

The issue as to whether the impugned text complained of by the Appellant constitutes an adverse and harmful finding of fact against the Appellant was not heard or ruled upon in the High Court and accordingly only first arose as a consideration of the Court of Appeal. If the

said point was in issue in the High Court, in accordance with fair procedures the Appellant could have been afforded an opportunity to rebut it and, if necessary, with leave of the Court, furnished evidence to substantiate her claim that she had as a matter of fact been materially prejudiced by virtue of media and online records of the findings made by the Employment Appeals Tribunal against her. If this Honourable Court is minded to grant leave to the Appellant to bring an appeal before this Court, it is submitted that the Appellant will, subject to the leave of this Court, be in a position to adduce evidence to substantiate and clarify the manner and extent to which the Appellant has as a matter of fact been prejudiced by media reports relating to the aforesaid proceedings before the Employment Appeals Tribunal.

***a) Reasons in law why the decision sought to be appealed involves a matter of general public importance:***

1. The judgments of the High Court and the Court of Appeal in the within proceedings formally set forth as judicial precedent in this jurisdiction the following:-
    - i) That a statutory decision-making body is entitled without any sanction to permanently make, record and inscribe on national and publically available record an adverse finding of fact against the good name and professional reputation of a private person who was neither a party to the proceedings before the decision-making body, nor present at the said proceedings, nor provided with notice of the possibility of such a finding of fact being recorded against them, nor provided with a right of reply before such an adverse finding of fact is ultimately set down on permanent record -  
  
notwithstanding that the said adverse and damaging finding of fact causes and/or has caused and/or is capable of causing material injury to the aggrieved person's right to a good name and reputation pursuant to Article 40.3.2 of Bunreacht na hÉireann;

-AND-

  - ii) That aggrieved person, as a rule, has no recourse to judicial remedy on the basis that he or she does not have *locus standi* to challenge a determination of a statutory decision-making body in proceedings to which he or she was not a party.
2. Accordingly, it is respectfully submitted that it is manifestly a matter of the utmost general public importance for this Court to determine whether, as a matter of law, private citizens in this jurisdiction who are not a party to proceedings before a

decision-making body should be precluded by way of the issue of *locus standi* from (a) relying on safeguards of constitutional justice and fair procedure - specifically the protection of the *audi alteram partem* rule, and, (b) challenging by way of judicial review a decision of decision-making body which is recorded on national and public record where that decision or part thereof (i) adversely affects that person's right to a good name pursuant to Article 40.3.2 of Bunreacht na hÉireann and (ii) no other avenue of redress, statutory or otherwise, is available to that person to facilitate remediation of the matters complained of.

***b) Reasons why in the interests of justice it is necessary that there be an appeal to the Supreme Court***

1. The Appellant has been denied justice, fair procedure and the rule of law in the Employment Appeals Tribunal determination and the decisions of both the High Court and the Court of Appeal. If proceedings had been conducted in accordance with the rule of law and fair procedure, the Appellant's position would have been validated. In the absence of an appeal being granted to the Appellant, the Appellant will be denied justice permanently in respect a most serious infringement of her constitutional right to her good name and reputation.

*Particulars*

2. It was at all material times open to the Employment Appeals Tribunal to refer to the matters complained of by the Appellant (if necessary) as a claim within the section "Claimant's case" and/or to attempt to carefully phrase and/or refer to same in such a way as to not make a determinative adverse finding of fact against the Appellant within the section entitled "Determination".
3. The Employment Appeals Tribunal, on the contrary, elected to make a specific, positive finding of fact against the Appellant in its Determination in a manner which it is respectfully submitted is fundamentally inconsistent with the tenets of constitutional justice and fair procedure and most particularly the *audi alteram partem* rule.
4. The said determinative finding of fact that the Appellant caused or contributed to the claimant's work related stress in the context of bullying and harassment and unfair dismissal portrays the Appellant as a person with a propensity to engage in bullying and/or anti-collegial behaviour. It has already been expressly stated to the Appellant

that the media reporting and online presence generated from the aforesaid Employment Appeals Tribunal proceedings constituted a material factor in the rejection of the Appellant's application for employment in an American law firm.

5. In the absence of judicial remedy, the specific, damaging finding by the Employment Appeals Tribunal that the Appellant caused and/or contributed to the work related stress of a co-employee in the context of bullying and harassment and unfair dismissal shall permanently be left on national, public record and shall, on balance, continue to affect the Appellant's personal and professional reputation and prospects of employment in the future.
6. The Employment Appeals Tribunal has not provided any justification to the Appellant as to why, having been put on notice of the issues complained of, the offending text was not simply expunged, redacted or deleted by the Employment Appeals Tribunal at no prejudice, cost or inconvenience to any party.
7. The substantive reliefs sought by the Appellant herein do not cause any prejudice to the proceedings of the Respondent or notice parties to the Employment Appeals Tribunal proceedings and are capable of being granted without causing any prejudice to the substance of the determination itself or to the awards made therein.

#### **6. Ground(s) of appeal which will be relied on if leave to appeal is granted**

- A. The learned Court of Appeal erred in law and/or erred in a mixed question of law and fact and/or misdirected itself in ruling that the words in determination complained of by the Appellant did not have a capacity to damage the good name and reputation of the Appellant.

##### Particulars

- i) The learned Court of Appeal Judges erred in law and/or erred on a mixed question of law and fact in determining that a specific positive finding by the Employment Appeals Tribunal that the Appellant caused and/or contributed to the work related stress of the claimant in the course of the Appellant's employment, in the context of bullying and harassment and unfair dismissal, was merely explanatory in nature and did not constitute an adverse finding of fact by the Employment Appeals Tribunal against the Appellant which

was capable of materially damaging the Appellant's right to a good name and/or future employment prospects.

ii) The learned Court of Appeal Judges further erred in law and/or erred on a mixed question of law and fact in failing to have regard or adequate regard to submissions made by counsel on the Appellant's behalf that, on the contrary, media reports and the online presence of the Appellant resulting from the impugned finding of fact by the Employment Appeals Tribunal were expressly referenced by a managing-partner of an American law firm as a reason for the firm's refusal of the Appellant's employment application thereto.

B. The learned Court of Appeal erred in law and/or erred in a mixed question of law and fact and/or misdirected itself in dismissing the Appellant's appeal and upholding the refusal of the High Court (O'Malley J.) to grant an application for judicial review on the basis that the Applicant did not have *locus standi* to bring the said application.

Particulars

i) The learned Court of Appeal Judges erred in law and/or erred on a mixed question of law and fact in failing to have regard or adequate regard to the Appellant's constitutional right to a good name pursuant to Article 40.3.2 of Bunreacht na hÉireann and to the Appellant's right to fair procedure and constitutional justice.

ii) The learned Court of Appeal Judges further erred in law and/or erred on a mixed question of law and fact in determining that a "sufficient interest in the matter to which the application relates" for the purposes of Order 84 Rule 20(5) of the Rules of the Superior Courts excluded the Appellant's interest in the matter to which the Appellant's application for judicial review relates.

iii) The learned Court of Appeal Judges further erred in law and/or erred on a mixed question of law and fact in failing to have regard or adequate regard to the scope and application of the judicial authorities opened by counsel for the Appellant which the Appellant claims strongly support her contention that, on a mixed question of law and fact, she meets or ought reasonably to meet the general test for *locus standi* in this jurisdiction.



- iv) The learned Court of Appeal Judges further erred in law and/or erred on a mixed question of law and fact in failing to have regard or adequate regard to the fact that the substantive relief sought by the Appellant causes no material prejudice to the Respondent or notice parties to the Employment Appeals Tribunal proceedings and are capable of being granted without causing any material injury and/or prejudice to the substance of the determination itself or to the awards made therein.
  
- v) The learned Court of Appeal Judges further erred in law and/or erred on a mixed question of law and fact in failing to have regard or adequate regard to the fact that the Respondent and the notice parties to the Employment Appeals Tribunal proceedings have not objected to the granting of the relief sought by the Appellant.
  
- vi) Furthermore, the issue as to whether the impugned text complained of by the Appellant constitutes an adverse finding of fact against the Appellant was not heard or ruled upon in the High Court and accordingly only first arose as a consideration of the Court of Appeal. If the said point was in issue in the High Court, the Appellant could, with leave of the Court, have furnished evidence to substantiate her claim that she had, as a matter of fact, been materially prejudiced by virtue of media and online records of the findings made by the Employment Appeals Tribunal against her. If this Honourable Court is minded to grant leave to the Appellant to bring an appeal before this Court, it is submitted that the Appellant will, subject to the leave of this Court, be in a position to adduce evidence to substantiate and clarify the manner and extent to which the Appellant has, in actual fact, been prejudiced by media reports of the proceedings before the Employment Appeals Tribunal.

## 7. Other relevant information

Neutral citation of the judgment appealed against

## 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:

- 1) An Order setting aside the Order made by the High Court on 7 July 2015 which dismissed the Appellant's application for judicial review in this matter on the basis that the Appellant did not have *locus standi* to bring the said application;
- 2) An Order setting aside the Order made by the Court of Appeal on 18 July 2016 which dismissed the Appellant's appeal against the decision of the High Court (O'Malley J.) on 7 July 2015 on the basis that the Appellant did not have *locus standi* to bring the said application for judicial review;
- 3) An Order that the Order(s) of the learned High Court Judge and Court of Appeal Judges be substituted as follows so as to include:
  - i. A Declaration that the Appellant does have *locus standi* to bring an application for judicial review in this matter;
  - ii. A Declaration that the Employment Appeals Tribunal exceeded its jurisdiction and/or erred in law in its Determination in the matter of *Cathy Shevlin –v- Sean Conlan* UD1238/2013 insofar as the Respondent Tribunal wrongly and improperly made a finding of fact at page 11 of its Determination that work-related stress existed in the matter and that the cause of the Claimant's alleged work-related stress, or part thereof, lay with the Appellant by stating in its Determination that "...the cause of her work related stress lay with both the respondent [Sean Conlan, being the second notice party in this appeal] and SC [the appellant herein] *[emphasis added]*."
  - iii. An Order that the words "both", "and" and "SC" in the sentence which reads "*as the cause of her work related stress lay with both the respondent and SC*" *[emphasis added]* in the ninth and tenth lines of page 11 of the Determination of the Respondent in the matter "*Cathy Shevlin –v- Sean Conlan* UD1238/2013" be expunged forthwith from the Determination and Order and statutory records of the Employment Appeals Tribunal;

- iv. An Order that the Employment Appeals Tribunal take such steps as lie within its power to communicate the fact and details of all such corrections as this Honourable Court may direct to all such persons or bodies (if any) as the Employment Appeals Tribunal may have communicated the text of its original Determination and to simultaneously request that their records of the original Determination and Order of the Employment Appeals Tribunal dated 17<sup>th</sup> day of February 2015 be corrected so as to accord with the decision of this Honourable Court;
- v. Such further or other Orders as this Honourable Court deems proper;
- vi. Costs.

What order are you seeking if successful?

Order being appealed: set aside  vary/substitute

Original order: set aside  restore  vary/substitute

**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

Will you request a priority hearing?  Yes  No


If Yes, please give reasons below:

The Appellant has already suffered material prejudice by virtue of online records of media reports relating to a Determination of the Employment Appeals Tribunal which formed the subject matter of her application for Judicial Review in the first instance. The said media reports and the Appellant's online presence resulting therefrom were directly and expressly cited as a material consideration in an American law firm's rejection of the Appellant's employment application thereto.

In the absence of judicial remedy, the Appellant will, on balance, continue to suffer further prejudice and harm as a result of the Employment Appeal Tribunal's adverse finding against her and online media records relative thereto. Moreover, the Appellant has contacted the Google company to attempt to expunge her name from Google search results but was

informed that such provision shall typically not be made by the Company in the absence of judicial direction.

Accordingly, in circumstances in which the harm suffered by the Appellant is of an on-going nature and materially affects not only the Appellant's right to a good name but also her right to earn a living, the matter carries with it a significant degree of urgency.

Signed: 

**Cormac & Ceallaigh & Co.**

Solicitor for the Applicant/Appellant

388 North Circular Road

Phibsborough

Dublin 7

**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.**